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| LEGISLATIVE FISCAL ESTIMATE: | Yes | 03/06/2024<br>03/21/2024 |
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**S50 (2R)**

|                                                         |                  |                                                             |
|---------------------------------------------------------|------------------|-------------------------------------------------------------|
| <b>INTRODUCED BILL:</b> (Includes sponsor(s) statement) | Yes              |                                                             |
| <b>REPRINT(S):</b>                                      | Yes              | SCU 1/25/24 1R<br>SBA 3/11/24 2R                            |
| <b>TECHNICAL REVIEW OF BILL:</b>                        | No               |                                                             |
| <b>COMMITTEE STATEMENT:</b>                             | <b>ASSEMBLY:</b> | No                                                          |
|                                                         | <b>SENATE:</b>   | Yes    Community & Urban Affairs<br>Budget & Appropriations |

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

|                                     |                   |
|-------------------------------------|-------------------|
| <b>FLOOR AMENDMENT STATEMENT:</b>   | No                |
| <b>LEGISLATIVE FISCAL ESTIMATE:</b> | Yes    03/21/2024 |

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| <b>VETO MESSAGE:</b> | No |
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| <b>GOVERNOR'S PRESS RELEASE ON SIGNING:</b> | Yes |
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|                            |     |
|----------------------------|-----|
| <b>REPORTS:</b>            | No  |
| <b>HEARINGS:</b>           | No  |
| <b>NEWSPAPER ARTICLES:</b> | Yes |

Jelani Gibson NJ Advance Media, 'Can NJ build its way out of housing crisis?', *Jersey Journal, The* (online), 20 Mar 20

Matthew Fazelpoor, 'Murphy signs landmark affordable housing legislation into law', *NJBIZ* (online), 20 Mar 2024

Jelani Gibson - For The Star-Ledger, 'Gov. signs affordable housing bill', *Star-Ledger, The* (online), 21 Mar 2024

Matthew Fazelpoor, 'Landmark affordable housing legislation heads to Murphy's desk', *NJBIZ* (online), 19 Mar 2024

Matthew Fazelpoor, 'TTF legislation with gas tax increase clears Legislature', *NJBIZ* (online), 19 Mar 2024

CL/MM

§§3,6,7  
C.52:27D-304.1  
to 52:27D-304.3  
§§5,36  
C.52:27D-313.2  
and 52:27D-313.3  
§37  
Repealer  
§38  
Approp.  
§39  
Note to  
§§1-36

P.L. 2024, CHAPTER 2, *approved March 20, 2024*  
Assembly, No. 4 (*Second Reprint*)

- 1   **AN ACT** concerning affordable housing, including administration  
2       and municipal obligations, amending, supplementing, and  
3       repealing various parts of the statutory law, and making an  
4       appropriation.  
5  
6       **BE IT ENACTED** by the Senate and General Assembly of the State  
7   *of New Jersey:*  
8  
9       1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to  
10    read as follows:  
11       2. The Legislature finds that:  
12       a. The New Jersey Supreme Court, through its rulings in **【South】**  
13    Southern Burlington County NAACP v. Mount Laurel, 67 N.J. 151  
14    (1975) and **【South】** Southern Burlington County NAACP v. Mount  
15    Laurel, 92 N.J. 158 (1983), has determined that every municipality in a  
16    growth area has a constitutional obligation to provide through its land  
17    use regulations a realistic opportunity for a fair share of its region's  
18    present and prospective needs for housing for **【low and moderate**  
19    **income】** low- and moderate-income families.  
20       b. In the second Mount Laurel ruling, the Supreme Court stated  
21    that the determination of the methods for satisfying this constitutional  
22    obligation "is better left to the Legislature," that the court has "always  
23    preferred legislative to judicial action in their field," and that the  
24    judicial role in upholding the Mount Laurel doctrine "could decrease  
25    as a result of legislative and executive action."  
26       c. The interest of all citizens, including **【low and moderate**  
27    **income】** low- and moderate-income families in need of affordable

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:  
<sup>1</sup>Assembly AAP committee amendments adopted February 8, 2024.  
<sup>2</sup>Senate SBA committee amendments adopted March 11, 2024.

1 housing, and the needs of the workforce, would be best served by a  
2 comprehensive planning and implementation response to this  
3 constitutional obligation.

4 d. There are a number of essential ingredients to a comprehensive  
5 planning and implementation response, including the establishment of  
6 reasonable fair share housing guidelines and standards, the initial  
7 determination of fair share by officials at the municipal level and the  
8 preparation of a municipal housing element, State review of the local  
9 fair share study and housing element, and continuous State funding for  
10 **low and moderate income** low- and moderate-income housing to  
11 replace the federal housing subsidy programs which have been almost  
12 completely eliminated.

13 e. The State can maximize the number of **low and moderate**  
14 **income** low- and moderate-income units provided in New Jersey by  
15 allowing its municipalities to adopt appropriate phasing schedules for  
16 meeting their fair share, so long as the municipalities permit a timely  
17 achievement of an appropriate fair share of the regional need for **low**  
18 **and moderate income** low- and moderate-income housing as required  
19 by the Mt. Laurel I and II opinions and other relevant court decisions.

20 f. The State can also maximize the number of **low and moderate**  
21 **income** low- and moderate-income units by creating new affordable  
22 housing and by rehabilitating existing, but substandard, housing in the  
23 State. Because the Legislature has determined, pursuant to P.L.2008,  
24 c.46 (C.52:27D-329.1 et al.), that it is no longer appropriate or in  
25 harmony with the Mount Laurel doctrine to permit the transfer of the  
26 fair share obligations among municipalities within a housing region, it  
27 is necessary and appropriate to create a new program to create new  
28 affordable housing and to foster the rehabilitation of existing, but  
29 substandard, housing.

30 g. Since the urban areas are vitally important to the State,  
31 construction, conversion and rehabilitation of housing in our urban  
32 centers should be encouraged. However, the provision of housing in  
33 urban areas must be balanced with the need to provide housing  
34 throughout the State for the free mobility of citizens.

35 h. The Supreme Court of New Jersey in its Mount Laurel  
36 decisions demands that municipal land use regulations affirmatively  
37 afford a **reasonable** realistic opportunity for a variety and choice of  
38 housing including low and moderate cost housing, to meet the needs of  
39 people desiring to live there. While provision for the actual  
40 construction of that housing by municipalities is not required, they are  
41 encouraged but not mandated to expend their own resources to help  
42 provide **low and moderate income** low- and moderate-income  
43 housing.

44 i. **Certain** amendments to the enabling act of the Council on  
45 Affordable Housing are necessary to provide guidance to the council  
46 to ensure consistency with the legislative intent, while at the same time  
47 clarifying the limitations of the council in its rulemaking. Although

1 the court has remarked in several decisions that the Legislature has  
2 granted the council considerable deference in its rulemaking, the  
3 Legislature retains its power and obligation to clarify and amend the  
4 enabling act from which the council derives its rulemaking power,  
5 from time to time, in order to better guide the council.】 (Deleted by  
6 amendment, P.L. , c. ) (pending before the Legislature as this bill)

7 j. The Legislature finds that the use of regional contribution  
8 agreements, which permits municipalities to transfer a certain portion  
9 of their fair share housing obligation outside of the municipal borders,  
10 should no longer be utilized as a mechanism for the creation of  
11 affordable housing 【by the council】.

12 k. The Legislature finds that the role of the Council on Affordable  
13 Housing, as intended in the original enactment of the "Fair Housing  
14 Act," has not developed in practice as was intended in the legislation.

15 l. The council's inability to function ultimately led the Supreme  
16 Court in 2015 to order the temporary dissolution of the requirement  
17 that administrative remedies be exhausted prior to resolving affordable  
18 housing disputes before the court, and allowed the courts to resume  
19 their role as the forum of first resort for evaluating municipal  
20 compliance with Mount Laurel obligations pursuant to guidelines laid  
21 out by the Supreme Court's order.

22 m. The Legislature finds that the council's inability to function led  
23 to a "gap period" that frustrated the intent of the Legislature and  
24 compliance with constitutional and statutory obligations, and that it is  
25 necessary to establish definitive deadlines for municipal action and  
26 any challenges to those actions to avoid such a "gap period" from  
27 being repeated in the future.

28 n. The Legislature finds that although the court-led system that has  
29 developed since 2015 has resulted in a significant number of  
30 settlement agreements and increased production of affordable housing,  
31 the system could operate more expeditiously to produce affordable  
32 housing, and at a lower cost to all parties, if appropriate standards are  
33 established by the Legislature to be applied throughout the State  
34 including more clarity on calculation on fair share affordable housing  
35 obligations using transparent and established data sources to eliminate  
36 the lengthy and costly processes of determining those obligations that  
37 have characterized both the Council on Affordable Housing and court-  
38 led system.

39 o. The Legislature determines that, considering the unique history  
40 of the "Fair Housing Act," the Council on Affordable Housing shall be  
41 abolished, and that, pursuant to the formulas and process established  
42 pursuant to sections 6 and 7 of P.L. , c. (C. and C. )  
43 (pending before the Legislature as this bill), a municipality shall be  
44 authorized to seek approval of its fair share affordable housing  
45 obligation, adopted pursuant to binding resolution and then filed with  
46 the court, with the guidance of calculations published by the  
47 Department of Community Affairs, but that advocates for the low- and

1 moderate-income households of the State shall be provided with an  
 2 opportunity to contest the municipal determination.

3 p. <sup>1</sup>The Legislature declares that the "Fair Housing Act,"  
 4 P.L.1985, c.222 (C.52:27D-301 et al.), as amended and supplemented  
 5 by P.L. , c. (C. ) (pending before the Legislature as this bill), is  
 6 intended to implement the Mount Laurel doctrine, and that  
 7 municipalities in compliance with the "Fair Housing Act," P.L.1985,  
 8 c.222 (C.52:27D-301 et al.) are also in compliance with the Mount  
 9 Laurel doctrine.

10 q.<sup>1</sup> The Legislature finds that the population of persons aged 65  
 11 years and older in the State has grown from approximately 13 percent  
 12 in 1990, to 17 percent in 2021, and that such growth, in conjunction  
 13 with expected future growth, makes it appropriate for the Legislature  
 14 to '【continue to】' allow up to '【25】 30' percent of the units towards a  
 15 municipality's prospective affordable housing obligation to be  
 16 satisfied through the creation of age-restricted housing.

17 <sup>2</sup>r. The "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.)  
 18 and the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.)  
 19 were enacted concurrently to address the ruling of the New Jersey  
 20 Supreme Court in Southern Burlington County NAACP v. Mount  
 21 Laurel, 92 N.J. 158 (1983) and associated land use planning concerns.

22 s. The Legislature, in amending and supplementing the "Fair  
 23 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), intends to  
 24 facilitate comprehensive planning in alignment with smart growth  
 25 principles, and the State Development and Redevelopment Plan.

26 t. The Legislature declares that the changes made to affordable  
 27 housing methodologies, obligations, and fair share plans, as  
 28 determined to be a necessity by the Legislature, through the enactment  
 29 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
 30 are made with the intention of furthering consistency with the State  
 31 Development and Redevelopment Plan.<sup>2</sup>

32 (cf: P.L.2008, c.46, s.4)

33

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

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

37 a. "Council" means the Council on Affordable Housing  
 38 established in P.L.1985, c.222 (C.52:27D-301 et al.), **【**which shall  
 39 have primary jurisdiction for the administration of housing obligations  
 40 in accordance with sound regional planning considerations in this  
 41 State**】** abolished pursuant to section 3 of P.L. , c. (C. )  
 42 (pending before the Legislature as this bill).

43 b. "Housing region" means a geographic area **【**of not less than  
 44 two nor more than four contiguous, whole counties which exhibit  
 45 significant social, economic and income similarities, and which  
 46 constitute to the greatest extent practicable the primary metropolitan  
 47 statistical areas as last defined by the United States Census Bureau

1 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.)**】**  
2 established pursuant to subsection b. of section 6 of  
3 P.L. , c. (C. ) (pending before the Legislature as this bill).

4 c. **【"Low income】** "Low-income housing" means housing  
5 affordable according to federal Department of Housing and Urban  
6 Development or other recognized standards for home ownership and  
7 rental costs and occupied or reserved for occupancy by households  
8 with a gross household income equal to 50 percent or less of the  
9 median gross household income for households of the same size within  
10 the housing region in which the housing is located.

11 d. **【"Moderate income】** "Moderate-income housing" means  
12 housing affordable according to federal Department of Housing and  
13 Urban Development or other recognized standards for home ownership  
14 and rental costs and occupied or reserved for occupancy by households  
15 with a gross household income equal to more than 50 **【%】** percent but  
16 less than 80 percent of the median gross household income for  
17 households of the same size within the housing region in which the  
18 housing is located.

19 e. **【"Resolution of participation" means a resolution adopted by a**  
20 **municipality in which the municipality chooses to prepare a fair share**  
21 **plan and housing element in accordance with P.L.1985, c.222**  
22 **(C.52:27D-301 et al.).**】**** (Deleted by amendment, P.L. , c. )  
23 (pending before the Legislature as this bill)

24 f. "Inclusionary development" means a residential housing  
25 development in which a substantial percentage of the housing units are  
26 provided for a reasonable income range of **【low and moderate**  
27 **income】** low- and moderate-income households.

28 g. "Conversion" means the conversion of existing commercial,  
29 industrial, or residential structures for **【low and moderate income】**  
30 low- and moderate-income housing purposes where a substantial  
31 percentage of the housing units are provided for a reasonable income  
32 range of **【low and moderate income】** low- and moderate-income  
33 households.

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

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

39 j. "Prospective need" means a projection of housing needs based  
40 on development and growth which is reasonably likely to occur in a  
41 region or a municipality, as the case may be, as a result of actual  
42 determination of public and private entities. **【In determining**  
43 **prospective need, consideration shall be given to approvals of**  
44 **development applications, real property transfers, and economic**  
45 **projections prepared by the State Planning Commission established by**  
46 **sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.)**】****  
47 Prospective need shall be determined by the methodology set forth

1 pursuant to sections 6 and 7 of P.L. , c. (C. and C. )  
2 (pending before the Legislature as this bill) for the fourth round and all  
3 future rounds of housing obligations.

4 k. "Person with a disability" means a person with a physical  
5 disability, infirmity, malformation, or disfigurement which is caused  
6 by bodily injury, birth defect, aging, or illness including epilepsy and  
7 other seizure disorders, and which shall include, but not be limited to,  
8 any degree of paralysis, amputation, lack of physical coordination,  
9 blindness or visual impairment, deafness or hearing impairment, the  
10 inability to speak or a speech impairment, or physical reliance on a  
11 service animal, wheelchair, or other remedial appliance or device.

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

18 m. "Very **low income** low-income housing" means housing  
19 affordable according to federal Department of Housing and Urban  
20 Development or other recognized standards for home ownership and  
21 rental costs and occupied or reserved for occupancy by households  
22 with a gross household income equal to 30 percent or less of the  
23 median gross household income for households of the same size within  
24 the housing region in which the housing is located.

25 n. "Accessory dwelling unit" means a residential dwelling unit  
26 that provides complete independent living facilities with a private  
27 entrance for one or more persons, consisting of provisions for living,  
28 sleeping, eating, sanitation, and cooking, including a stove and  
29 refrigerator, and is located within a proposed or existing primary  
30 dwelling, within an existing or proposed structure that is accessory to a  
31 dwelling on the same lot, constructed in whole or part as an extension  
32 to a proposed or existing primary dwelling, or constructed as a  
33 separate detached structure on the same lot as the existing or proposed  
34 primary dwelling.

35 o. "Builder's remedy" means court imposed site-specific relief for  
36 a litigant who seeks to build affordable housing for which the court  
37 requires a municipality to utilize zoning techniques such as mandatory  
38 set-asides or density bonuses, including techniques which provide for  
39 the economic viability of a residential development by including  
40 housing that is not for low- and moderate-income households.

41 p. "Commissioner" means the Commissioner of Community  
42 Affairs.

43 q. "Compliance certification" means the certification obtained by a  
44 municipality pursuant to section 3 of P.L. , c. (C. ) (pending  
45 before the Legislature as this bill), that protects the municipality from  
46 <sup>1</sup>[a builder's remedy] exclusionary zoning litigation<sup>1</sup> during the  
47 current round of present and prospective need and through July 1 of  
48 the year the next round begins, which is also known as a "judgment of



1 compliance" or "judgment of repose." The term "compliance  
 2 certification" shall include a judgment of repose granted in an action  
 3 filed pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313).

4 r. "County level housing judge" means a judge appointed pursuant  
 5 to section 5 of P.L. , c. (C. ) (pending before the Legislature  
 6 as this bill), to resolve disputes over the compliance of municipal fair  
 7 share affordable housing obligations and municipal fair share plans  
 8 and housing elements, with the "Fair Housing Act," P.L.1985, c.222  
 9 (C.52:27D-301 et al.

10 s. "Deficient housing unit" means housing that: (1) is over fifty  
 11 years old and overcrowded; (2) lacks complete plumbing; or (3) lacks  
 12 complete kitchen facilities.

13 t. "Department" means the Department of Community Affairs.

14 u. <sup>1</sup>"Exclusionary zoning litigation" means litigation to challenge  
 15 the fair share plan, housing element, or ordinances or resolutions  
 16 implementing the fair share plan or housing element of a municipality  
 17 based on alleged noncompliance with the "Fair Housing Act,"  
 18 P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine,  
 19 which litigation shall include, but shall not be limited to, litigation  
 20 seeking a builder's remedy.

21 v. <sup>1</sup> "Fair share plan" means the plan or proposal that is in a form  
 22 which may readily be adopted, with accompanying ordinances and  
 23 resolutions, pursuant to subsection f. of section 3 of  
 24 P.L. , c. (C. ) (pending before the Legislature as this bill), by  
 25 which a municipality proposes to satisfy its obligation to create a  
 26 realistic opportunity to meet its fair share of low- and moderate-  
 27 income housing needs of its region and which details the affirmative  
 28 measures the municipality proposes to undertake to achieve its fair  
 29 share of low- and moderate-income housing, as provided in the  
 30 municipal housing element, and addresses the development regulations  
 31 necessary to implement the housing element, including, but not limited  
 32 to, inclusionary requirements and development fees, and the  
 33 elimination of unnecessary housing cost-generating features from the  
 34 municipal land use ordinances and regulations.

35 <sup>1</sup>[v.] w. <sup>2</sup>"Highlands-conforming municipality" means a  
 36 municipality that has adopted a land development ordinance  
 37 implementing the municipality's plan conformance petition and which  
 38 land development ordinance has been certified by the Highlands Water  
 39 Protection and Planning Council as consistent with the "Highlands  
 40 Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et  
 41 seq.), the Highlands regional master plan, and the municipality's plan  
 42 conformance approval. The term "land development ordinance" shall  
 43 be inclusive of any amendment to the municipality's land development  
 44 ordinances that is adopted to further the municipality's petition of plan  
 45 conformance.

46 x. <sup>2</sup> "Housing element" means that portion of a municipality's  
 47 master plan consisting of reports, statements, proposals, maps,  
 48 diagrams, and text designed to meet the municipality's fair share of its

1 region's present and prospective housing needs, particularly with  
 2 regard to low- and moderate-income housing, and which shall contain  
 3 the municipal present and prospective obligation for affordable  
 4 housing, determined pursuant to subsection f. of section 3 of P.L. , c.  
 5 (C. ) (pending before the Legislature as this bill).

6 <sup>1</sup>[w.] <sup>2</sup>[x.<sup>1</sup>] y.<sup>2</sup> "Program" means the Affordable Housing  
 7 Dispute Resolution Program, established pursuant to section 5 of  
 8 P.L. , c. (C. ) (pending before the Legislature as this bill).

9 <sup>1</sup>[x.] <sup>2</sup>[y.<sup>1</sup>] z. "State Development and Redevelopment Plan" or  
 10 "State Plan" means the plan prepared pursuant to sections 1 through 12  
 11 of the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.),  
 12 designed to represent a balance of development and conservation  
 13 objectives best suited to meet the needs of the State, and for the  
 14 purpose of coordinating planning activities and establishing Statewide  
 15 planning objectives in the areas of land use, housing, economic  
 16 development, transportation, natural resource conservation, agriculture  
 17 and farmland retention, recreation, urban and suburban redevelopment,  
 18 historic preservation, public facilities and services, and  
 19 intergovernmental coordination pursuant to subsection f. of section 5  
 20 of P.L.1985,c.398 (C.52:18A-200).

21 aa.<sup>2</sup> "Transitional housing" means temporary housing that:

22 (1) includes, but is not limited to, single-room occupancy housing  
 23 or shared living and supportive living arrangements;

24 (2) provides access to on-site or off-site supportive services for  
 25 very low-income households who have recently been homeless or lack  
 26 stable housing;

27 (3) is licensed by the department; and

28 (4) allows households to remain for a minimum of six months.

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

30  
 31 3. (New section) a. The Council on Affordable Housing,  
 32 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
 33 et al.), is abolished. Each municipality shall determine its municipal  
 34 present and prospective obligations in accordance with the formulas  
 35 established in sections 6 and 7 of P.L. , c. (C. and C. )  
 36 (pending before the Legislature as this bill) and may take into  
 37 consideration the calculations in the report published by the  
 38 department in accordance with this section.

39 b. Following the expiration of the third round of affordable  
 40 housing obligations on July 1, 2025, a municipality shall have  
 41 immunity from <sup>1</sup>[a builder's remedy] exclusionary zoning litigation<sup>1</sup>  
 42 if the municipality complies with the deadlines established in P.L. ,  
 43 c. (C. ) (pending before the Legislature as this bill) for both  
 44 determining present and prospective obligations, and for adopting a  
 45 housing element and fair share plan to meet those obligations.

46 <sup>1</sup>(1) Immunity from exclusionary zoning litigation shall not limit  
 47 the ability of an interested party to challenge a municipality for failure

1 to comply with the terms of its compliance certification. However, a  
 2 municipality's actions to comply with the terms of its compliance  
 3 certification shall retain a presumption of validity if challenged for an  
 4 alleged failure described in this paragraph.

5 (2) Immunity from exclusionary zoning litigation shall not limit  
 6 the ability of an interested party to <sup>2</sup>bring a<sup>2</sup> challenge <sup>2</sup>before<sup>2</sup> the  
 7 program alleging that, despite the issuance of compliance certification,  
 8 a municipality's fair share obligation, fair share plan, housing element,  
 9 or ordinances implementing the fair share plan or housing element are  
 10 in violation of the Mount Laurel doctrine. However, the <sup>2</sup>decisions of  
 11 the<sup>2</sup> program <sup>2</sup>[and its actions]<sup>2</sup> shall retain a presumption of validity  
 12 if challenged for an alleged violation described in this paragraph.<sup>1</sup>

13 c. Prior to the beginning of each new 10-year round of housing  
 14 obligations beginning with the fourth round on July 1, 2025, the  
 15 Department of Community Affairs shall conduct a calculation of  
 16 regional need and municipal present and prospective obligations in  
 17 accordance with the formulas established in sections 6 and 7 of  
 18 P.L. , c. (C. and C. ) (pending before the Legislature as  
 19 this bill).

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

45 e. Nothing in the provisions of subsections c., d., or f. of this  
 46 section shall be interpreted to render any calculation in a report by the  
 47 department published pursuant to this section binding on any

1 municipality or other entity, nor to render any failure by the  
 2 department to timely conduct the calculations or publish a report  
 3 required by this section to alter the deadlines or process set forth in  
 4 this section. The ultimate determination of a municipality's present  
 5 and prospective need shall be through the process as set forth below.

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

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

1 after adoption of the binding resolution and prior to March 1, 2025,  
2 alleging that the municipality's determination of its present and  
3 prospective obligation does not comply with the requirements of  
4 sections 6 and 7 of P.L. , c. (C. and C. ) (pending before  
5 the Legislature as this bill). For the fifth round, and each subsequent  
6 new round of housing obligations, the deadlines established in this  
7 subparagraph shall be on the last day of January, the last day of  
8 February, and the first day of March, respectively, of the year of the  
9 start of each new round.

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

1       (2) (a) A municipality shall adopt a housing element and fair  
2 share plan as provided for by the "Fair Housing Act," P.L.1985, c.222  
3 (C.52:27D-301 et al.), and propose drafts of the appropriate zoning  
4 and other ordinances and resolutions to implement its present and  
5 prospective obligation established in paragraph (1) of this subsection  
6 on or before June 30, 2025. After adoption of the housing element and  
7 fair share plan, and the proposal of drafts of the appropriate zoning and  
8 other ordinances and resolutions, the municipality shall within 48  
9 hours of adoption or by June 30, 2025, whichever is sooner, file the  
10 same with the program as part of the action initiated pursuant to  
11 subparagraph (b) of paragraph (1) of this subsection through the  
12 program's Internet website. Any municipality that does not do so by  
13 June 30, 2025, shall not retain immunity from **'[builder's remedy]**  
14 **exclusionary zoning**<sup>1</sup> litigation until such time as the municipality is  
15 determined to have come into compliance with the "Fair Housing  
16 Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel  
17 doctrine and shall be subject to review through the declaratory  
18 judgment process as established in paragraph (3) of this subsection.  
19 As part of its housing element and fair share plan, the municipality  
20 shall include an assessment of the degree to which the municipality  
21 has met its fair share obligation from the prior rounds of affordable  
22 housing obligations as established by prior court approval, or approval  
23 by the council, and determine to what extent this obligation is  
24 unfulfilled or whether the municipality has credits in excess of its prior  
25 round obligations. If a prior round obligation remains unfulfilled, or a  
26 municipality never received an approval from court or the council for  
27 any prior round, the municipality shall address such unfulfilled prior  
28 round obligation in its housing element and fair share plan. Units  
29 included as part of the municipality's unfulfilled prior round obligation  
30 shall not count towards the cap on units in the municipality's  
31 prospective need obligation. In addressing prior round obligations, the  
32 municipality shall retain any sites that, in furtherance of the prior  
33 round obligation, are the subject of a contractual agreement with a  
34 developer, or for which the developer has filed a complete application  
35 seeking subdivision or site plan approval prior to the date by which the  
36 housing element and fair share plan are required to be submitted, and  
37 shall demonstrate how any sites that were not built in the prior rounds  
38 continue to present a realistic opportunity, which may include  
39 proposing changes to the zoning on the site to make its development  
40 more likely, and which may also include the dedication of municipal  
41 affordable housing trust fund dollars or other monetary or in-kind  
42 resources. The municipality shall only plan to replace any sites  
43 planned for development as provided by a prior court approval,  
44 settlement agreement, or approval by the council, with alternative  
45 development plans, if it is determined that the previously planned sites  
46 no longer present a realistic opportunity, and the sites in the alternative  
47 development plan provide at least an equivalent number of affordable  
48 units and are otherwise in compliance with the "Fair Housing Act,"

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

43 (b) Following the filing, in an action, of an adopted housing  
44 element and fair share plan pursuant to subparagraph (a) of this  
45 paragraph, an interested party may file a response on or before August  
46 31, 2025 alleging that the municipality's fair share plan and housing  
47 element are not in compliance with the "Fair Housing Act," P.L.1985,  
48 c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. Such

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



1 round, and each subsequent new round of housing obligations, the  
2 deadline established in this subparagraph for an interested party to file  
3 a challenge shall be August 31, and for the municipality to revise its  
4 housing element and fair share plan in response, shall be December 31,  
5 of the year of the beginning of the new round.

6 (c) For the fourth round of affordable housing obligations, the  
7 implementing ordinances and resolutions, proposed pursuant to  
8 subparagraph (a) of this paragraph, and incorporating any changes  
9 from the program, shall be adopted on or before March 15, 2026. For  
10 the fifth round, and each subsequent new round of housing obligations,  
11 the deadline established in this subparagraph for the implementing  
12 ordinances and resolutions shall be on March 15 of the year following  
13 the beginning of the new round. After adoption of the implementing  
14 ordinances and resolutions by the municipality, the municipality shall  
15 immediately file the ordinances and resolutions with the program  
16 through the program's Internet website. Failure to meet the March 15  
17 deadline shall result in the municipality losing immunity from  
18 <sup>1</sup>~~builder's remedy~~ exclusionary zoning<sup>1</sup> litigation.

19 (d) The program may permit a municipality that still has a  
20 remaining dispute by interested parties to retain immunity from  
21 <sup>1</sup>~~builder's remedy~~ exclusionary zoning<sup>1</sup> litigation into the year  
22 following the year in which a new round begins if the program, or  
23 county level housing judge, determines that the municipality has been  
24 unable to resolve the issues disputed despite being determined to come  
25 into constitutional compliance. The Administrative Director of the  
26 Courts shall develop procedures to enable a county level housing judge  
27 to resolve this dispute over the issuance of compliance certification  
28 through a summary proceeding in Superior Court following the year in  
29 which the new round begins. A judge shall be permitted to serve as a  
30 county level housing judge for more than one county in the same  
31 vicinage. The pendency of such a dispute shall not stay the deadline  
32 for adoption of implementing ordinances and resolutions pursuant to  
33 this paragraph. <sup>1</sup>The implementing ordinances and resolutions  
34 adopted prior to the resolution of the dispute may be subject to  
35 changes to reflect the results of the dispute. As an alternative to  
36 adopting <sup>2</sup>~~the~~ all necessary<sup>2</sup> implementing ordinances and  
37 resolutions by the March 15 deadline, a municipality involved in a  
38 continuing dispute over the issuance of compliance certification may  
39 adopt a binding resolution by this date to commit to adopting the  
40 implementing ordinances and resolutions following resolution of the  
41 dispute, with necessary adjustments to reflect the resolution of the  
42 dispute.<sup>1</sup>

43 (e) Once a municipality has received a compliance certification or  
44 otherwise has had its fair share obligation and housing element and  
45 fair share plan finally determined via judgment of repose or other  
46 judgment, the municipality shall make the municipality's fair share  
47 plan and housing element, as well as any subsequently adopted

1 implementing ordinances and resolutions, or amendments thereto,  
2 available to the department and the program for publication on the  
3 department's and program's respective Internet websites.

4 (3) (a) If a municipality fails to 'materially' adhere to any of the  
5 deadlines established in paragraphs (1) or (2) of this subsection due to  
6 circumstances beyond the control of the municipality, including but  
7 not limited to an inability to meet a deadline due to an extreme  
8 weather event, then the program, or the county level housing judge, in  
9 accordance with court rules, may permit a municipality to have a grace  
10 period to come into compliance with the timeline, the length of which,  
11 and effect of which on later deadlines, shall be determined on a case-  
12 by-case basis.

13 (b) A municipality that has not adopted and published a binding  
14 resolution pursuant to paragraph (1) of this subsection or that has not  
15 adopted and filed a housing element and fair share plan pursuant to  
16 paragraph (2) of this subsection may seek compliance certification by  
17 filing an action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-  
18 313), provided that any '[builder's remedy] exclusionary zoning'  
19 litigation filed by a plaintiff against such a municipality prior to such  
20 time may proceed notwithstanding such filing. In a municipality that  
21 has adopted and published a binding resolution pursuant to paragraph  
22 (1) of this subsection and has adopted and filed a housing element and  
23 fair share plan pursuant to paragraph (2) of this subsection, a court  
24 shall not '[grant a builder's remedy to a plaintiff in] consider'  
25 exclusionary zoning litigation during the timeframe after the timely  
26 submission of a binding resolution or fair share plan and housing  
27 element of a municipality, or both, and before a challenge is submitted,  
28 or during the timeframe of a challenge that is pending resolution with  
29 the program pursuant to this subsection. A court may '[grant a  
30 builder's remedy to a plaintiff in] consider' exclusionary zoning  
31 litigation after such timeframe upon a finding that the municipality: (i)  
32 is determined to be constitutionally noncompliant with its  
33 responsibilities pursuant to the "Fair Housing Act," P.L.1985, c.222  
34 (C.52:27D-301 et al.) or is participating in the program in bad faith;  
35 (ii) has failed to meet the deadlines established pursuant to P.L. , c.  
36 (C. ) (pending before the Legislature as this bill); or (iii) has, after  
37 receiving compliance certification, failed to comply with the terms of  
38 that certification by not actually allowing for the development of the  
39 affordable housing as provided for in its fair share plan and housing  
40 element through actions, omissions, or both, of a municipality or its  
41 subordinate boards.

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

44 (d) A determination by the program as to the present and  
45 prospective need obligation or as to issuance of compliance  
46 certification pursuant to this section shall be considered a final  
47 decision, subject to appellate review pursuant to the procedures set

1 forth in subparagraph (c) of paragraph (1) of subsection f. of this  
2 section.

3 (e) A municipality shall not be deemed out of compliance with the  
4 deadlines of P.L. , c. (C. ) (pending before the Legislature as  
5 this bill), or lose immunity from <sup>1</sup>**builder's remedy** exclusionary  
6 zoning<sup>1</sup> litigation, due to a failure by the program to promptly  
7 maintain and update its Internet website, or other operational failure of  
8 the program.

9 <sup>1</sup>g. <sup>2</sup>**The program shall be made a party to, and shall be**  
10 responsible for defending its issuance of compliance certification in,  
11 any litigation alleging that, despite the issuance of compliance  
12 certification, a municipality's fair share obligation, fair share plan,  
13 housing element, or ordinances implementing the fair share plan or  
14 housing element are not in compliance with the Mount Laurel  
15 doctrine.<sup>1</sup> **A compliance certification, issued pursuant to P.L. , c.**  
16 **(C. ) (pending before the Legislature as this bill), shall be**  
17 **accompanied by a written report that shall set forth the basis of the**  
18 **issuance of the certification, and shall be in a format to be developed**  
19 **and approved by the Administrative Director of the Courts.**<sup>2</sup>

20

21 4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to  
22 read as follows:

23 13. a. **[A] If a municipality [which] has [filed a housing element**  
24 **may, at any time during a two-year period following the filing of the**  
25 **housing element, petition the council for a substantive certification of**  
26 **its element and ordinances or] adopted a housing element and fair**  
27 **share plan pursuant to section 3 of P.L. , c. (C. ) (pending**  
28 **before the Legislature as this bill), but has failed to satisfy the June 30**  
29 **deadline established pursuant to paragraph (2) of subsection f. of**  
30 **section 3 of P.L. , c. (C. ) (pending before the Legislature as**  
31 **this bill), for any round of affordable housing obligations, the**  
32 **municipality may request and be provided with a grace period pursuant**  
33 **to paragraph (3) of subsection f. of section 3 of P.L. , c. (C. )**  
34 **(pending before the Legislature as this bill), if authorized by the**  
35 **program or county level housing judge, as determined by the rules of**  
36 **court. If a municipality that has not satisfied this June 30 deadline is**  
37 **not provided with a grace period, the municipality may institute an**  
38 **action for declaratory judgment granting it repose in the Superior**  
39 **Court [, but in no event shall a grant of substantive certification extend**  
40 **beyond a 10-year period starting on the date the municipality files its**  
41 **housing element with the council] for the 10-year period constituting**  
42 **the current round of fair share obligations. The municipality shall**  
43 **publish notice of its [petition] filing of a declaratory judgment action**  
44 **in a newspaper of general circulation within the municipality and**  
45 **county and shall make available to the public information on the**  
46 **element and ordinances by submitting such information to the program**  
47 **to be published on the Internet website of the program in accordance**

1 with **【**such procedures as the council shall establish. The council shall  
 2 also establish a procedure for providing public notice of each petition  
 3 which it receives**】** section 3 of P.L. , c. (C. ) (pending before  
 4 the Legislature as this bill).

5 b. **【**Notwithstanding the provisions of subsection a. of this section,  
 6 a municipality which filed a housing element prior to the effective date  
 7 of P.L.1990, c.121, shall be permitted to petition for substantive  
 8 certification at any time within two years following that filing, or  
 9 within one year following the effective date of P.L.1990, c.121,  
 10 whichever shall result in permitting the municipality the longer period  
 11 of time within which to petition.**】** (Deleted by amendment, P.L. , c.  
 12 (pending before the Legislature as this bill))

13 **【**The Council shall establish procedures for**】** c. (1) A  
 14 municipality or other interested party may file an action through the  
 15 program seeking a realistic opportunity review **【**at the midpoint of the  
 16 certification period and shall provide for notice to the public**】** at the  
 17 midpoint of the certification period and shall provide for notice to the  
 18 public, including a realistic opportunity review of any inclusionary  
 19 development site in the housing element and fair share plan that has  
 20 not received preliminary site plan approval prior to the midpoint of the  
 21 10-year round. If such an action is initiated by a municipality, the  
 22 municipality <sup>1</sup>**【shall】 may**<sup>1</sup> propose one or more alternative sites with  
 23 an accompanying development plan or plans that provide a realistic  
 24 opportunity for the same number of affordable units and is otherwise  
 25 in compliance with the "Fair Housing Act," P.L.1985, c.222  
 26 (C.52:27D-301 et al.) and the Mount Laurel doctrine, provided that if  
 27 the facts demonstrate that the municipality or its subordinate boards  
 28 have prevented the site from receiving site plan approval, then the  
 29 program shall reject the municipality's challenge.

30 (2) Any party may file a request for information from the program  
 31 regarding the progress of development at any inclusionary  
 32 development site in the housing element and fair share plan of a  
 33 municipality, or at any alternative site proposed by the municipality.  
 34 The program may respond to a request independently or in  
 35 coordination with the department.

36 (cf: P.L.2001, c.435, s.5)

37  
 38 5. (New section) a. There is established an Affordable Housing  
 39 Dispute Resolution Program that shall have the purpose of efficiently  
 40 resolving disputes involving the "Fair Housing Act," P.L.1985, c.222  
 41 (C.52:27D-301 et al.), to consist of an odd number of members, of at  
 42 least three and no more than seven members who shall lead the  
 43 administration of the program. The <sup>1</sup>**【**Chief Justice of the Supreme  
 44 Court**】** Administrative Director of the Courts<sup>1</sup> shall update the  
 45 assignment of designated Mount Laurel judges to indicate which  
 46 current or retired and on recall judges of the Superior Court shall serve  
 47 as members, within <sup>1</sup>**【40】 60**<sup>1</sup> days following the effective date of

1 P.L. , c. (C. ) (pending before the Legislature as this bill). The  
2 **1[Chief Justice of the Supreme Court] Administrative Director of the**  
3 **Courts<sup>1</sup>** may appoint other qualified experts as members if sufficient  
4 current and retired judges are unavailable. The **1[Chief Justice of the**  
5 **Supreme Court] Administrative Director of the Courts<sup>1</sup>** shall take into  
6 consideration in making such appointments experience in the  
7 employment of alternative dispute resolution methods and in relevant  
8 subject matter.

9 b. The **1[Chief Justice of the Supreme Court] Administrative**  
10 **Director of the Courts<sup>1</sup>** shall designate a member to serve as chair.  
11 The **1[Chief Justice of the Supreme Court] Administrative Director of**  
12 **the Courts<sup>1</sup>** shall make new appointments as needs arise for new  
13 appointments.

14 c. The program, in its discretion and in accordance with Rules of  
15 Court, may consult or employ the services of one or more special  
16 masters or staff to assist it in rendering determinations, resolving  
17 disputes, and facilitating communication as required by subparagraph  
18 (b) of paragraph (2) of subsection f. of section 3 of P.L. , c.  
19 (C. ) (pending before the Legislature as this bill). In addition, the  
20 program may incorporate any existing or newly established court  
21 mediation or alternative dispute resolution process to assist the  
22 program in resolving disputes and facilitating communication among  
23 municipalities and interested parties.

24 d. The Administrative Director of the Courts shall establish a  
25 filing system via an Internet website in which the public is able to  
26 access, without cost, filings made pursuant to P.L. , c. (C. )  
27 (pending before the Legislature as this bill) and such other related  
28 filings as the Administrative Director of the Courts may include on the  
29 filing system.

30 e. The Administrative Director of the Courts may assign  
31 additional responsibilities to the program for resolving disputes arising  
32 out of or related to the "Fair Housing Act," P.L.1985, c.222  
33 (C.52:27D-301 et al.).

34 f. The Administrative Director of the Courts shall establish  
35 procedures for the purpose of efficiently resolving disputes involving  
36 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), for  
37 circumstances in which the program is unable to address the dispute  
38 within the time limitations established pursuant to section 3 of P.L. ,  
39 c. (C. ) (pending before the Legislature as this bill). As a part of  
40 the procedures established pursuant to this section, in order to facilitate  
41 an appropriate level of localized control of affordable housing  
42 decisions, for each vicinage, the Chief Justice of the Supreme Court  
43 shall designate a Superior Court judge who sits within the vicinage, or  
44 a retired judge who, during the judge's tenure as a judge, served within  
45 the vicinage, to serve as county level housing judge to resolve disputes  
46 over the compliance, of fair share plans and housing elements of  
47 municipalities within their designated county or counties, with the

1 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as well as  
2 disputes that arise with respect to ongoing compliance or  
3 noncompliance with obligations created by fair share plans, housing  
4 elements, and the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
5 et al.). A judge shall be permitted to serve as a county level housing  
6 judge for more than one county in the same vicinage.

7 g. The Administrative Director of the Courts shall promulgate,  
8 maintain, and apply a Code of Ethics that is modeled upon the Code of  
9 Judicial Conduct of the American Bar Association, as amended and  
10 adopted by the Supreme Court of New Jersey, and may establish  
11 additional, more restrictive ethical standards in order to meet the  
12 specific needs of the program, and of county level housing judges.

13  
14 6. (New section) a. Municipal present need for each 10-year  
15 round of affordable housing obligations shall be determined by  
16 estimating the deficient housing units occupied by low- and moderate-  
17 income households in the region, following a methodology similar to  
18 the methodology used to determine third round municipal present  
19 need, through the use of most recent datasets made available through  
20 the federal decennial census and the American Community Survey <sup>2</sup>,  
21 including the Comprehensive Housing Affordability Strategy dataset  
22 thereof<sup>2</sup>.

23 b. For the purpose of determining regional need for the 10-year  
24 round of low- and moderate-income housing obligations, running from  
25 July 1, 2025 through June 30, 2035, and each 10-year round thereafter:

26 (1) The regions of the State shall be comprised as follows:

27 (a) Region 1 shall consist of the counties of Bergen, Hudson,  
28 Passaic, and Sussex;

29 (b) Region 2 shall consist of the counties of Essex, Morris, Union,  
30 and Warren;

31 (c) Region 3 shall consist of the counties of Hunterdon,  
32 Middlesex, and Somerset;

33 (d) Region 4 shall consist of the counties of Mercer, Monmouth,  
34 and Ocean;

35 (e) Region 5 shall consist of the counties of Burlington, Camden,  
36 and Gloucester; and

37 (f) Region 6 shall consist of the counties of Atlantic, Cape May,  
38 Cumberland, and Salem.

39 (2) Regional prospective need for a 10-year round of low- and  
40 moderate-income housing obligations shall be determined through the  
41 calculation provided in this subsection. Projected household change  
42 for a 10-year round in a region shall be estimated by establishing the  
43 household change experienced in the region between the most recent  
44 federal decennial census, and the second-most recent federal decennial  
45 census. This household change, if positive, shall be divided by 2.5 to  
46 estimate the number of low- and moderate-income homes needed to  
47 address low- and moderate-income household change in the region,  
48 and to determine the regional prospective need for a 10-year round of

1 low- and moderate-income housing obligations. If household change  
2 is zero or negative, the number of low- and moderate-income homes  
3 needed to address low- and moderate-income household change in the  
4 region and the regional prospective need shall be zero.

5  
6 7. (New section) a. The present and prospective fair share  
7 obligation for low- and moderate-income housing for each  
8 municipality in the State shall be determined as described in this  
9 section. In addition, the March 8, 2018 unpublished decision of the  
10 Superior Court, Law Division, Mercer County, In re Application of  
11 Municipality of Princeton shall be referenced as to datasets and  
12 methodologies that are not explicitly addressed by this section. These  
13 determinations of municipal present and prospective need shall be  
14 based on a determination of the present and prospective regional need  
15 for low- and moderate-income housing, established pursuant to section  
16 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).  
17 These calculations of municipal present and prospective need shall use  
18 necessary datasets that are updated to the greatest extent practicable.

19 b. A municipality's present need obligation shall be determined by  
20 estimating the existing deficient housing units currently occupied by  
21 low- and moderate-income households within the municipality,  
22 following a methodology comparable to the methodology used to  
23 determine third round present need, through the use of datasets made  
24 available through the federal decennial census and the American  
25 Community Survey <sup>2</sup>, including the Comprehensive Housing  
26 Affordability Strategy dataset thereof<sup>2</sup>.

27 c. A municipality's prospective fair share obligation of the  
28 regional prospective need for the upcoming 10-year round shall be  
29 determined in accordance with this subsection:

30 (1) If a municipality is a qualified urban aid municipality, the  
31 municipality shall be exempt from responsibility for any fair share  
32 prospective need obligation for the upcoming 10-year round. For the  
33 purposes of this section, a municipality is a qualified urban aid  
34 municipality if the municipality, as of July 1 of the year prior to the  
35 beginning of a new round, is designated by the department, pursuant to  
36 P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid, and the  
37 municipality meets at least one of the following criteria:

38 (a) The ratio of substandard existing deficient housing units  
39 currently occupied by low- and moderate-income households within  
40 the municipality, compared to all existing housing in the municipality,  
41 is greater than the equivalent ratio in the region;

42 (b) The municipality has a population density greater than 10,000  
43 persons per square mile of land area; or

44 (c) The municipality has a population density of more than 6,000,  
45 but less than 10,000 persons per square mile of land area, and less than  
46 five percent vacant parcels not used as farmland, as measured by the  
47 average of:

1 (i) The number of vacant land parcels in the municipality as a  
2 percentage of the total number of parcels in the municipality; and

3 (ii) The valuation of vacant land in the municipality as a  
4 percentage of total valuations in the municipality.

5 (2) A municipality's equalized nonresidential valuation factor  
6 shall be determined. To determine this factor, the changes in  
7 nonresidential property valuations in the municipality, since the  
8 beginning of the round preceding the round being calculated, shall be  
9 calculated using data published by the Division of Local Government  
10 Services in the department. <sup>2</sup>For the purposes of this paragraph, the  
11 beginning of the round of affordable housing obligations preceding the  
12 fourth round shall be the beginning of the gap period in 1999.<sup>2</sup> The  
13 change in the municipality's nonresidential valuations shall be divided  
14 by the regional total change in nonresidential valuations to determine  
15 the municipality's share of the regional change as the equalized  
16 nonresidential valuation factor.

17 (3) A municipality's income capacity factor shall be determined.  
18 This factor shall be determined by calculating the average of the  
19 following measures:

20 (a) The municipal share of the regional sum of the differences  
21 between the median municipal household income, according to the  
22 most recent American Community Survey Five-Year Estimates, and  
23 an income floor of \$100 below the lowest median household income in  
24 the region; and

25 (b) The municipal share of the regional sum of the differences  
26 between the median municipal household incomes and an income floor  
27 of \$100 below the lowest median household income in the region,  
28 weighted by the number of the households in the municipality.

29 (4) A municipality's land capacity factor shall be determined.  
30 This factor shall be determined by estimating the area of developable  
31 <sup>1</sup>and redevelopable<sup>1</sup> land in the municipality's boundaries, and  
32 regional boundaries, that may accommodate development through the  
33 use of the "land use / land cover data" most recently published by the  
34 Department of Environmental Protection, <sup>2</sup>data from the American  
35 Community Survey and Comprehensive Housing Affordability  
36 Strategy dataset thereof, MOD-IV Property Tax List data from the  
37 Division of Taxation in the Department of the Treasury, and  
38 construction permit data from the Department of Community Affairs,<sup>2</sup>  
39 and weighing such land based on the planning area type in which such  
40 land is located. After the weighing factors are applied, the sum of the  
41 total developable <sup>1</sup>and redevelopable<sup>1</sup> land area that may  
42 accommodate development in the municipality, and in the region shall  
43 be determined. The municipality's share of its region's developable  
44 <sup>1</sup>and redevelopable<sup>1</sup> land shall be its land capacity factor.  
45 Developable <sup>1</sup>and redevelopable<sup>1</sup> land that may accommodate  
46 development shall be weighted based on the planning area type in  
47 which such land is located, as designated pursuant to P.L.1985, c.398



1 (C.52:18A-196 et seq.), P.L.1979, c.111 (C.13:18A-1 et seq.), or  
 2 P.L.2004, c.120 (C.13:20-1 et seq.), as follows:

3 (a) Planning Area 1 (Metropolitan) shall have a weighting factor  
 4 of 1.0;

5 (b) Planning Area 2 (Suburban) shall have a weighting factor of  
 6 1.0;

7 (c) Planning Area 3 (Fringe) shall have a weighting factor of 0.5;

8 (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;

9 (e) Planning Area 5 (Environmentally Sensitive) shall have a  
 10 weighting factor of 0.0;

11 (f) Centers in Planning Areas 1 and 2 shall have a weighting factor  
 12 of 1.0;

13 (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting  
 14 factor of 0.5;

15 (h) Pinelands Regional Growth Area shall have a weighting factor  
 16 of 0.5;

17 (i) Pinelands Town shall have a weighting factor of 0.5;

18 (j) All other Pinelands shall have a weighting factor of 0.0;

19 (k) Meadowlands shall have a weighting factor of 1.0;

20 (l) Meadowlands Center shall have a weighting factor of 1.0;

21 (m) Highlands Preservation Area shall have a weighting factor of  
 22 0.0;

23 (n) Highlands Planning Area Existing Community Zone <sup>2</sup>【, opted  
 24 in municipality by May 1, 2022】 and Highlands Designated Center in  
 25 a Highlands-conforming municipality, as determined by the Highlands  
 26 Water Protection and Planning Council pursuant to the list provided to  
 27 the department pursuant to subsection d. of section 3 of P.L. \_\_\_\_\_, c.  
 28 (C. \_\_\_\_\_) (pending before the Legislature as this bill),<sup>2</sup> shall have a  
 29 weighting factor of 1.0;

30 (o) Highlands Planning Area, State-designated sewer service area,  
 31 <sup>2</sup>【municipality not opted in by May 1, 2022】 Highlands municipality  
 32 that is not a Highlands-conforming municipality as determined by the  
 33 Highlands Water Protection and Planning Council pursuant to the list  
 34 provided to the department pursuant to subsection d. of section 3 of  
 35 P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the Legislature as this bill)<sup>2</sup>,  
 36 shall have a weighting factor of 1.0; and

37 (p) All other Highlands Planning Areas shall have a weighting  
 38 factor of 0.0.

39 (5) The equalized nonresidential valuation factor, income capacity  
 40 factor, and land capacity factor, determined in paragraphs (2), (3), and  
 41 (4) of this subsection, shall be averaged to yield the municipality's  
 42 average allocation factor for distributing gross regional prospective  
 43 need to the municipality. The regional prospective need shall then be  
 44 multiplied by the municipality's average allocation factor to determine  
 45 the municipality's gross prospective need for the 10-year round.

46 <sup>2</sup>【(6) Secondary sources of supply and demand shall be adjusted  
 47 for by first calculating demolitions of low- and moderate-income

1 housing, and housing creation through low- and moderate-income  
2 residential conversions. A municipality's share of low- and moderate-  
3 income conversions shall then be subtracted from the sum of each  
4 municipality's allocated share of gross prospective need and  
5 demolitions of low- and moderate-income housing.】<sup>2</sup>

6  
7 8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read  
8 as follows:

9 4. a. Upon failure to perform any obligation of a residential  
10 mortgage by the residential mortgage debtor and before any  
11 residential mortgage lender may accelerate the maturity of any  
12 residential mortgage obligation and commence any foreclosure or  
13 other legal action to take possession of the residential property  
14 which is the subject of the mortgage, the residential mortgage  
15 lender shall give a notice of intention, which shall include a notice  
16 of the right to cure the default as provided in section 5 of P.L.1995,  
17 c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in  
18 advance of such action as provided in this section, to the residential  
19 mortgage debtor, and, if the mortgage is secured by a residence for  
20 which a restriction on affordability was recorded in the county in  
21 which the property is located, the clerk of the municipality in which  
22 the subject property is located, the municipal housing liaison, if one  
23 has been appointed by the municipality 【pursuant to the regulations  
24 of the Council on Affordable Housing, and the Commissioner of  
25 Community Affairs】. For the purposes of this section, "restriction  
26 on affordability" means any conditions recorded with a mortgage or  
27 a deed which would limit the sale of such property to income  
28 qualified households pursuant to the rules adopted to effectuate the  
29 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

30 b. Notice of intention to take action as specified in subsection  
31 a. of this section shall be in writing, provided to the Department of  
32 Community Affairs in accordance with subsection a. of section 2 of  
33 P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or  
34 certified mail, return receipt requested, at the debtor's last known  
35 address, and, if different, to the address of the property which is the  
36 subject of the residential mortgage. The notice is deemed to have  
37 been effectuated on the date the notice is delivered in person or  
38 mailed to the party.

39 c. The written notice shall clearly and conspicuously state in a  
40 manner calculated to make the debtor aware of the situation:

- 41 (1) the particular obligation or real estate security interest;  
42 (2) the nature of the default claimed;  
43 (3) the right of the debtor to cure the default as provided in  
44 section 5 of P.L.1995, c.244 (C.2A:50-57);  
45 (4) what performance, including what sum of money, if any, and  
46 interest, shall be tendered to cure the default as of the date specified  
47 under paragraph (5) of this subsection c.;

1 (5) the date by which the debtor shall cure the default to avoid  
2 initiation of foreclosure proceedings, which date shall not be less  
3 than 30 days after the date the notice is effective, and the name and  
4 address and phone number of a person to whom the payment or  
5 tender shall be made;

6 (6) that if the debtor does not cure the default by the date  
7 specified under paragraph (5) of this subsection c., the lender may  
8 take steps to terminate the debtor's ownership in the property by  
9 commencing a foreclosure suit in a court of competent jurisdiction;

10 (7) that if the lender takes the steps indicated pursuant to  
11 paragraph (6) of this subsection c., a debtor shall still have the right  
12 to cure the default pursuant to section 5 of P.L.1995, c.244  
13 (C.2A:50-57), but that the debtor shall be responsible for the  
14 lender's court costs and attorneys' fees in an amount not to exceed  
15 that amount permitted pursuant to the Rules Governing the Courts  
16 of the State of New Jersey;

17 (8) the right, if any, of the debtor to transfer the real estate to  
18 another person subject to the security interest and that the transferee  
19 may have the right to cure the default as provided in P.L.1995,  
20 c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;

21 (9) that the debtor is advised to seek counsel from an attorney of  
22 the debtor's own choosing concerning the debtor's residential  
23 mortgage default situation, and that, if the debtor is unable to obtain  
24 an attorney, the debtor may communicate with the New Jersey Bar  
25 Association or Lawyer Referral Service in the county in which the  
26 residential property securing the mortgage loan is located; and that,  
27 if the debtor is unable to afford an attorney, the debtor may  
28 communicate with the Legal Services Office in the county in which  
29 the property is located;

30 (10) the possible availability of financial assistance for curing a  
31 default from programs operated by the State or federal government  
32 or nonprofit organizations, if any, as identified by the  
33 Commissioner of Banking and Insurance and, if the property is  
34 subject to restrictions on affordability, the address and phone  
35 number of the municipal affordable housing liaison and of the New  
36 Jersey Housing and Mortgage Finance Agency. This requirement  
37 shall be satisfied by attaching a list of such programs promulgated  
38 by the commissioner;

39 (11) the name and address of the lender and the telephone  
40 number of a representative of the lender whom the debtor may  
41 contact if the debtor disagrees with the lender's assertion that a  
42 default has occurred or the correctness of the mortgage lender's  
43 calculation of the amount required to cure the default;

44 (12) that if the lender takes the steps indicated pursuant to  
45 paragraph (6) of this subsection, the debtor has the option to  
46 participate in the Foreclosure Mediation Program following the  
47 filing of a mortgage foreclosure complaint by initiating mediation  
48 pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019,

1 c.64 (C.2A:50-77). Notice of the option to participate in the  
2 Foreclosure Mediation Program shall adhere to the requirements of  
3 section 3 of P.L.2019, c.64 (C.2A:50-76) and any court rules,  
4 procedures, or guidelines adopted by the Supreme Court;

5 (13) that the debtor is entitled to housing counseling, at no cost  
6 to the debtor, through the Foreclosure Mediation Program  
7 established by the New Jersey Judiciary, including information on  
8 how to contact the program;

9 (14) that if the property which is the subject of the mortgage has  
10 more than one dwelling unit but less than five, one of which is  
11 occupied by the debtor or a member of the debtor's immediate  
12 family as the debtor's or member's residence at the time the loan is  
13 originated, and is not properly maintained and meets the necessary  
14 conditions for receivership eligibility, established pursuant to  
15 section 4 of the "Multifamily Housing Preservation and  
16 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
17 mortgage lender shall file an order to show cause to appoint a  
18 receiver; and

19 (15) that the lender is either licensed in accordance with the  
20 "New Jersey Residential Mortgage Lending Act," sections 1  
21 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89)  
22 or exempt from licensure under the act in accordance with  
23 applicable law.

24 d. The notice of intention to foreclose required to be provided  
25 pursuant to this section shall not be required if the debtor has  
26 voluntarily surrendered the property which is the subject of the  
27 residential mortgage.

28 e. The duty of the lender under this section to serve notice of  
29 intention to foreclose is independent of any other duty to give  
30 notice under the common law, principles of equity, State or federal  
31 statute, or rule of court and of any other right or remedy the debtor  
32 may have as a result of the failure to give such notice.

33 f. Compliance with this section and subsection a. of section 2  
34 of P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the  
35 pleadings of any legal action referred to in this section. If the  
36 plaintiff in any complaint seeking foreclosure of a residential  
37 mortgage alleges that the property subject to the residential  
38 mortgage has been abandoned or voluntarily surrendered, the  
39 plaintiff shall plead the specific facts upon which this allegation is  
40 based.

41 g. If more than 180 days have elapsed since the date the notice  
42 required pursuant to this section is sent, and any foreclosure or  
43 other legal action to take possession of the residential property  
44 which is the subject of the mortgage has not yet been commenced,  
45 the lender shall send a new written notice at least 30 days, but not  
46 more than 180 days, in advance of that action.

47 h. If the property which is the subject of the notice of intention  
48 to foreclose has more than one dwelling unit but less than five, one

1 of which is occupied by the debtor or a member of the debtor's  
2 immediate family as the debtor's or member's residence at the time  
3 the loan is originated, and is not properly maintained and meets the  
4 necessary conditions for receivership eligibility, established  
5 pursuant to section 4 of the "Multifamily Housing Preservation and  
6 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
7 mortgage lender shall file an order to show cause to appoint a  
8 receiver.

9 (cf: P.L.2019, c.134, s.4)

10  
11 9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as  
12 follows:

13 2. The New Jersey Council on Physical Fitness and Sports,  
14 established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is  
15 authorized to provide grants to assist low-income families in  
16 purchasing the protective eyewear. As used in this section, a "low-  
17 income family" means a family which qualifies for low-income  
18 housing under the standards promulgated by the **【Council on**  
19 **Affordable Housing】** New Jersey Housing and Mortgage Finance  
20 Agency pursuant to the "Fair Housing Act," P.L.1985, c.222  
21 (C.52:27D-301 et al.).

22 (cf: P.L.2005, c.306, s.2)

23  
24 10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to  
25 read as follows:

26 25. a. The **【Council on Affordable Housing** shall take into  
27 consideration the **】** regional master plan **【prior to making any】** shall  
28 be taken into account as part of the determination of obligations  
29 pursuant to the method in section 7 of P.L. , c. (C. )  
30 (pending before the Legislature as this bill) regarding the allocation  
31 of the prospective fair share of the housing need **【in any**  
32 **municipality in the Highlands Region】** under the "Fair Housing  
33 Act," P.L.1985, c.222 (C.52:27D-301 et al.) for **【the】** any fair share  
34 period subsequent to **【1999】** the effective date of  
35 P.L. , c. (C. ) (pending before the Legislature as this bill) if  
36 a municipality is in the Highlands Region.

37 b. Nothing in **【this act】** P.L.2004, c.120 (C.13:20-1 et al.) shall  
38 affect protections provided through a grant of substantive  
39 certification or a judgment of repose granted prior to **【the date of**  
40 **enactment of this act】** August 10, 2004.

41 (cf: P.L.2004, c.120, s.25)

42  
43 11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to  
44 read as follows:

45 5. The requirements of this act shall not apply to:

46 a. Depository institutions; but subsidiaries and service  
47 corporations of these institutions shall not be exempt. A depository

1 institution may register with the department for the purpose of  
2 sponsoring individuals, licensed as mortgage loan originators  
3 subject to subparagraph (b) of paragraph (1) of subsection c. of  
4 section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such  
5 registered entity obtains and maintains bond coverage for mortgage  
6 loan originators consistent with section 13 of P.L.2009, c.53  
7 (C.17:11C-63). A depository institution registered with the  
8 department in accordance with this subsection a. shall otherwise  
9 remain exempt from the licensing requirements of P.L.2009, c.53  
10 (C.17:11C-51 et seq.).

11 b. A registered mortgage loan originator that is registered  
12 under the federal "Secure and Fair Enforcement for Mortgage  
13 Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101  
14 et seq.).

15 c. A licensed attorney who negotiates the terms of a residential  
16 mortgage loan on behalf of a client as an ancillary matter to the  
17 attorney's representation of the client, unless the attorney is  
18 compensated by a residential mortgage lender, residential mortgage  
19 broker, or mortgage loan originator.

20 d. A person licensed as a real estate broker or salesperson  
21 pursuant to R.S.45:15-1 et seq., and not engaged in the business of a  
22 residential mortgage lender or residential mortgage broker. Any  
23 person holding a license under this act as a residential mortgage  
24 lender or broker shall be exempt from the licensing and other  
25 requirements of R.S.45:15-1 et seq. in the performance of those  
26 functions authorized by this act.

27 e. Any employer, other than a residential mortgage lender, who  
28 provides residential mortgage loans to his employees as a benefit of  
29 employment which are at an interest rate which is not in excess of  
30 the usury rate in existence at the time the loan is made, as  
31 established in accordance with the law of this State, and on which  
32 the borrower has not agreed to pay, directly or indirectly, any  
33 charge, cost, expense or any fee whatsoever, other than that interest.

34 f. The State of New Jersey or a municipality, or any agency or  
35 instrumentality thereof, which, in accordance with a housing  
36 element that has previously received substantive certification from  
37 the Council on Affordable Housing, or a judgment of repose or  
38 other court approval, pursuant to the "Fair Housing Act," P.L.1985,  
39 c.222 (C.52:27D-301 et al.), or in fulfillment of a regional  
40 contribution agreement with a municipality that has received a  
41 certification, employs or proposes to employ municipally generated  
42 funds, funds obtained through any State or federal subsidy, or funds  
43 acquired by the municipality under a regional contribution  
44 agreement, to finance the provision of affordable housing by  
45 extending loans or advances, the repayment of which is secured by  
46 a lien, subordinate to any prior lien, upon the property that is to be  
47 rehabilitated.

1 g. Any individual who offers or negotiates terms of a  
2 residential mortgage loan:

3 (1) with or on behalf of an immediate family member; or  
4 (2) secured by a dwelling that serves as the individual's  
5 residence.

6 h. Any person who, during a calendar year takes three or fewer  
7 residential mortgage loan applications or offers or negotiates the  
8 terms of three or fewer residential mortgage loans or makes three or  
9 fewer residential mortgage loans related to manufactured housing  
10 structures which are:

11 (1) titled by the New Jersey Motor Vehicle Commission;

12 (2) located in a mobile home park as defined in subsection e. of  
13 section 3 of P.L.1983, c.400 (C.54:4-1.4); and

14 (3) exempt from taxation as real property pursuant to subsection  
15 b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

16 i. A bona fide not for profit entity and any individuals directly  
17 employed by that entity, so long as the entity maintains its tax  
18 exempt status under Section 501(c)(3) of the Internal Revenue Code  
19 of 1986 and otherwise meets the definition of "bona fide not for  
20 profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as  
21 periodically determined by the department in accordance with rules  
22 established by the commissioner.

23 (cf: P.L.2018, c.108, s.3)

24

25 12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to  
26 read as follows:

27 2. a. A person who violates a requirement of this act shall be  
28 warned of the violation by the enforcing official. The parent or  
29 legal guardian of that person also may be fined a maximum of \$25  
30 for the person's first offense and a maximum of \$100 for a  
31 subsequent offense if it can be shown that the parent or guardian  
32 failed to exercise reasonable supervision or control over the  
33 person's conduct. Penalties provided in this section for a failure to  
34 wear a helmet may be waived if an offender or his parent or legal  
35 guardian presents suitable proof that an approved helmet was  
36 owned at the time of the violation or has been purchased since the  
37 violation occurred.

38 b. All money collected as fines under subsection a. of this  
39 section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-  
40 10.6) shall be deposited in a nonlapsing revolving fund to be known  
41 as the "Bicycle and Skating Safety Fund." Interest earned on  
42 money deposited in the fund shall accrue to the fund. Money in the  
43 fund shall be utilized by the director to provide educational  
44 programs devoted to bicycle, roller skating and skateboarding  
45 safety. If the director determines that sufficient money is available  
46 in the fund, he also may use, in a manner prescribed by rule and  
47 regulation, the money to assist **low income** low-income families  
48 in purchasing approved bicycle helmets. For the purposes of this

1 subsection, **["low income family"]** "low-income family" means a  
2 family which qualifies for **[low income]** low-income housing under  
3 the standards promulgated by the **[Council on Affordable Housing]**  
4 New Jersey Housing and Mortgage Finance Agency pursuant to the  
5 provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).  
6 (cf: P.L.1997, c.411, s.11)  
7

8 13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to  
9 read as follows:

10 33. The Legislature finds and declares:

11 a. The collection of development fees from builders of  
12 residential and non-residential properties has been authorized by the  
13 court through the powers **[delegated to the Council on Affordable**  
14 **Housing]** established pursuant to the "Fair Housing Act," P.L.1985,  
15 c.222 (C.52:27D-301 et al.). Due to the Legislature's determination  
16 that the role of the Council on Affordable Housing has not  
17 developed in practice as intended, the Legislature further  
18 determines that authority relating to rulemaking on the collection of  
19 residential and non-residential development fees is appropriately  
20 delegated to the Department of Community Affairs, given the  
21 department's existing roles related to local government finance and  
22 the funding and financing of affordable housing throughout the  
23 State.

24 b. New Jersey's land resources are becoming more scarce, while  
25 its redevelopment needs are increasing. In order to balance the  
26 needs of developing and redeveloping communities, a reasonable  
27 method of providing for the housing needs of **[low and moderate**  
28 **income]** low-, moderate-, and **[middle income]** middle-income  
29 households, without mandating the inclusion of housing in every  
30 non-residential project, must be established.

31 c. A Statewide non-residential development fee program, which  
32 permits municipalities **[under the council's jurisdiction]** that have  
33 obtained or are in the process of seeking compliance certification to  
34 retain these fees for use in the municipality will provide a fair and  
35 balanced funding method to address the State's affordable housing  
36 needs, while providing an incentive to all municipalities to **[seek**  
37 **substantive]** obtain compliance certification **[from the council]**.

38 d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),  
39 organizations are directed to invest in the Casino Reinvestment  
40 Development Authority to ensure that the development of housing  
41 for families of **[low and moderate income]** low- and moderate-  
42 income shall be provided. The Casino Reinvestment Development  
43 Authority **[, in consultation with the council,]** shall work to  
44 effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301  
45 et al.).

46 e. **[The "Statewide Non-Residential Development Fee Act,"**  
47 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through



1 C.40:55D-8.7), prohibits municipalities from imposing their own  
2 fees to fund affordable housing on non-residential development, and  
3 P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this  
4 underlying policy. **Deleted by amendment P.L. , c. (pending**  
5 **before the Legislature as this bill)**

6 f. The negative impact of a State policy that over-relies on a  
7 municipal fee structure and of State programs that require a  
8 municipality to impose fees and charges on developers must be  
9 balanced against any public good expected from such regulation. It  
10 is undisputable that the charging of fees at high levels dissuades  
11 commerce from locating within a State or municipality or locality  
12 and halts non-residential and residential development, and these ill  
13 effects directly increase the overall costs of housing, and could  
14 impede the constitutional obligation to provide for a realistic  
15 opportunity for housing for families at all income levels.

16 (cf: P.L.2009, c.90, s.36)

17  
18 14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to  
19 read as follows:

20 34. As used in sections 32 through 38 of P.L.2008, c.46  
21 (C.40:55D-8.1 through C.40:55D-8.7):

22 "Construction" means new construction and additions, but does  
23 not include alterations, reconstruction, renovations, and repairs as  
24 those terms are defined under the State Uniform Construction Code  
25 promulgated pursuant to the "State Uniform Construction Code  
26 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

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

29 **["Council" means the Council on Affordable Housing,**  
30 **established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).]**

31 "Department" means the Department of Community Affairs.

32 "Developer" means the legal or beneficial owner or owners of a  
33 lot or of any land proposed to be included in a proposed  
34 development, including the holder of an option or contract to  
35 purchase, or other person having an enforceable proprietary interest  
36 in such land.

37 "Equalized assessed value" means the assessed value of a  
38 property divided by the current average ratio of assessed to true  
39 value for the municipality in which the property is situated, as  
40 determined in accordance with sections 1, 5, and 6 of P.L.1973,  
41 c.123 (C.54:1-35a through C.54:1-35c).

42 "Mixed use development" means any development which  
43 includes both a non-residential development component and a  
44 residential development component, and shall include developments  
45 for which (1) there is a common developer for both the residential  
46 development component and the non-residential development  
47 component, provided that for purposes of this definition, multiple  
48 persons and entities may be considered a common developer if there

1 is a contractual relationship among them obligating each entity to  
2 develop at least a portion of the residential or non-residential  
3 development, or both, or otherwise to contribute resources to the  
4 development; and (2) the residential and non-residential  
5 developments are located on the same lot or adjoining lots,  
6 including but not limited to lots separated by a street, a river, or  
7 another geographical feature.

8 "Non-residential development" means: (1) any building or  
9 structure, or portion thereof, including but not limited to any  
10 appurtenant improvements, which is designated to a use group other  
11 than a residential use group according to the State Uniform  
12 Construction Code promulgated to effectuate the "State Uniform  
13 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),  
14 including any subsequent amendments or revisions thereto; (2)  
15 hotels, motels, vacation timeshares, and child-care facilities; and (3)  
16 the entirety of all continuing care facilities within a continuing care  
17 retirement community which is subject to the "Continuing Care  
18 Retirement Community Regulation and Financial Disclosure Act,"  
19 P.L.1986, c.103 (C.52:27D-330 et seq.).

20 "Non-residential development fee" means the fee authorized to  
21 be imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
22 (C.40:55D-8.1 through C.40:55D-8.7).

23 "Relating to the provision of housing" shall be liberally  
24 construed to include the construction, maintenance, or operation of  
25 housing, including but not limited to the provision of services to  
26 such housing and the funding of any of the above.

27 "Spending plan" means a method of allocating funds collected  
28 and to be collected pursuant to an approved municipal development  
29 fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)  
30 for the purpose of meeting the housing needs of low and moderate  
31 income individuals.

32 "Treasurer" means the Treasurer of the State of New Jersey.  
33 (cf: P.L.2008, c.46, s.34)  
34

35 15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to  
36 read as follows:

37 35. a. Beginning on the effective date of P.L.2008, c.46  
38 (C.52:27D-329.1 et al.), a fee is imposed on all construction resulting  
39 in non-residential development, as follows:

40 (1) A fee equal to two and one-half percent of the equalized  
41 assessed value of the land and improvements, for all new non-  
42 residential construction on an unimproved lot or lots; or

43 (2) A fee equal to two and one-half percent of the increase in  
44 equalized assessed value, of the additions to existing structures to be  
45 used for non-residential purposes.

46 b. All non-residential construction of buildings or structures on  
47 property used by churches, synagogues, mosques, and other houses of  
48 worship, and property used for educational purposes, which is tax-

1 exempt pursuant to R.S.54:4-3.6, shall be exempt from the imposition  
2 of a non-residential development fee pursuant to this section, provided  
3 that the property continues to maintain its tax exempt status under that  
4 statute for a period of at least three years from the date of issuance of  
5 the certificate of occupancy. In addition, the following shall be  
6 exempt from the imposition of a non-residential development fee:

7 (1) parking lots and parking structures, regardless of whether the  
8 parking lot or parking structure is constructed in conjunction with a  
9 non-residential development, such as an office building, or whether the  
10 parking lot is developed as an independent non-residential  
11 development;

12 (2) any non-residential development which is an amenity to be  
13 made available to the public, including, but not limited to, recreational  
14 facilities, community centers, and senior centers, which are developed  
15 in conjunction with or funded by a non-residential developer;

16 (3) non-residential construction resulting from a relocation of or  
17 an on-site improvement to a nonprofit hospital or a nursing home  
18 facility;

19 (4) projects that are located within a specifically delineated urban  
20 transit hub, as defined pursuant to section 2 of P.L.2007, c.346  
21 (C.34:1B-208);

22 (5) projects that are located within an eligible municipality, as  
23 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a  
24 majority of the project is located within a one-half mile radius of the  
25 midpoint of a platform area for a light rail system; and

26 (6) projects determined by the New Jersey Transit Corporation to  
27 be consistent with a transit village plan developed by a transit village  
28 designated by the Department of Transportation.

29 A developer of a non-residential development exempted from the  
30 non-residential development fee pursuant to this section shall be  
31 subject to it at such time the basis for the exemption set forth in this  
32 subsection no longer applies, and shall make the payment of the non-  
33 residential development fee, in that event, within three years after that  
34 event or after the issuance of the final certificate of occupancy of the  
35 non-residential development whichever is later.

36 For purposes of this subsection, "recreational facilities and  
37 community center" means any indoor or outdoor buildings, spaces,  
38 structures, or improvements intended for active or passive recreation,  
39 including but not limited to ball fields, meeting halls, and classrooms,  
40 accommodating either organized or informal activity; and "senior  
41 center" means any recreational facility or community center with  
42 activities and services oriented towards serving senior citizens.

43 If a property which was exempted from the collection of a non-  
44 residential development fee thereafter ceases to be exempt from  
45 property taxation, the owner of the property shall remit the fees  
46 required pursuant to this section within 45 days of the termination of  
47 the property tax exemption. Unpaid non-residential development fees

1 under these circumstances may be enforceable by the municipality as a  
2 lien against the real property of the owner.

3 c. (1) Unless authorized to pay directly to the municipality in  
4 which the non-residential construction is occurring in accordance with  
5 paragraph (2) of this subsection, developers shall pay non-residential  
6 development fees imposed pursuant to P.L.2008, c.46 (C.52:27D-  
7 329.1 et al.) to the Treasurer, in accordance with subsection g. of this  
8 section in a manner and on such forms as required by the Treasurer,  
9 provided that a certified proof concerning the payment shall be  
10 furnished by the Treasurer, to the municipality.

11 (2) The **【council】** department shall maintain on its Internet  
12 website a list of each municipality that is authorized to use the  
13 development fees collected pursuant to this section and that has a  
14 confirmed status of compliance with the "Fair Housing Act,"  
15 P.L.1985, c.222 (C.52:27D-301 et al.) , or is in the process of seeking  
16 compliance certification, which compliance shall include a spending  
17 plan **【authorized by the council】** pursuant to section 8 of P.L.2008,  
18 c.46 (C.52:27D-329.2) for all development fees collected.

19 (3) No later than 90 days following the enactment of P.L. , c.  
20 (C. ) (pending before the Legislature as this bill), any municipality  
21 that is or has been authorized to retain and expend non-residential  
22 development fees shall provide the department with a detailed  
23 accounting of all such fees that have been collected and expended  
24 since the inception of the municipal authorization to collect and retain  
25 said fees.

26 (4) Beginning with the year after the enactment of P.L. , c.  
27 (C. ) (pending before the Legislature as this bill), by <sup>2</sup>【January】  
28 February<sup>2</sup> 15, every municipality that is or has been authorized to  
29 retain and expend non-residential development fees shall provide the  
30 department with a detailed accounting of all such fees that have been  
31 collected and expended previous year.

32 d. The payment of non-residential development fees required  
33 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
34 through C.40:55D-8.7) shall be made prior to the issuance of a  
35 certificate of occupancy for such development. A final certificate of  
36 occupancy shall not be issued for any non-residential development  
37 until such time as the fee imposed pursuant to this section has been  
38 paid by the developer. A non-residential developer may deposit with  
39 the appropriate entity the development fees as calculated by the  
40 municipality under protest, and the local code enforcement official  
41 shall thereafter issue the certificate of occupancy provided that the  
42 construction is otherwise eligible for a certificate of occupancy.

43 e. The construction official responsible for the issuance of a  
44 building permit shall notify the local tax assessor of the issuance of the  
45 first building permit for a development which may be subject to a non-  
46 residential development fee. Within 90 days of receipt of that notice,  
47 the municipal tax assessor, based on the plans filed, shall provide an  
48 estimate of the equalized assessed value of the non-residential

1 development. The construction official responsible for the issuance of  
2 a final certificate of occupancy shall notify the local assessor of any  
3 and all requests for the scheduling of a final inspection on property  
4 which may be subject to a non-residential development fee. Within 10  
5 business days of a request for the scheduling of a final inspection, the  
6 municipal assessor shall confirm or modify the previously estimated  
7 equalized assessed value of the improvements of the non-residential  
8 development in accordance with the regulations adopted by the  
9 Treasurer pursuant to P.L.1971, c.424 (C.54:1-35.35); calculate the  
10 non-residential development fee pursuant to sections 32 through 38 of  
11 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter  
12 notify the developer of the amount of the non-residential development  
13 fee. Should the municipality fail to determine or notify the developer  
14 of the amount of the non-residential development fee within 10  
15 business days of the request for final inspection, the developer may  
16 estimate the amount due and pay that estimated amount consistent with  
17 the dispute process set forth in subsection b. of section 37 of P.L.2008,  
18 c.46 (C.40:55D-8.6). Upon tender of the estimated non-residential  
19 development fee, provided the developer is in full compliance with all  
20 other applicable laws, the municipality shall issue a final certificate of  
21 occupancy for the subject property. Failure of the municipality to  
22 comply with the timeframes or procedures set forth in this subsection  
23 may subject it to penalties to be imposed by the commissioner; any  
24 penalties so imposed shall be deposited into the "New Jersey  
25 Affordable Housing Trust Fund" established pursuant to section 20 of  
26 P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46  
27 (C.52:27D-320).

28 A developer of a mixed use development shall be required to pay  
29 the Statewide non-residential development fee relating to the non-  
30 residential development component of a mixed use development  
31 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

32 Non-residential construction which is connected with the  
33 relocation of the facilities of a for-profit hospital shall be subject to the  
34 fee authorized to be imposed under this section to the extent of the  
35 increase in equalized assessed valuation in accordance with regulations  
36 to be promulgated by the Director of the Division of Taxation,  
37 Department of the Treasury.

38 f. Any municipality that is not in compliance with the  
39 requirements established pursuant to sections 32 through 38 of  
40 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or regulations of  
41 the **【council】** commissioner adopted thereto, may be subject to  
42 forfeiture of any or all funds remaining within its municipal  
43 development trust fund. Any funds so forfeited shall be deposited into  
44 the New Jersey Affordable Housing Trust Fund established pursuant to  
45 section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008,  
46 c.46 (C.52:27D-320).

47 g. The Treasurer shall credit to the "Urban Housing Assistance  
48 Fund," established pursuant to section 13 of P.L.2008, c.46 (C.52:27D-

1 329.7) annually from the receipts of the fees authorized to be imposed  
2 pursuant to this section an amount equal to \$20 million; all receipts in  
3 excess of this amount shall be deposited into the "New Jersey  
4 Affordable Housing Trust Fund," established pursuant to section 20 of  
5 P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46  
6 (C.52:27D-320), to be used for the purposes of that fund.

7 The Treasurer shall adopt such regulations as necessary to  
8 effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
9 through C.40:55D-8.7), in accordance with the "Administrative  
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

11 (cf: P.L.2008, c.46, s.35)

12  
13 16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to  
14 read as follows:

15 36. a. The commissioner **],** in consultation with the council,**]**  
16 shall promulgate, in accordance with the provisions of the  
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
18 seq.), such regulations as are necessary for the prompt and effective  
19 implementation of the provisions and purposes of **]**P.L.2008, c.46  
20 (C.52:27D-329.1 et al.)**]** section 8 of P.L.2008, c.46 (C.52:27D-  
21 329.2), including, but not limited to, provisions for the payment of  
22 any necessary administrative costs related to the assessment of  
23 properties and collection of any development fees by a  
24 municipality.

25 b. **]**Notwithstanding the authority granted to the commissioner  
26 herein, the council**]** The commissioner shall adopt and promulgate,  
27 in accordance with the provisions of the "Administrative Procedure  
28 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are  
29 necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et  
30 al.), including but not limited to, regulations necessary for the  
31 establishment, implementation, review, monitoring, and  
32 enforcement of a municipal affordable housing trust fund and  
33 spending plan.

34 (cf: P.L.2008, c.46, s.36)

35  
36 17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to  
37 read as follows:

38 38. a. Except as expressly provided in P.L.2008, c.46  
39 (C.52:27D-329.1 et al.), including subsection b. of this section, any  
40 provision of a local ordinance which imposes a fee for the  
41 development of affordable housing upon a developer of non-  
42 residential property, including any and all development fee  
43 ordinances adopted in accordance with any regulations of the  
44 **]**Council on Affordable Housing**]** department, or any provision of  
45 an ordinance which imposes an obligation relating to the provision  
46 of housing affordable to **]**low and moderate income**]** low- and  
47 moderate-income households, or payment in-lieu of building as a

1 condition of non-residential development, shall be void and of no  
2 effect. A provision of an ordinance which imposes a development  
3 fee which is not prohibited by any provision of P.L.2008, c.46  
4 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

5 b. No affordable housing obligation shall be imposed  
6 concerning a mixed use development that would result in an  
7 affordable housing obligation greater than that which would have  
8 been imposed if the residential portion of the mixed use  
9 development had been developed independently of the non-  
10 residential portion of the mixed use development.

11 c. Whenever the developer of a non-residential development  
12 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or  
13 committed itself to make a financial or other contribution relating to  
14 the provision of housing affordable to low and moderate income  
15 households, the non-residential development fee authorized  
16 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied  
17 through the investment obligations made pursuant to P.L.1977,  
18 c.110 (C.5:12-1 et seq.).  
19 (cf: P.L.2008, c.46, s.38)

20

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

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

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

36 b. A developer of a non-residential project that, prior to July  
37 17, 2008, has been referred to a planning board by the State, a  
38 governing body, or other public agency for review pursuant to  
39 section 22 of P.L.1975, c.291 (C.40:55D-31) and that was subject to  
40 the payment of a nonresidential development fee prior to the  
41 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be  
42 entitled to a return of any moneys paid that represent the difference  
43 between moneys committed prior to July 17, 2008 and moneys paid  
44 on or after that date.

45 c. If moneys are required to be returned under subsection a., b.  
46 or d. of this section, a claim shall be submitted, in writing, to the  
47 same entity to which the moneys were paid, within 120 days of the  
48 effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity

1 to whom the funds were paid shall promptly review all requests for  
2 returns, and the fees paid shall be returned to the claimant within 30  
3 days of receipt of the claim for return.

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

12 e. **【**Notwithstanding the provisions of subsections a., b., c., and  
13 d. of this section, if, on the effective date of P.L.2009, c.90  
14 (C.52:27D-489a et al.), a municipality that has returned all or a  
15 portion of non-residential fees in accordance with subsection a. or  
16 b. of this section shall be reimbursed from the funds available  
17 through the appropriation made into the "New Jersey Affordable  
18 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90  
19 (C.52:27D-320.1) within 30 days of the municipality providing  
20 written notice to the Council on Affordable Housing.**】** (Deleted by  
21 amendment, P.L. , c. ) (pending before the Legislature as this  
22 bill)

23 f. 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, 2010  
26 but prior to the effective date of P.L.2011, c.122, shall be entitled to  
27 the return of those monies paid, provided that said monies have not  
28 already been expended by the municipality on affordable housing  
29 projects, and provided that the provisions of section 37 of P.L.2008,  
30 c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit  
31 the imposition of a fee upon the developer of that non-residential  
32 property. If moneys are eligible to be returned under this  
33 subsection, a claim shall be submitted, in writing, to the same entity  
34 to which the moneys were paid, within 120 days of the effective  
35 date of P.L.2011, c.122. The entity to whom the funds were paid  
36 shall promptly review all requests for returns, to ensure  
37 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6) and the  
38 fees paid shall be returned to the claimant within 30 days of receipt  
39 of the claim for return.

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

41

42 19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to  
43 read as follows:

44 3. a. There is established in, but not of, the department a Site  
45 Improvement Advisory Board, to devise statewide site improvement  
46 standards pursuant to section 4 of **【this act】** P.L.1993, c.32  
47 (C.40:55D-40.4). The board shall consist of the commissioner or  
48 **【his】** the commissioner's designee, who shall be a non-voting



1 member of the board, the Director of the Division of **[Housing]**  
 2 Codes and Standards in the Department of Community Affairs, who  
 3 shall be a voting member of the board, the Executive Director of the  
 4 New Jersey Housing and Mortgage Finance Agency, or the  
 5 executive director's designee, who shall be a voting member of the  
 6 board, and **[10]** nine other voting members, to be appointed by the  
 7 commissioner. The other members shall include two professional  
 8 planners, one of whom serves as a planner for a governmental entity  
 9 or whose professional experience is predominantly in the public  
 10 sector and who has worked in the public sector for at least the  
 11 previous five years and the other of whom serves as a planner in  
 12 private practice and has particular expertise in private residential  
 13 development and has been involved in private sector planning for at  
 14 least the previous five years, and one representative each from:

- 15 (1) The New Jersey Society of Professional Engineers;
- 16 (2) The New Jersey Society of Municipal Engineers;
- 17 (3) The New Jersey Association of County Engineers;
- 18 (4) The New Jersey Federation of Planning Officials;
- 19 (5) **[The Council on Affordable Housing]** (Deleted by  
 20 amendment, P.L. , c. (pending before the Legislature as this  
 21 bill);
- 22 (6) The New Jersey Builders' Association;
- 23 (7) The New Jersey Institute of Technology;
- 24 (8) The New Jersey State League of Municipalities.

25 b. Among the members to be appointed by the commissioner  
 26 who are first appointed, four shall be appointed for terms of two  
 27 years each, four shall be appointed for terms of three years each,  
 28 and two shall be appointed for terms of four years each. Thereafter,  
 29 each appointee shall serve for a term of four years. Vacancies in  
 30 the membership shall be filled in the same manner as original  
 31 appointments are made, for the unexpired term. The **[commission]**  
 32 board shall select a chair from among its members **[a chairman]**.  
 33 Members may be removed by the commissioner for cause.

34 c. Board members shall serve without compensation, but may  
 35 be entitled to reimbursement, from moneys appropriated or  
 36 otherwise made available for the purposes of this act, for expenses  
 37 incurred in the performance of their duties.

38 (cf: P.L.1993, c.32, s.3)

40 20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to  
 41 read as follows:

42 3. As used in **[this act]** P.L.1992, c.79 (C.40A:12A-1 et seq.):

43 "Bonds" means any bonds, notes, interim certificates, debentures  
 44 or other obligations issued by a municipality, county,  
 45 redevelopment entity, or housing authority pursuant to P.L.1992,  
 46 c.79 (C.40A:12A-1 et al.).

1 "Comparable, affordable replacement housing" means newly-  
2 constructed or substantially rehabilitated housing to be offered to a  
3 household being displaced as a result of a redevelopment project,  
4 that is affordable to that household based on its income under the  
5 guidelines established by the **【Council on Affordable Housing in**  
6 **the Department of Community Affairs】** New Jersey Housing and  
7 Mortgage Finance Agency for maximum affordable sales prices or  
8 maximum fair market rents, and that is comparable to the  
9 household's dwelling in the redevelopment area with respect to the  
10 size and amenities of the dwelling unit, the quality of the  
11 neighborhood, and the level of public services and facilities offered  
12 by the municipality in which the redevelopment area is located.

13 "Development" means the division of a parcel of land into two or  
14 more parcels, the construction, reconstruction, conversion,  
15 structural alteration, relocation, or enlargement of any building or  
16 other structure, or of any mining, excavation or landfill, and any use  
17 or change in the use of any building or other structure, or land or  
18 extension of use of land, for which permission may be required  
19 pursuant to the "Municipal Land Use Law," P.L.1975, c.291  
20 (C.40:55D-1 et seq.).

21 "Electric vehicle charging station" means an electric component  
22 assembly or cluster of component assemblies designed specifically  
23 to charge batteries within electric vehicles by permitting the transfer  
24 of electric energy to a battery or other storage device in an electric  
25 vehicle.

26 "Governing body" means the body exercising general legislative  
27 powers in a county or municipality according to the terms and  
28 procedural requirements set forth in the form of government  
29 adopted by the county or municipality.

30 "Housing authority" means a housing authority created or  
31 continued pursuant to this act.

32 "Housing project" means a project, or distinct portion of a  
33 project, which is designed and intended to provide decent, safe and  
34 sanitary dwellings, apartments or other living accommodations for  
35 persons of **【low and moderate income】** low- and moderate-income;  
36 such work or undertaking may include buildings, land, equipment,  
37 facilities and other real or personal property for necessary,  
38 convenient or desirable appurtenances, streets, sewers, water  
39 service, parks, site preparation, gardening, administrative,  
40 community, health, recreational, educational, welfare or other  
41 purposes. The term "housing project" also may be applied to the  
42 planning of the buildings and improvements, the acquisition of  
43 property, the demolition of existing structures, the construction,  
44 reconstruction, alteration and repair of the improvements and all  
45 other work in connection therewith.

46 "Parking authority" means a public corporation created pursuant  
47 to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et

1 seq.), and authorized to exercise redevelopment powers within the  
2 municipality.

3 "Persons of **low and moderate income** low- and moderate-  
4 income" means persons or families who are, in the case of State  
5 assisted projects or programs, so defined by the **Council on**  
6 **Affordable Housing in the Department of Community Affairs** New  
7 Jersey Housing and Mortgage Finance Agency, or in the case of  
8 federally assisted projects or programs, defined as of **"low and**  
9 **very low income"** "low- and very low-income" by the United  
10 States Department of Housing and Urban Development.

11 "Public body" means the State or any county, municipality,  
12 school district, authority or other political subdivision of the State.

13 "Public electric vehicle charging station" means an electric  
14 vehicle charging station located at a publicly available parking  
15 space.

16 "Public housing" means any housing for persons of **low and**  
17 **moderate income** low- and moderate-income owned by a  
18 municipality, county, the State or the federal government, or any  
19 agency or instrumentality thereof.

20 "Public hydrogen fueling station" means publicly available  
21 equipment to store and dispense hydrogen fuel to vehicles  
22 according to industry codes and standards.

23 "Publicly assisted housing" means privately owned housing  
24 which receives public assistance or subsidy, which may be grants or  
25 loans for construction, reconstruction, conservation, or  
26 rehabilitation of the housing, or receives operational or maintenance  
27 subsidies either directly or through rental subsidies to tenants, from  
28 a federal, State or local government agency or instrumentality.

29 "Publicly available parking space" means a parking space that is  
30 available to, and accessible by, the public and may include on-street  
31 parking spaces and parking spaces in surface lots or parking  
32 garages, but shall not include: a parking space that is part of, or  
33 associated with, a private residence; or a parking space that is  
34 reserved for the exclusive use of an individual driver or vehicle or  
35 for a group of drivers or vehicles, such as employees, tenants,  
36 visitors, residents of a common interest development, or residents  
37 of an adjacent building.

38 "Real property" means all lands, including improvements and  
39 fixtures thereon, and property of any nature appurtenant thereto or  
40 used in connection therewith, and every estate, interest and right,  
41 legal or equitable, therein, including terms for years and liens by  
42 way of judgment, mortgage or otherwise, and indebtedness secured  
43 by such liens.

44 "Redeveloper" means any person, firm, corporation or public  
45 body that shall enter into or propose to enter into a contract with a  
46 municipality or other redevelopment entity for the redevelopment or  
47 rehabilitation of an area in need of redevelopment, or an area in

1 need of rehabilitation, or any part thereof, under the provisions of  
2 this act, or for any construction or other work forming part of a  
3 redevelopment or rehabilitation project.

4 "Redevelopment" means clearance, replanning, development and  
5 redevelopment; the conservation and rehabilitation of any structure  
6 or improvement, the construction and provision for construction of  
7 residential, commercial, industrial, public or other structures and  
8 the grant or dedication of spaces as may be appropriate or necessary  
9 in the interest of the general welfare for streets, parks, playgrounds,  
10 or other public purposes, including recreational and other facilities  
11 incidental or appurtenant thereto, in accordance with a  
12 redevelopment plan.

13 "Redevelopment agency" means a redevelopment agency created  
14 pursuant to subsection a. of section 11 of P.L.1992, c.79  
15 (C.40A:12A-11) or established heretofore pursuant to the  
16 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et  
17 al.), repealed by this act, which has been permitted in accordance  
18 with the provisions of **[this act]** P.L.1992, c.79 (C.40A:12A-1 et  
19 seq.) to continue to exercise its redevelopment functions and  
20 powers.

21 "Redevelopment area" or "area in need of redevelopment" means  
22 an area determined to be in need of redevelopment pursuant to  
23 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6)  
24 or determined heretofore to be a "blighted area" pursuant to  
25 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both  
26 determinations as made pursuant to the authority of Article VIII,  
27 Section III, paragraph 1 of the Constitution. A redevelopment area  
28 may include lands, buildings, or improvements which of themselves  
29 are not detrimental to the public health, safety or welfare, but the  
30 inclusion of which is found necessary, with or without change in  
31 their condition, for the effective redevelopment of the area of which  
32 they are a part.

33 "Redevelopment entity" means a municipality or an entity  
34 authorized by the governing body of a municipality pursuant to  
35 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to  
36 implement redevelopment plans and carry out redevelopment  
37 projects in an area in need of redevelopment, or in an area in need  
38 of rehabilitation, or in both.

39 "Redevelopment plan" means a plan adopted by the governing  
40 body of a municipality for the redevelopment or rehabilitation of all  
41 or any part of a redevelopment area, or an area in need of  
42 rehabilitation, which plan shall be sufficiently complete to indicate  
43 its relationship to definite municipal objectives as to appropriate  
44 land uses, public transportation and utilities, recreational and  
45 municipal facilities, and other public improvements; and to indicate  
46 proposed land uses and building requirements in the redevelopment  
47 area or area in need of rehabilitation, or both.

1 "Redevelopment project" means any work or undertaking  
2 pursuant to a redevelopment plan; such undertaking may include  
3 any buildings, land, including demolition, clearance or removal of  
4 buildings from land, equipment, facilities, or other real or personal  
5 properties which are necessary, convenient, or desirable  
6 appurtenances, such as but not limited to streets, sewers, utilities,  
7 parks, site preparation, landscaping, and administrative, community,  
8 health, recreational, educational, and welfare facilities, and zero-  
9 emission vehicle fueling and charging infrastructure.

10 "Rehabilitation" means an undertaking, by means of extensive  
11 repair, reconstruction or renovation of existing structures, with or  
12 without the introduction of new construction or the enlargement of  
13 existing structures, in any area that has been determined to be in  
14 need of rehabilitation or redevelopment, to eliminate substandard  
15 structural or housing conditions and arrest the deterioration of that  
16 area.

17 "Rehabilitation area" or "area in need of rehabilitation" means  
18 any area determined to be in need of rehabilitation pursuant to  
19 section 14 of P.L.1992, c.79 (C.40A:12A-14).

20 "Zero-emission vehicle" means a vehicle certified as a zero  
21 emission vehicle pursuant to the California Air Resources Board  
22 zero emission vehicle standards for the applicable model year,  
23 including but not limited to, battery electric-powered vehicles and  
24 hydrogen fuel cell vehicles.

25 "Zero-emission vehicle fueling and charging infrastructure"  
26 means infrastructure to charge or fuel zero-emission vehicles,  
27 including but not limited to, public electric vehicle charging  
28 stations and public hydrogen fueling stations.

29 (cf: P.L.2021, c.168, s.1)

30

31 21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to  
32 read as follows:

33 16. a. In order to carry out the housing purposes of this act, a  
34 municipality, county, or housing authority may exercise the  
35 following powers, in addition to those set forth in section 22 of  
36 P.L.1992, c.79 (C.40A:12A-22):

37 (1) Plan, construct, own, and operate housing projects; maintain,  
38 reconstruct, improve, alter, or repair any housing project or any part  
39 thereof; and for these purposes, receive and accept from the State or  
40 federal government, or any other source, funds or other financial  
41 assistance;

42 (2) Lease or rent any dwelling house, accommodations, lands,  
43 buildings, structures or facilities embraced in any housing project;  
44 and pursuant to the provisions of this act, establish and revise the  
45 rents and charges therefor;

46 (3) Acquire property pursuant to subsection i. of section 22 of  
47 P.L.1992, c.79 (C.40A:12A-22);

- 1 (4) Acquire, by condemnation, any land or building which is  
 2 necessary for the housing project, pursuant to the provisions of the  
 3 "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);
- 4 (5) Issue bonds in accordance with the provisions of section 29  
 5 of P.L.1992, c.79 (C.40A:12A-29);
- 6 (6) Cooperate with any other municipality, private, county, State  
 7 or federal entity to provide funds to the municipality or other  
 8 governmental entity and to homeowners, tenant associations,  
 9 nonprofit or private developers to acquire, construct, rehabilitate or  
 10 operate publicly assisted housing, and to provide rent subsidies for  
 11 persons of **low and moderate income** low- and moderate-income,  
 12 including the elderly, pursuant to applicable State or federal  
 13 programs;
- 14 (7) Encourage the use of demand side subsidy programs such as  
 15 certificates and vouchers for low-income families and promote the  
 16 use of project based certificates which provide subsidies for units in  
 17 newly constructed and substantially rehabilitated structures, and of  
 18 tenant based certificates which subsidize rent in existing units;
- 19 (8) Cooperate with any State or federal entity to secure  
 20 mortgage assistance for any person of **low or moderate income**  
 21 low- or moderate-income;
- 22 (9) Provide technical assistance and support to nonprofit  
 23 organizations and private developers interested in constructing **low**  
 24 **and moderate income** low- and moderate-income housing;
- 25 (10) If it owns and operates public housing units, provide to the  
 26 tenants public safety services, including protection against  
 27 substance use disorder, and social services, including counseling  
 28 and financial management, in cooperation with other agencies;
- 29 (11) Provide emergency shelters, transitional housing and  
 30 supporting services to homeless families and individuals.
- 31 b. All housing projects, programs and actions undertaken  
 32 pursuant to this act shall accord with the housing element of the  
 33 master plan of the municipality within which undertaken, and with  
 34 any fair share housing plan **filed by** of the municipality **with the**  
 35 **Council on Affordable Housing, based upon the council's criteria**  
 36 **and guidelines**, adopted pursuant to the "Fair Housing Act,"  
 37 P.L.1985, c.222 (C.52:27D-301 et al.) **whether or not the**  
 38 **municipality has petitioned for substantive certification of the**  
 39 **plan**.

40 (cf: P.L.2017, c.131, s.176)

41

42 22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to  
 43 read as follows:

44 10. A municipality's housing element shall be designed to achieve  
 45 the goal of access to affordable housing to meet present and  
 46 prospective housing needs, with particular attention to **low and**

- 1 moderate income] low- and moderate-income housing, and shall  
2 contain at least:
- 3 a. An inventory of the municipality's housing stock by age,  
4 condition, purchase or rental value, occupancy characteristics, and  
5 type, including the number of units affordable to [low and moderate  
6 income] low- and moderate-income households and substandard  
7 housing capable of being rehabilitated, and in conducting this  
8 inventory the municipality shall have access, on a confidential basis  
9 for the sole purpose of conducting the inventory, to all necessary  
10 property tax assessment records and information in the assessor's  
11 office, including but not limited to the property record cards;
- 12 b. A projection of the municipality's housing stock, including the  
13 probable future construction of [low and moderate income] low- and  
14 moderate-income housing, for the next ten years, taking into account,  
15 but not necessarily limited to, construction permits issued, approvals  
16 of applications for development and probable residential development  
17 of lands;
- 18 c. An analysis of the municipality's demographic characteristics,  
19 including but not necessarily limited to, household size, income level  
20 and age;
- 21 d. An analysis of the existing and probable future employment  
22 characteristics of the municipality;
- 23 e. A determination of the municipality's present and prospective  
24 fair share for [low and moderate income] low- and moderate-income  
25 housing and its capacity to accommodate its present and prospective  
26 housing needs, including its fair share for [low and moderate income]  
27 low- and moderate-income housing, as established pursuant to section  
28 3 of P.L. , c. (C. ) (pending before the Legislature as this bill);
- 29 f. A consideration of the lands that are most appropriate for  
30 construction of [low and moderate income] low- and moderate-  
31 income housing and of the existing structures most appropriate for  
32 conversion to, or rehabilitation for, [low and moderate income] low-  
33 and moderate-income housing, including a consideration of lands of  
34 developers who have expressed a commitment to provide [low and  
35 moderate income] low- and moderate-income housing; <sup>2</sup>[and]<sup>2</sup>
- 36 g. An analysis of the extent to which municipal ordinances and  
37 other local factors advance or detract from the goal of preserving  
38 multigenerational family continuity as expressed in the  
39 recommendations of the Multigenerational Family Housing Continuity  
40 Commission, adopted pursuant to paragraph (1) of subsection f. of  
41 section 1 of P.L.2021, c.273 (C.52:27D-329.20) <sup>2</sup>;
- 42 h. For a municipality located within the jurisdiction of the  
43 Highlands Water Protection and Planning Council, established  
44 pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of  
45 compliance of the housing element with the Highlands Regional  
46 Master Plan of lands in the Highlands Preservation Area, and lands in  
47 the Highlands Planning Area for Highlands-conforming

1 municipalities. This analysis shall include consideration of the  
 2 municipality's most recent Highlands Municipal Build Out Report,  
 3 consideration of opportunities for redevelopment of existing developed  
 4 lands into inclusionary or 100 percent affordable housing, or both, and  
 5 opportunities for 100 percent affordable housing in both the Highlands  
 6 Planning Area and Highlands Preservation Area that are consistent  
 7 with the Highlands regional master plan; and

8 i. An analysis of consistency with the State Development and  
 9 Redevelopment Plan, including water, wastewater, stormwater, and  
 10 multi-modal transportation based on guidance and technical assistance  
 11 from the State Planning Commission<sup>2</sup>.

12 (cf: P.L.2021, c.273, s.2)

13  
 14 23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended to  
 15 read as follows:

16 1. Any municipality that receives an adjustment of its prospective  
 17 need obligations for the fourth round or subsequent rounds based on a  
 18 lack of vacant land shall as part of the process of adopting and  
 19 implementing its housing element and fair share plan identify  
 20 sufficient parcels likely to redevelop during the current round of  
 21 obligations to address at least 25 percent of the prospective need  
 22 obligation that has been adjusted, and adopt realistic zoning that  
 23 allows for such adjusted obligation, or demonstrate why the  
 24 municipality is unable to do so. When computing a municipal  
 25 adjustment regarding available land resources as part of the  
 26 determination of a municipality's fair share of affordable housing, the  
 27 **【Council on Affordable Housing】** municipality, in filing a housing  
 28 element and fair share plan pursuant to subsection f. of section 3 of  
 29 P.L. , c. (C. and C. ) (pending before the Legislature as  
 30 this bill), shall exclude from designating , and the process set forth  
 31 pursuant to sections 3 and 4 of P.L. , c. (C. and C. )  
 32 (pending before the Legislature as this bill) shall confirm was correctly  
 33 excluded, as vacant land:

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

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



(c) any vacant contiguous parcels of land in private ownership of a size which would accommodate fewer than five housing units **【if current standards of the council were applied】** based on appropriate standards pertaining to housing density;

(d) historic and architecturally important sites listed on the State Register of Historic Places or National Register of Historic Places prior to the **【submission of the petition of substantive certification】** date of filing a housing element and fair share plan pursuant to section 3, or initiation of an action pursuant to section 4 of P.L. , c. (C. or C. ) (pending before the Legislature as this bill);

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

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

(g) environmentally sensitive lands where development is prohibited by any State or federal agency <sup>2</sup>, including, but not limited to, the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), for lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities<sup>2</sup>.

No municipality shall be required to utilize for affordable housing purposes land that is excluded from being designated as vacant land. (cf: P.L.2008, c.46, s.39)

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

11. a. In adopting its housing element, the municipality may provide for its fair share of **【low and moderate income】** low- and moderate-income housing by means of any technique or combination of techniques which provide a realistic opportunity for the provision of the fair share. The housing element shall contain an analysis demonstrating that it will provide such a realistic opportunity, and the municipality shall establish that its land use and other relevant ordinances have been revised to incorporate the provisions for **【low and moderate income】** low- and moderate-income housing. In preparing the housing element, the municipality shall consider the following techniques for providing **【low and moderate income】** low- and moderate-income housing within the municipality, as well as such other appropriate techniques as have been established through applicable precedent and may be **【published by the council or proposed】** employed by the municipality:

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

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

3 (3) Determination of measures that the municipality will take to  
4 assure that **low and moderate income** low- and moderate-income  
5 units remain affordable to **low and moderate income** low- and  
6 moderate-income households for an appropriate period of not less than  
7 **six years** the period required by the regulations adopted by the  
8 Department of Community Affairs pursuant to section 21 of P.L.1985,  
9 c.222 (C.52:27D-321);

10 (4) A plan for infrastructure expansion and rehabilitation and  
11 conversion or redevelopment of unused or underutilized real property,  
12 including existing structures, if necessary to assure the achievement of  
13 the municipality's fair share of **low and moderate income** low- and  
14 moderate-income housing;

15 (5) Donation or use of municipally owned land or land condemned  
16 by the municipality for purposes of providing **low and moderate**  
17 **income** low- and moderate-income housing;

18 (6) Tax abatements for purposes of providing **low and moderate**  
19 **income** low- and moderate-income housing;

20 (7) Utilization of funds obtained from any State or federal subsidy  
21 toward the construction of **low and moderate income** low- and  
22 moderate-income housing;

23 (8) Utilization of municipally generated funds toward the  
24 construction of **low and moderate income** low- and moderate-  
25 income housing; and

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

33 b. The municipality may provide for a phasing schedule for the  
34 achievement of its fair share of **low and moderate income** low- and  
35 moderate-income housing.

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

37 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall require  
38 a municipality to raise or expend municipal revenues in order to  
39 provide **low and moderate income** low- and moderate-income  
40 housing.

41 e. When a municipality's housing element includes the provision  
42 of rental housing units in a community residence for the  
43 developmentally disabled , for the mentally ill, or for persons with  
44 head injuries, as those terms are defined in section 2 of P.L.1977,  
45 c.448 (C.30:11B-2), or in transitional housing, which will be  
46 affordable to persons of **low and moderate income** low- and  
47 moderate-income, and for which adequate measures to retain such

1 affordability pursuant to paragraph (3) of subsection a. of this section  
2 are included in the housing element, those housing units shall be fully  
3 credited ~~as permitted under the rules of the council~~ towards the  
4 fulfillment of the municipality's fair share of ~~low and moderate~~  
5 ~~income~~ low- and moderate-income housing. A municipality shall not  
6 credit transitional housing units towards more than 10 percent of the  
7 municipality's fair share obligation.

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

16 g. A municipality ~~which~~ that has received ~~substantive~~  
17 ~~certification from the council~~ approval of its housing element and fair  
18 share plan for the current round, and ~~which~~ that has actually effected  
19 the construction of the affordable housing units it is obligated to  
20 provide, may amend its affordable housing element or zoning  
21 ordinances without ~~the approval of the council~~ losing immunity  
22 from 'builder's remedy' exclusionary zoning<sup>1</sup> litigation.

23 h. Whenever affordable housing units are proposed to be provided  
24 through an inclusionary development, a municipality shall provide,  
25 through its zoning powers, incentives to the developer, which shall  
26 include increased densities and reduced costs ~~, in accordance with the~~  
27 ~~regulations of the council and this subsection~~.

28 i. ~~The council, upon the application of a~~ A municipality and a  
29 developer [,] may ~~approve~~ request a modification of a compliance  
30 certification involving reduced affordable housing set-asides or  
31 increased densities to ensure the economic feasibility of an  
32 inclusionary development , if any such application demonstrates how  
33 any shortfall in meeting the municipal fair share obligation will then  
34 be addressed. Such a request may be granted only if the municipality  
35 and developer have demonstrated that the project has been impacted  
36 by market conditions beyond their reasonable control.

37 j. A municipality may enter into an agreement with a developer  
38 or residential development owner to provide a preference for  
39 affordable housing to ~~low and moderate income~~ low- and moderate-  
40 income veterans who served in time of war or other emergency, as  
41 defined in section 1 of P.L.1963, c.171 (C.54:4-8.10), of up to 50  
42 percent of the affordable units in that particular project. This  
43 preference shall be established in the applicant selection process for  
44 available affordable units so that applicants who are veterans who  
45 served in time of war or other emergency, as referenced in this  
46 subsection, and who apply within 90 days of the initial marketing  
47 period shall receive preference for the rental of the agreed-upon

1 percentage of affordable units. After the first 90 days of the initial  
 2 120-day marketing period, if any of those units subject to the  
 3 preference remain available, then applicants from the general public  
 4 shall be considered for occupancy. Following the initial 120-day  
 5 marketing period, previously qualified applicants and future qualified  
 6 applicants who are veterans who served in time of war or other  
 7 emergency, as referenced in this subsection, shall be placed on a  
 8 special waiting list as well as the general waiting list. The veterans on  
 9 the special waiting list shall be given preference for affordable units,  
 10 as the units become available, whenever the percentage of preference-  
 11 occupied units falls below the agreed upon percentage. Any  
 12 agreement to provide affordable housing preferences for veterans  
 13 pursuant to this subsection shall not affect a municipality's ability to  
 14 receive credit for the unit **from the council, or its successor**].

15 k. In the fourth round, and in subsequent rounds of affordable  
 16 housing obligations, a municipality shall be able to receive one credit  
 17 against its affordable housing obligation for each unit of low- or  
 18 moderate-income housing, and shall not receive bonus credit for any  
 19 particular type of low- or moderate-income housing, unless authority  
 20 to obtain bonus credit is expressly provided pursuant to this section, or  
 21 other sections of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-  
 22 301 et al.). A municipality shall not receive more than one type of  
 23 bonus credit for any unit, and a municipality shall not be permitted to  
 24 satisfy more than 25 percent of its prospective need obligation in the  
 25 fourth round or any subsequent round through the use of bonus credits.  
 26 This subsection shall not be construed to limit the ability of a  
 27 municipality to receive a unit of credit for a low- or moderate-income  
 28 housing unit that is subject to affordability controls that are scheduled  
 29 to expire, but are extended <sup>1</sup>in accordance with the Uniform Housing  
 30 Affordability Controls promulgated by the New Jersey Housing and  
 31 Mortgage Finance Agency pursuant to section 21 of P.L.1985, c.222  
 32 (C.52:27D-321)<sup>1</sup>, to the extent that this affordability control extension  
 33 would otherwise generate this credit. As a part of a fair share plan and  
 34 housing element adopted pursuant to subsection f. of section 3 of  
 35 P.L. , c. (C. ) (pending before the Legislature as this bill), a  
 36 municipality shall:

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

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

44 (3) receive one unit of credit and one-half bonus credit for each  
 45 unit of low- or moderate-income housing located within a one-half  
 46 mile radius, or one-mile radius for projects located in a Garden State  
 47 Growth Zone, as defined in section 2 of P.L.2011, c.149 (C.34:1B-  
 48 243), surrounding a New Jersey Transit Corporation, Port Authority

Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations. For the purpose of this subparagraph, the distance from the bus, rail, or ferry station to a housing unit shall be measured from the closest point on the outer perimeter of the station, including any associated park-and-ride lot, to the closest point of the housing project property;

(4) receive one unit of credit and one-half bonus credit for a unit of age-restricted housing, provided that a bonus credit for age-restricted housing shall not be applied to more than <sup>1</sup>15 percent of the units of age-restricted housing constructed in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency in a municipality that count towards the municipality's affordable housing obligation for any single 10-year round of affordable housing obligations;

(5) receive one unit of credit and one-half bonus credit for each unit of low- or moderate-income family housing with at least three bedrooms above the minimum number required by the bedroom distribution <sup>1</sup>in a given development. This bonus credit shall be calculated by taking into account the full municipal fair share plan and housing element, and the number of units with at least three bedrooms required for projects satisfying the minimum 50 percent family housing requirements. A municipality shall receive the bonus credit pursuant to this paragraph for each unit with at least three bedrooms that are above the minimum number required for the bedroom distribution determined pursuant to the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency<sup>1</sup>;

(6) receive one unit of credit and one-half bonus credit for a unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space;

(7) receive one unit of credit and one-half bonus credit for each existing low- or moderate-income rental housing unit for which affordability controls are extended for a new term of affordability, in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency, and the municipality contributes funding towards the costs necessary for this preservation;

(8) receive one unit of credit and <sup>1</sup>one-half <sup>1</sup>one bonus credit for each unit of low- or moderate-income housing in a 100 percent affordable housing project <sup>1</sup>toward <sup>1</sup>for which the municipality <sup>1</sup>either contributes property without which the project would not be feasible, or makes contributions from the municipal affordable housing trust fund that cover no less than 10 percent of the project cost] contributes toward the costs of the project. This contribution may consist of: (a) real property donations that enable siting and construction of the project; or (b) contributions from the municipal

affordable housing trust fund in support of the project, if the contribution consists of no less than three percent of the project cost<sup>1</sup>;

'[and]'

(9) receive one unit of credit and one-half bonus credit for each unit of very low-income housing for families above the 13 percent of units required to be reserved for very low-income housing pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1). <sup>1</sup>In accordance with section 7 of P.L.2008, c.46 (C.52:27D-329.1), a municipality shall not be required to provide that a specific percentage of the units in any specific project be reserved as very low-income housing in order to obtain this bonus credit, and the 13 percent level, for the purpose of bonus credits, shall be calculated against the full prospective need obligation provided pursuant to the fair share plan; and

(10) receive one unit of credit and one bonus credit for each unit of low- or moderate-income housing created by transforming an existing rental or ownership unit from a market rate unit to an affordable housing unit. A municipality may only rely on this bonus credit as part of its fair share plan and housing element if the municipality demonstrates that a commitment to follow through with this market to affordable agreement has been made and: (a) this agreement has been signed by the property owner; or (b) the municipality has obtained ownership of the property.<sup>1</sup>

l. A municipality may not satisfy more than <sup>1</sup>[25] 30<sup>1</sup> percent of the affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation through the creation of age-restricted housing. A municipality shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy a minimum of 25 percent of the actual affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation, through rental housing, including at least half of that number available to families with children. All units referred to in this section shall otherwise be in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321).

m. All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the Legislature as this bill), or binding court decisions.

<sup>2</sup>n. P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the Legislature as this bill) shall not be construed to require a municipality to fund

1 infrastructure improvements for affordable housing projects beyond  
2 any commitments made in a fair share plan and housing element that  
3 has been provided with compliance certification. A municipality may  
4 fund infrastructure improvements for affordable housing projects,  
5 through the adoption of a development agreement with the applicant,  
6 beyond any commitments made in a fair share plan and housing  
7 element that has been provided with compliance certification.<sup>2</sup>

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

9  
10 25. Section 6 of P.L.2005, c.350 (C.52:27D-311b) is amended to  
11 read as follows:

12 6. **【The council】** A municipality may take such measures as are  
13 necessary to assure compliance with the adaptability requirements  
14 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), including  
15 the inspection of those units which are newly constructed and receive  
16 housing credit as provided under section 1 of P.L.2005, c.350  
17 (C.52:27D-311a) for adaptability, as part of the monitoring which  
18 occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). No housing  
19 unit subject to the provisions of section 5 of P.L.2005, c.350  
20 (C.52:27D-123.15) and to the provisions of the barrier free subcode  
21 adopted by the Commissioner of Community Affairs pursuant to the  
22 "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-  
23 119 et seq.) shall be eligible for inclusion in a municipal fair share plan  
24 unless the unit complies with the requirements set forth thereunder. If  
25 any units for which credit was granted in accordance with the  
26 provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not to  
27 conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et  
28 al.), 【the council may】 any party representing the interests of  
29 households with disabilities may seek a modification to the approval of  
30 the municipal fair share plan to require the municipality to amend its  
31 fair share plan within 90 days of 【receiving notice from the council】  
32 such a finding, to address its fair share obligation pursuant to  
33 P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the  
34 municipality fails to amend its fair share plan within 90 days of  
35 【receiving such notice, the council may revoke substantive  
36 certification】 such a finding, the municipality shall lose immunity to  
37 '【a builder's remedy】 exclusionary zoning litigation' for the portion  
38 of its obligation that is found not to conform to the requirements of  
39 P.L.2005, c.350 (C.52:27D-311a et al.).

40 (cf: P.L.2005, c.350, s.6)

41  
42 26. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to  
43 read as follows:

44 20. There is established in the Department of Community  
45 Affairs a separate trust fund, to be used for the exclusive purposes  
46 as provided in this section, and which shall be known as the "New  
47 Jersey Affordable Housing Trust Fund." The fund shall be a non-

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

23 a. Except as permitted pursuant to subsection g. of this section,  
24 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the  
25 commissioner shall award grants or loans from this fund for  
26 housing projects and programs in municipalities whose housing  
27 elements have **received substantive certification from the council,**  
28 obtained compliance certification pursuant to section 3 of P.L. , c.  
29 (C. ) (pending before the Legislature as this bill), or in  
30 municipalities receiving State aid pursuant to P.L.1978, c.14  
31 (C.52:27D-178 et seq.) **],** in municipalities subject to a builder's  
32 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328),  
33 or in receiving municipalities in cases where the council has  
34 approved a regional contribution agreement and a project plan  
35 developed by the receiving municipality**].**

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

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

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



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

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

12 d. Amounts deposited in the "New Jersey Affordable Housing  
13 Trust Fund" shall be targeted to regions based on the region's  
14 percentage of the State's **【low and moderate income】** low- and  
15 moderate-income housing need as determined **【by the council】**  
16 pursuant to the low- and moderate-income household growth over  
17 the prior 10 years, as calculated pursuant to section 6 of P.L. \_\_, c.  
18 (C. \_\_) (pending before the Legislature as this bill). Amounts in  
19 the fund shall be applied for the following purposes in designated  
20 neighborhoods:

21 (1) Rehabilitation of substandard housing units occupied or to  
22 be occupied by **【low and moderate income】** low- and moderate-  
23 income households;

24 (2) Creation of accessory **【apartments】** dwelling units to be  
25 occupied by **【low and moderate income】** low- and moderate-  
26 income households;

27 (3) Conversion of non-residential space to residential purposes;  
28 provided a substantial percentage of the resulting housing units are  
29 to be occupied by **【low and moderate income】** low- and moderate-  
30 income households;

31 (4) Acquisition of real property, demolition and removal of  
32 buildings, or construction of new housing that will be occupied by  
33 **【low and moderate income】** low- and moderate-income households,  
34 or any combination thereof;

35 (5) Grants of assistance to eligible municipalities for costs of  
36 necessary studies, surveys, plans, and permits; engineering,  
37 architectural, and other technical services; costs of land acquisition  
38 and any buildings thereon; and costs of site preparation, demolition,  
39 and infrastructure development for projects undertaken pursuant to  
40 an approved regional contribution agreement;

41 (6) Assistance to a local housing authority, nonprofit or limited  
42 dividend housing corporation, or association or a qualified entity  
43 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for  
44 rehabilitation or restoration of housing units which it administers  
45 which: (a) are unusable or in a serious state of disrepair; (b) can be  
46 restored in an economically feasible and sound manner; and (c) can

1 be retained in a safe, decent, and sanitary manner, upon completion  
2 of rehabilitation or restoration; and

3 (7) Other housing programs for **low and moderate income**  
4 low- and moderate-income housing, including, without limitation,  
5 (a) infrastructure projects directly facilitating the construction of  
6 **low and moderate income** low- and moderate-income housing not  
7 to exceed a reasonable percentage of the construction costs of the  
8 **low and moderate income** low- and moderate-income housing to  
9 be provided and (b) alteration of dwelling units occupied or to be  
10 occupied by households of **low or moderate income** low- or  
11 moderate-income and the common areas of the premises in which  
12 they are located in order to make them accessible to persons with  
13 disabilities.

14 e. Any grant or loan agreement entered into pursuant to this  
15 section shall incorporate contractual guarantees and procedures by  
16 which the division **will** shall ensure that any unit of housing  
17 provided for **low and moderate income** low- and moderate-  
18 income households shall continue to be occupied by **low and**  
19 **moderate income** low- and moderate-income households for **at**  
20 **least 20 years** a period that conforms to the requirements of  
21 subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321)  
22 following the award of the loan or grant, except that the division  
23 may approve a guarantee for a period of less **than 20 years**  
24 duration where necessary to ensure project feasibility.

25 f. Notwithstanding the provisions of any other law, rule, or  
26 regulation to the contrary, in making grants or loans under this  
27 section, the department shall not require that tenants be certified as  
28 **low or moderate income** low- or moderate-income or that  
29 contractual guarantees or deed restrictions be in place to ensure  
30 continued **low and moderate income** low- and moderate-income  
31 occupancy as a condition of providing housing assistance from any  
32 program administered by the department, when that assistance is  
33 provided for a project of moderate rehabilitation if the project: (1)  
34 contains 30 or fewer rental units; and (2) is located in a census tract  
35 in which the median household income is 60 percent or less of the  
36 median income for the housing region in which the census tract is  
37 located, as determined for a three person household by the  
38 **council** department in accordance with the latest federal  
39 decennial census. A list of eligible census tracts shall be  
40 maintained by the department and shall be adjusted upon  
41 publication of median income figures by census tract after each  
42 federal decennial census.

43 g. In addition to other grants or loans awarded pursuant to this  
44 section, and without regard to any limitations on such grants or  
45 loans for any other purposes herein imposed, the commissioner  
46 shall annually allocate such amounts as may be necessary in the  
47 commissioner's discretion, and in accordance with section 3 of

1 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants  
2 under the program created pursuant to P.L.2004, c.140 (C.52:27D-  
3 287.1 et al.). Such rental assistance grants shall be deemed  
4 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-  
5 301 et al.), in order to meet the housing needs of certain **low**  
6 **income** low-income households who may not be eligible to occupy  
7 other housing produced pursuant to P.L.1985, c.222 (C.52:27D-301  
8 et al.).

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

25 i. The commissioner may award or grant the amount of any  
26 appropriation deposited in the "New Jersey Affordable Housing  
27 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-  
28 320.1) to municipalities pursuant to the provisions of section 39 of  
29 P.L.2009, c.90 (C.40:55D-8.8).  
30 (cf: P.L.2017, c.131, s.200)

31  
32 27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to  
33 read as follows:

34 21. The agency shall establish affordable housing programs to  
35 assist municipalities in meeting the obligation of developing  
36 communities to provide **low and moderate income** low- and  
37 moderate-income housing.

38 a. Of the bond authority allocated to it under section 24 of  
39 P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a  
40 reasonable period of time established by its board, no less than **25%**  
41 25 percent to be used in conjunction with housing to be constructed or  
42 rehabilitated with assistance under **this act** P.L.1985, c.222  
43 (C.52:27D-301 et al.).

44 b. The agency shall to the extent of available funds, award  
45 assistance to affordable housing programs located in municipalities  
46 whose housing elements have **received substantive** obtained  
47 compliance certification **from the council** , or which have been

1 subject to a builder's remedy **【**or which are in furtherance of a regional  
2 contribution agreement approved by the council**】**. During **【**the first 12  
3 months from the effective date of this act and for**】** any **【**additional**】**  
4 period which the **【**council**】** agency may approve, the agency may  
5 assist affordable housing programs **【**which are not located in  
6 municipalities whose housing elements have been granted substantive  
7 certification or which are not in furtherance of a regional contribution  
8 agreement**】** that have a pending request for compliance certification;  
9 provided the affordable housing program will meet all or in part a  
10 municipal **【**low and moderate income**】** low- and moderate-income  
11 housing obligation.

12 c. Assistance provided pursuant to this section may take the form  
13 of grants or awards to municipalities, prospective home purchasers,  
14 housing sponsors as defined in P.L.1983, c.530 (C.55:14K-1 et seq.),  
15 or as contributions to the issuance of mortgage revenue bonds or  
16 multi-family housing development bonds which have the effect of  
17 achieving the goal of producing affordable housing.

18 d. Affordable housing programs which may be financed or  
19 assisted under this provision may include, but are not limited to:

20 (1) Assistance for home purchase and improvement including  
21 interest rate assistance, down payment and closing cost assistance, and  
22 direct grants for principal reduction;

23 (2) Rental programs including loans or grants for developments  
24 containing **【**low and moderate income**】** low- and moderate-income  
25 housing, moderate rehabilitation of existing rental housing, congregate  
26 care and retirement facilities;

27 (3) Financial assistance for the conversion of nonresidential space  
28 to residences;

29 (4) Other housing programs for **【**low and moderate income**】** low-  
30 and moderate-income housing, including infrastructure projects  
31 directly facilitating the construction of **【**low and moderate income**】**  
32 low- and moderate-income housing; and

33 (5) Grants or loans to municipalities, housing sponsors and  
34 community organizations to encourage development of innovative  
35 approaches to affordable housing, including:

36 (a) Such advisory, consultative, training and educational services  
37 as will assist in the planning, construction, rehabilitation and operation  
38 of housing; and

39 (b) Encouraging research in and demonstration projects to develop  
40 new and better techniques and methods for increasing the supply,  
41 types and financing of housing and housing projects in the State.

42 e. The agency shall establish procedures and guidelines  
43 governing the qualifications of applicants, the application procedures  
44 and the criteria for awarding grants and loans for affordable housing  
45 programs and the standards for establishing the amount, terms and  
46 conditions of each grant or loan.

1 f. ~~【In consultation with the council, the】~~ The agency , in  
 2 consultation with the department, shall establish requirements and  
 3 controls to 【insure】 ensure the maintenance of housing assisted under  
 4 【this act】 P.L.1985, c.222 (C.52:27D-301 et al.) as affordable to 【low  
 5 and moderate income】 low- and moderate-income households for a  
 6 period of not less than <sup>1</sup>【40】 <sup>2</sup>【30<sup>1</sup>】 40<sup>2</sup> years for <sup>1</sup>newly created<sup>1</sup>  
 7 rental units <sup>1</sup>【and】 , <sup>1</sup> <sup>2</sup>【20】 30<sup>2</sup> years for for-sale units <sup>1</sup>, <sup>2</sup>【except for  
 8 housing units for which affordability controls are extended for a new  
 9 term of affordability<sup>1</sup>; provided that the agency】<sup>2</sup> 【may establish a  
 10 shorter period upon a determination that the economic feasibility of the  
 11 program is jeopardized by the requirement and the public purpose  
 12 served by the program outweighs the shorter period】 <sup>2</sup>and 30 years for  
 13 housing units for which affordability controls are extended for a new  
 14 term of affordability, provided that the minimum extension term may  
 15 be limited to no less than 20 years as long as the original and extended  
 16 term, in combination, total at least 60 years. Any 100 percent  
 17 affordable rental property shall have a right to extinguish a deed  
 18 restriction regardless of original length, beginning 30 years following  
 19 the start of the deed restriction, provided a refinancing or  
 20 rehabilitation, or both, for the purpose of preservation is commenced  
 21 and that a new deed restriction of at least 30 years is provided. A  
 22 municipality shall be eligible to receive credits for all preserved units  
 23 pursuant to this subsection, as long as the original and extended term  
 24 total at least 60 years, and this credit may be obtained at the time of  
 25 preservation. All 100 percent affordable projects shall be eligible for  
 26 any affordable housing preservation program administered by the  
 27 State, beginning 30 years following the start of the deed restriction,  
 28 regardless of original length of the deed restriction. Any State  
 29 administered preservation program may allow a refinancing funding  
 30 process to commence prior to the 30th year of the deed restriction  
 31 when such refinancing or rehabilitation funding is needed to preserve  
 32 affordable housing. The agency<sup>2</sup> may update or amend any controls  
 33 previously adopted by the agency, in consultation with the Council on  
 34 Affordable Housing, prior to the effective date of P.L. , c. (C. )  
 35 (pending before the Legislature as this bill), provided that the  
 36 requirements and controls shall, at a minimum, be consistent with the  
 37 controls as in effect immediately prior to the effective date of P.L. ,  
 38 c. (C. ) (pending before the Legislature as this bill), including,  
 39 but not limited to, any requirements concerning bedroom distributions,  
 40 affordability averages, and affirmative marketing. <sup>2</sup>【<sup>1</sup>For the purpose  
 41 of housing units for which affordability controls are extended for a  
 42 new term of affordability: (1) a 20-year minimum deed restriction shall  
 43 be required if the unit was initially created before October 1, 2001; and  
 44 (2) a 30-year minimum deed restriction shall be required if the unit  
 45 was initially created on or following October 1, 2001. <sup>1</sup>】<sup>2</sup> The controls  
 46 may include, among others, requirements for recapture of assistance  
 47 provided pursuant to 【this act】 P.L.1985, c.222 (C.52:27D-301 et al.)

1 or restrictions on return on equity in the event of failure to meet the  
 2 requirements of the program. With respect to rental housing financed  
 3 by the agency pursuant to **[this act]** P.L.1985, c.222 (C.52:27D-301 et  
 4 al.) or otherwise which promotes the provision or maintenance of **[low**  
 5 **and moderate income]** low- and moderate-income housing, the agency  
 6 may waive restrictions on return on equity required pursuant to  
 7 P.L.1983, c.530 (C.55:14K-1 et seq.) which is gained through the sale  
 8 of the property or of any interest in the property or sale of any interest  
 9 in the housing sponsor. The agency shall promulgate updated  
 10 regulations no later than nine months following the effective date of  
 11 P.L. , c. (C. ) (pending before the Legislature as this bill). All  
 12 parties may continue to rely on regulations previously adopted by the  
 13 agency pursuant to the authority provided by this section as in effect  
 14 immediately prior to the effective date of P.L. , c. (C. )  
 15 (pending before the Legislature as this bill) until new rules and  
 16 regulations are adopted by the agency. Notwithstanding the provisions  
 17 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
 18 seq.) to the contrary, the agency, after consultation with department,  
 19 may adopt, immediately, upon filing with the Office of Administrative  
 20 Law, said regulations, which shall be effective for a period not to  
 21 exceed one year from the date of the filing. The agency shall  
 22 thereafter amend, adopt, or readopt the regulations in accordance with  
 23 the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

24 g. The agency may establish affordable housing programs  
 25 through the use or establishment of subsidiary corporations or  
 26 development corporations as provided in P.L.1983, c.530 (C.55:14K-1  
 27 et seq.). The subsidiary corporations or development corporations  
 28 shall be eligible to receive funds provided under **[this act]** P.L.1985,  
 29 c.222 (C.52:27D-301 et al.) for any permitted purpose.

30 h. The agency shall provide assistance, through its bonding  
 31 powers or in any other manner within its powers, to the grant and loan  
 32 program established pursuant to section 20 of P.L.1985, c.222  
 33 (C.52:27D-320).

34 i. (1) The department shall promulgate processes and standards  
 35 for the certification of administrative agents and municipal housing  
 36 liaisons in the State, as well as standards for measuring performance of  
 37 and enforcing compliance by administrative agents and municipal  
 38 housing liaisons in implementing the affordable housing requirements  
 39 and controls established pursuant to subsection f. of this section.

40 (2) Administrative agents shall be responsible for implementing  
 41 the requirements and controls set by the regulations promulgated  
 42 pursuant to subsection <sup>2</sup>**[(f)] f.<sup>2</sup>** of this section. The department may  
 43 bring via summary proceeding any findings of violation of the  
 44 responsibilities set forth in this section before a county level housing  
 45 judge, to docket the violation and issue corrective orders and levy  
 46 fines.

(3) Municipal housing liaisons shall be responsible for monitoring administrative agents within their municipality's jurisdiction to ensure compliance with the requirements and controls set by regulation under subsection f. of this section.

(4) Municipal housing liaisons, the department, and interested parties may bring a challenge before a county level housing judge to determine whether properties subject to the regulations set forth by this section are out of compliance with the regulations. A finding of deliberate noncompliance may result in the department removing the administrative agent's certification.

(5) A County level housing judge may issue fines and order corrective actions for violations and may consider patterns of violations in determining whether a municipality is meeting its obligations under the compliance certification established by section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

(6) Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the department may adopt, immediately, upon filing with the Office of Administrative Law, regulations to implement the provisions of this subsection, which shall be effective for a period not to exceed one year from the date of the filing. The department shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

(cf: P.L.2004, c.140, s.5)

28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended to read as follows:

19. Notwithstanding any rules of the New Jersey Housing and Mortgage Finance Agency to the contrary, the allocation of **low income** low-income tax credits shall be made by the agency to the full extent such credits are permitted to be allocated under federal law, including allocations of **[4]** four percent or **[9]** nine percent federal **low income** low-income tax credits, and including allocations allowable for partial credits. The affordable portion of any mixed income or mixed use development that is part of a fair share housing plan **approved by the council, or** that has obtained compliance certification, including a court-approved judgment of repose or compliance, including, but not limited to, a development that has received a density bonus, shall be permitted to receive allocations of **low income** low-income tax credits, provided that the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units, and the affordable units are developed contemporaneously with the commercial or market rate residential units.

(cf: P.L.2008, c.46, s.19)

1        29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to  
2 read as follows:

3        7. **【**The council shall coordinate and review the housing  
4 elements as filed pursuant to section 11 of P.L.1985, c.222  
5 (C.52:27D-311), and the housing activities under section 20 of  
6 P.L.1985, c.222 (C.52:27D-320), at least once every three years, to**】**  
7 Housing elements and fair share plans adopted pursuant to section 3  
8 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
9 shall ensure that at least 13 percent of the housing units made  
10 available for occupancy by low-income and **【**moderate income**】**  
11 moderate-income households to address a municipality's  
12 prospective need obligation will be reserved for occupancy by very  
13 low income households, as that term is defined pursuant to section 4  
14 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units  
15 made available for families with children. The 13 percent shall  
16 count towards the minimum 50 percent of the housing units  
17 required to be made available for occupancy by low-income  
18 households to address a municipality's prospective need obligation.  
19 Nothing in this section shall require that a specific percentage of the  
20 units in any specific project be reserved as very **【**low income**】** low-  
21 income housing; provided, however, that a municipality shall not  
22 receive bonus credits for the provision of housing units reserved for  
23 occupancy by very **【**low income**】** low-income households unless  
24 the 13 percent target has been exceeded within that municipality **【**.  
25 The council shall coordinate all efforts to meet the goal of this  
26 section in a manner that will result in a balanced number of housing  
27 units being reserved for very low income households throughout all  
28 housing regions. For the purposes of this section, housing activities  
29 under section 20 of P.L.1985, c.222 (C.52:27D-320) shall include  
30 any project-based assistance provided from the "New Jersey  
31 Affordable Housing Trust Fund" pursuant to P.L.2004, c.140  
32 (C.52:27D-287.1 et al.), regardless of whether the housing activity  
33 is counted toward the municipal obligation under the "Fair Housing  
34 Act," P.L.1985, c.222 (C.52:27D-301 et al.)**】** , and that the agency  
35 shall update the regulations adopted pursuant to section 21 of  
36 P.L.1985, c.222 (C.52:27D-321) to replace any requirements for  
37 very low-income housing inconsistent with the percentages and  
38 definitions established pursuant to P.L. , c. (C. ) (pending  
39 before the Legislature as this bill) with the percentage and  
40 definition specified in this section.  
41 (cf: P.L.2008, c.46, s.7)

42  
43        30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to  
44 read as follows:

45        8. a. **【**The council may authorize a**】** (1) A municipality that is in  
46 the process of seeking compliance certification, has **【**petitioned for  
47 substantive**】** obtained compliance certification, <sup>1</sup>is a qualified urban



1 aid municipality, as determined pursuant to paragraph (1) of  
2 subsection c. of section 7 of P.L. , c. (C. ) (pending before the  
3 Legislature as this bill),<sup>1</sup> or that has been so authorized by a court of  
4 competent jurisdiction, and which has adopted a municipal  
5 development fee ordinance shall be authorized to impose and collect  
6 development fees from developers of residential property, in  
7 accordance with rules promulgated by the [council] department. Each  
8 amount collected shall be deposited and shall be accounted for  
9 separately, by payer and date of deposit.

10 (2) No later than '[90] 180<sup>1</sup> days following the enactment of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill), any  
12 municipality that is or has been authorized to impose and collect  
13 development fees from developers of residential property, or payments  
14 in lieu of constructing affordable housing, shall provide the  
15 Department of Community Affairs with a detailed accounting of all  
16 such fees that have been collected and expended since the inception of  
17 the municipal authorization to collect the fees.

18 (3) Beginning with the year after the enactment of P.L. ,  
19 c. (C. ) (pending before the Legislature as this bill), by  
20 <sup>2</sup>[January] February<sup>2</sup> 15, every municipality that is or has been  
21 authorized to impose and collect development fees from developers of  
22 residential property, or payments in lieu of constructing affordable  
23 housing, shall provide the Department of Community Affairs with a  
24 detailed accounting of all such fees that have been collected and  
25 expended the previous year.

26 (4) A municipality may not spend or commit to spend any  
27 affordable housing development fees, including Statewide non-  
28 residential fees collected and deposited into the municipal affordable  
29 housing trust fund, without first obtaining the [council's] approval of  
30 the expenditure as part of its compliance certification or by the  
31 department. A municipality shall include in its housing element and  
32 fair share plan adopted pursuant to section 3 of P.L. , c. (C. )  
33 (pending before the Legislature as this bill) a spending plan for current  
34 funds in the municipal affordable housing trust fund and projected  
35 funds through the current round. Review of that spending plan for  
36 consistency with applicable law and the municipality's Housing  
37 Element and Fair Share Plan shall be part of the process specified in  
38 section 3 of P.L. , c. (C. ) (pending before the Legislature as  
39 this bill). The [council] department shall promulgate updated  
40 regulations no later than nine months following the effective date of  
41 P.L. , c. (C. ) (pending before the Legislature as this bill)  
42 regarding the establishment, administration, reporting, and  
43 enforcement of the expenditure of affordable housing development  
44 fees by municipalities, which shall include establishing an expedited  
45 process for approving spending plan expenditures for emergent  
46 opportunities to create affordable housing after a municipality has  
47 obtained compliance certification and procedures for monitoring the

1 collection and expenditure of trust funds. The department shall  
 2 develop and publish on the department's Internet website a detailed  
 3 summary of the municipal affordable housing trust fund expenditures  
 4 for each municipality, and shall update each summary on an annual  
 5 basis. As part of the regulations adopted pursuant to this section and  
 6 section 10 of P.L.2008, c.46 (C.52:27D-329.4), the department shall  
 7 adopt reporting requirements applicable to municipal affordable  
 8 housing trust funds to facilitate fulfillment of the department's  
 9 obligations pursuant to this section. Municipalities may continue to  
 10 rely on regulations on development fees and spending plans previously  
 11 adopted by the council until new rules and regulations are adopted by  
 12 the department. The [council] department shall have [exclusive]  
 13 jurisdiction regarding the enforcement of these regulations, provided  
 14 that any municipality which is not in compliance with the regulations  
 15 adopted by the [council] department may be subject to forfeiture of  
 16 any or all funds remaining within its municipal trust fund. Any funds  
 17 so forfeited shall be deposited into the "New Jersey Affordable  
 18 Housing Trust Fund" established pursuant to section 20 of P.L.1985,  
 19 c.222 (C.52:27D-320).

20 b. A municipality shall deposit all fees collected, whether or not  
 21 such collections were derived from fees imposed upon non-residential  
 22 or residential construction into a trust fund dedicated to those purposes  
 23 as required under this section, and such additional purposes as may be  
 24 approved by the [council] department.

25 c. (1) A municipality <sup>2</sup>, other than a qualified urban aid  
 26 municipality, as determined pursuant to paragraph (1) of subsection c.  
 27 of section 7 of P.L. , c. (C. ) (pending before the Legislature as  
 28 this bill),<sup>2</sup> may only spend development fees for an activity approved  
 29 by the [council] department to address the municipal fair share  
 30 obligation, or approved as part of compliance certification.

31 (2) Municipal development trust funds shall not be expended  
 32 unless the municipality has immunity from 'builder's remedy]  
 33 exclusionary zoning<sup>1</sup> litigation at the time of the expenditure <sup>2</sup>[, and] ,  
 34 or said municipality has previously collected such funds while under  
 35 the protection of presumptive validity or immunity from exclusionary  
 36 zoning litigation and in accordance with an approved spending plan.  
 37 However, municipal development trust funds may be expended by a  
 38 municipality if the municipality is a qualified urban aid municipality,  
 39 as determined pursuant to paragraph (1) of subsection c. of section 7 of  
 40 P.L. , c. (C. ) (pending before the Legislature as this bill), with  
 41 a development fee ordinance and spending plan approved by the  
 42 department or a court of competent jurisdiction, regardless of whether  
 43 this approval occurs prior to or subsequent to the effective date of P.L.  
 44 , c. (C. ) (pending before the Legislature as this bill). Municipal  
 45 development fee trust funds<sup>2</sup> shall not be expended:

46 (a) to reimburse municipalities for activities which occurred prior  
 47 to the authorization of a municipality to collect development fees; or

1        (b) (i) on administrative costs, attorney fees or court costs to  
2 obtain a judgment of repose; (ii) to contest a determination of the  
3 municipality's fair share obligation; or (iii) on costs of any challenger  
4 in connection to a challenge to the municipality's obligation, housing  
5 element, or fair share plan.

6        (3) A municipality shall set aside a portion of its development fee  
7 trust fund for the purpose of providing affordability assistance to **low**  
8 **and moderate income** low- and moderate-income households in  
9 affordable units included in a municipal fair share plan, in accordance  
10 with rules of the **council** department.

11        (a) Affordability assistance programs may include down payment  
12 assistance, security deposit assistance, low interest loans, common  
13 maintenance expenses for units located in condominiums, rental  
14 assistance, and any other program authorized by the **council**  
15 department.

16        (b) Affordability assistance to households earning 30 percent or  
17 less of median income may include buying down the cost of **low**  
18 **income** low-income units in a municipal fair share plan to make them  
19 affordable to households earning 30 percent or less of median income.  
20 The use of development fees in this manner shall not entitle a  
21 municipality to bonus credits except as may **be provided by the rules**  
22 **of the council** otherwise be allowed by applicable precedent.

23        (4) A municipality may contract with a private or public entity to  
24 administer any part of its housing element and fair share plan,  
25 including the requirement for affordability assistance, or any program  
26 or activity for which the municipality expends development fee  
27 proceeds, in accordance with rules of the **council** department.

28        (5) Not more than 20 percent of the revenues collected from  
29 development fees shall be expended on administration, in accordance  
30 with rules of the **council** department. Such administration may  
31 include expending a portion of its affordable housing trust fund on  
32 actions and efforts reasonably related to the determination of its fair  
33 share obligation and the development of its housing element and fair  
34 share plan pursuant to paragraphs (1) and (2) of subsection f. of  
35 section 3 of P.L. , c. (C. ) (pending before the Legislature as  
36 this bill), and for expenses that are reasonably necessary for  
37 compliance with the processes of the program, including but not  
38 limited to, the costs to the municipality of resolving a challenge under  
39 the program.

40        d. The **council** department shall establish a time by which all  
41 development fees collected within a calendar year shall be expended;  
42 provided, however, that all fees shall be committed for expenditure  
43 within four years from the date of collection. A municipality that fails  
44 to commit to expend the balance required in the development fee trust  
45 fund by the time set forth in this section shall be required by the  
46 council to transfer the remaining unspent balance at the end of the  
47 four-year period to the "New Jersey Affordable Housing Trust Fund,"

1 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320),  
2 as amended by P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in  
3 the housing region of the transferring municipality for the authorized  
4 purposes of that fund.

5 e. Notwithstanding any provision of this section, or regulations of  
6 the **【council】** department, a municipality shall not collect a  
7 development fee from a developer whenever that developer is  
8 providing for the construction of affordable units, either on-site or  
9 elsewhere within the municipality.

10 This section shall not apply to the collection of a Statewide  
11 development fee imposed upon non-residential development pursuant  
12 to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 **【et seq.】**  
13 through C.40:55D-8.7) by the State Treasurer, when such collection is  
14 not authorized to be retained by a municipality.

15 (cf: P.L.2008, c.46, s.8)

16  
17 31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended to  
18 read as follows:

19 10. a. The **【council】** department shall maintain on its Internet  
20 website, and also publish on **【a regular】** an annual basis, an up-to-date  
21 municipal status report **【concerning the petitions for substantive**  
22 **certification of each municipality that has submitted to the council's**  
23 **jurisdiction, and shall collect and publish】** based on its collection and  
24 publication of information concerning the number affordable of  
25 housing units actually constructed, construction starts, certificates of  
26 occupancy granted, **【rental units maintained, and the number of**  
27 **housing units transferred or sold within the previous 12-month period】**  
28 the start and expiration dates of deed restrictions, and residential and  
29 non-residential development fees collected and expended, including  
30 purposes and amounts of such expenditures, along with the current  
31 balance in the municipality's affordable housing trust funds. With  
32 respect to units actually constructed, the information shall specify the  
33 characteristics of the housing, including housing type, tenure,  
34 affordability level, number of bedrooms, date and expiration of  
35 affordability controls, and whether occupancy is reserved for families,  
36 senior citizens, or other special populations. **【No later than 60 months**  
37 **after the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), the**  
38 **council shall require each municipality, as a condition of substantive**  
39 **certification, to provide, in a standardized electronic media format as**  
40 **determined by the council, the details of the fair share plan as adopted**  
41 **by the municipality and approved by the council. The council shall**  
42 **publish and maintain such approved plans on its website.】**

43 b. (1) No later than '【90】 180<sup>1</sup> days following the enactment of  
44 P.L. , c. (C. ) (pending before the Legislature as this bill), each  
45 municipality shall provide the department with the information  
46 necessary to comply with this section.

(2) Beginning with the year after the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), by <sup>2</sup> **January** February<sup>2</sup> 15, each municipality shall provide the department with the information necessary to comply with this section.

c. The department may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as may be necessary to effectuate the provisions of this section, including rules and regulations to ensure that municipalities and developers report any information as may be necessary for the department to fulfill its obligations pursuant to this section.

(cf: P.L.2008, c.46, s.10)

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

18. a. Notwithstanding any rules **of the council** to the contrary, for developments consisting of newly-constructed residential units located, or to be located, within the jurisdiction of any regional planning entity required to adopt a master plan or comprehensive management plan pursuant to statutory law, including the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization Planning Authority pursuant to section 5 of P.L.2006, c.16 (C.52:27I-5), or its successor, and the Highlands Water Protection and Planning Council pursuant to section 11 of P.L.2004, c.120 (C.13:20-11), but excluding joint planning boards formed pursuant to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be required to be reserved for occupancy by **low or moderate income** low- or moderate-income households at least 20 percent of the residential units constructed **, to the extent this is economically feasible** with affordability controls as required pursuant to the rules and regulations of the agency.

b. Subject to the provisions of subsection d. of this section, a developer of a project consisting of newly-constructed residential units being financed in whole or in part with State funds, including, but not limited to, transit villages designated by the Department of Transportation and units constructed on State-owned property, shall be required to reserve at least 20 percent of the residential units constructed for occupancy by **low or moderate income** low- or moderate-income households, as those terms are defined in section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as required under the rules of the **council**, unless the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given a judgment of repose or a judgment of compliance by the

1 court, and such a reservation is not required under the approved  
2 affordable housing plan] agency.

3 c. [(1) The Legislature recognizes that regional planning  
4 entities are appropriately positioned to take a broader role in the  
5 planning and provision of affordable housing based on regional  
6 planning considerations. In recognition of the value of sound  
7 regional planning, including the desire to foster economic growth,  
8 create a variety and choice of housing near public transportation,  
9 protect critical environmental resources, including farmland and  
10 open space preservation, and maximize the use of existing  
11 infrastructure, there is created a new program to foster regional  
12 planning entities.

13 (2) The regional planning entities identified in subsection a. of  
14 this section shall identify and coordinate regional affordable  
15 housing opportunities in cooperation with municipalities in areas  
16 with convenient access to infrastructure, employment opportunities,  
17 and public transportation. Coordination of affordable housing  
18 opportunities may include methods to regionally provide housing in  
19 line with regional concerns, such as transit needs or opportunities,  
20 environmental concerns, or such other factors as the council may  
21 permit; provided, however, that such provision by such a regional  
22 entity may not result in more than a 50 percent change in the fair  
23 share obligation of any municipality; provided that this limitation  
24 shall not apply to affordable housing units directly attributable to  
25 development by the New Jersey Sports and Exposition Authority  
26 within the New Jersey Meadowlands District.

27 (3) In addition to the entities identified in subsection a. of this  
28 section, the Casino Reinvestment Development Authority, in  
29 conjunction with the Atlantic County Planning Board, shall identify  
30 and coordinate regional affordable housing opportunities directly  
31 attributable to Atlantic City casino development, which may be  
32 provided anywhere within Atlantic County, subject to the  
33 restrictions of paragraph (4) of this subsection.

34 (4) The coordination of affordable housing opportunities by  
35 regional entities as identified in this section shall not include  
36 activities which would provide housing units to be located in those  
37 municipalities that are eligible to receive aid under the "Special  
38 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or  
39 are coextensive with a school district which qualified for  
40 designation as a "special needs district" pursuant to the "Quality  
41 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at  
42 any time in the last 10 years have been qualified to receive  
43 assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall  
44 within the jurisdiction of any of the regional entities specified in  
45 subsection a. of this section.] (Deleted by amendment,  
46 P.L. , c. ) (pending before the Legislature as this bill)

47 d. Notwithstanding the provisions of subsection b. of this  
48 section, or any other law or regulation to the contrary, for purposes

1 of mixed use projects or qualified residential projects in which a  
2 business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-  
3 207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90  
4 (C.34:1B-209.3), or both, an "eligible municipality," as defined in  
5 section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of  
6 deciding the percentage of newly-constructed residential units  
7 within the project, up to 20 percent of the total, required to be  
8 reserved for occupancy by **low or moderate income** low- or  
9 moderate-income households. For a mixed use project or a  
10 qualified residential project that has received preliminary or final  
11 site plan approval prior to the effective date of P.L.2011, c.89, the  
12 percentage shall be deemed to be the percentage, if any, of units  
13 required to be reserved for **low or moderate income** low- or  
14 moderate-income households in accordance with the terms and  
15 conditions of such approval.

16 (cf: P.L.2011, c.89, s.5)

17  
18 33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to  
19 read as follows:

20 3. As used in this act:

21 "Affordable Home Ownership Opportunities Bonds" means any  
22 bonds of the New Jersey Housing and Mortgage Finance Agency  
23 that provide funds to facilitate the provisions of this act.

24 "Agency" means the New Jersey Housing and Mortgage Finance  
25 Agency.

26 "Annual income" means total income, from all sources, during  
27 the last full calendar year preceding the filing of an application for a  
28 loan pursuant to this act.

29 "Bonds" means bonds, notes or any other form of evidence of  
30 indebtedness of the agency, bearing either a fixed rate or a variable  
31 rate of interest, issued by the agency.

32 "Eligible project" means a project for the creation of low or  
33 moderate income housing which meets the standards of eligibility  
34 for loans under the program created by this act.

35 "Eligible purchaser" means a purchaser of a dwelling unit in an  
36 eligible project to whom a loan may be made under the program  
37 pursuant to section 5 of this act.

38 "Fund" means the Affordable Home Ownership Opportunities  
39 Fund established by section 5 of this act.

40 "Housing region" means a housing region as defined in  
41 subsection b. of section 4 of the "Fair Housing Act," P.L.1985,  
42 c.222 (C.52:27D-304) and determined **by the Council on**  
43 **Affordable Housing pursuant to section 7 of that act, P.L.1985,**  
44 **c.222 (C.52:27D-307)]** pursuant to subsection b. of section 6 of  
45 P.L. , c. (C. ) (pending before the Legislature as this bill).

46 "Local enforcement authority" means any officer or agency of  
47 local government responsible for the implementation or  
48 enforcement of land-use and building regulations established by or

1 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
2 c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law,"  
3 P.L.1975, c.291 (C.40:55D-1 et seq.).

4 "Low income" means a gross annual household income equal to  
5 50% or less of the median gross annual household income for  
6 households of the same size within the relevant housing region.

7 "Moderate income" means a gross annual household income  
8 equal to not more than 80%, but more than 50% of the median gross  
9 annual household income for households of the same size within the  
10 relevant housing region.

11 "Program" means the Affordable Home Ownership Opportunities  
12 Program created by this act.

13 "Qualified nonprofit organization" means any corporation or  
14 association of persons organized under Title 15A of the New Jersey  
15 Statutes, having for its principal purpose, or as a purpose ancillary  
16 to its principal purpose, the improvement of realistic opportunities  
17 for low income and moderate income housing, as defined pursuant  
18 to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.),  
19 being within the description of section 501(c)(3) of the United  
20 States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been  
21 determined by the agency to be a bona fide organization not under  
22 the effective control of any for-profit organization or governmental  
23 entity, and appearing capable, by virtue of past activities,  
24 qualifications of staff or board, or other features, of furthering the  
25 purposes of this act.

26 "Substantial rehabilitation" means repair, reconstruction or  
27 renovation which (1) costs in excess of 60% of the fair market value  
28 of a rehabilitated dwelling after such repair, reconstruction or  
29 renovation, or (2) renders a previously vacant and uninhabitable  
30 dwelling safe, sanitary and decent for residential purposes, or (3)  
31 converts to safe, sanitary and decent residential use a structure  
32 previously in non-residential use.  
33 (cf: P.L.1995, c.343, s.3)

34

35 34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to  
36 read as follows:

37 7. A project of new construction or substantial rehabilitation by  
38 a nonprofit organization shall be eligible for a loan under this act if  
39 (1) the homes to be constructed or substantially rehabilitated under  
40 the project are located within an identifiable neighborhood in which  
41 median family income does not exceed the current standard of  
42 "moderate income" pursuant to the contemporaneous standards **【of**  
43 **the Council on Affordable Housing】** established pursuant to the  
44 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the  
45 homes to be constructed or substantially rehabilitated under the  
46 project are sufficient in number and located on the same or  
47 contiguous parcels of land or within such proximity to each other as  
48 to render the cost per unit of housing practicable for acquisition by



1 lower-income purchasers; and (3) each home constructed or  
2 substantially rehabilitated within the project will conform to all  
3 requirements of the State Uniform Construction Code, except as to  
4 the waiver of any fee or other requirement pursuant to subsection b.  
5 of section 9 of this act.

6 (cf: P.L.1995, c.343, s.7)

7  
8 35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to  
9 read as follows:

10 3. As used in this act:

11 "Agency" means the New Jersey Housing and Mortgage Finance  
12 Agency.

13 "Annual income" means total income, from all sources, during  
14 the last full calendar year preceding the filing of an application for a  
15 loan pursuant to this act.

16 "Bonds" means bonds, notes or any other form of evidence of  
17 indebtedness of the agency, bearing either a fixed rate or a variable  
18 rate of interest, issued by the agency.

19 "Eligible project" means a project undertaken by a qualified  
20 housing sponsor to create housing for shared occupancy by seniors  
21 or persons with disability of low or moderate income, whether for  
22 home ownership or rental, which meets the standards of eligibility  
23 for loans under the program created by section 4 of P.L.1998, c.128  
24 (C.55:14K-75).

25 "Eligible purchaser" means a purchaser of a dwelling unit in an  
26 eligible project who fulfills the definition of a senior or person with  
27 disability pursuant to this section, is of low or moderate income and  
28 to whom a loan may be made under the program pursuant to section  
29 4 of P.L.1998, c.128 (C.55:14K-75).

30 "Fund" means the Senior and Disabled Cooperative Housing  
31 Incentive Fund established by section 6 of P.L.1998, c.128  
32 (C.55:14K-77).

33 "Housing region" means a housing region as defined in  
34 subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and  
35 determined **【**by the Council on Affordable Housing pursuant to  
36 section 7 of P.L.1985, c.222 (C.52:27D-307)**】** pursuant to  
37 subsection b. of section 6 of P.L. , c. (C. ) (pending before  
38 the Legislature as this bill).

39 "Low income" means a gross annual household income equal to  
40 50% or less of the median gross annual household income for  
41 households of the same size within the relevant housing region.

42 "Moderate income" means a gross annual household income  
43 equal to not more than 80%, but more than 50% of the median gross  
44 annual household income for households of the same size within the  
45 relevant housing region.

46 "Person with disability" means any person who is 18 years of age  
47 or older and who fulfills the definition of having a "disability"

1 pursuant to section 3 of the "Americans with Disabilities Act of  
2 1990," 42 U.S.C. s.12102).

3 "Program" means the New Jersey Senior and Disabled  
4 Cooperative Housing Finance Incentive Program created by  
5 P.L.1998, c.128 (C.55:14K-72 et seq.).

6 "Qualified housing sponsor" means any corporation or  
7 association of persons organized under the New Jersey Statutes, or  
8 any other corporation having for one of its purposes the  
9 improvement of realistic opportunities for low income and moderate  
10 income housing, as defined pursuant to the "Fair Housing Act,"  
11 P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by  
12 virtue of past activities, qualifications of staff or board, or other  
13 features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-  
14 72 et seq.).

15 "Retrofitting" means renovating or remodeling an existing  
16 residential or non-residential structure to allow for cooperative  
17 living.

18 "Senior" means an individual who is 55 years of age or older.

19 "Substantial rehabilitation" means repair, reconstruction or  
20 renovation which (1) costs in excess of 60% of the fair market value  
21 of a rehabilitated dwelling after such repair, reconstruction or  
22 renovation, or (2) renders a previously vacant and uninhabitable  
23 dwelling safe, sanitary and decent for residential purposes or (3)  
24 converts to safe, sanitary and decent residential use a structure  
25 previously in non-residential use.

26 (cf: P.L.1998, c.128, s.3)

27

28 36. (New section) a. (1) Notwithstanding the provisions of the  
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)  
30 to the contrary, the Commissioner of Community Affairs shall, in  
31 consultation with the Administrative Director of the Courts and the  
32 Executive Director of the New Jersey Housing and Mortgage Finance  
33 Agency, adopt, immediately upon filing with the Office of  
34 Administrative Law, no later than nine months after the effective date  
35 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
36 such transitional rules and regulations as necessary for the  
37 implementation of P.L. , c. (C. ) (pending before the  
38 Legislature as this bill), including for <sup>2</sup>:(a)<sup>2</sup> the identification of any  
39 vestigial duties of the Council on Affordable Housing and <sup>2</sup>["for"]<sup>2</sup> the  
40 transfer of those duties within the Department of Community Affairs  
41 to the extent that those duties are not otherwise assumed, pursuant to  
42 P.L. , c. (C. ) (pending before the Legislature as this bill), by  
43 municipalities or the Affordable Housing Dispute Resolution Program  
44 <sup>2</sup>; and (b) the establishment of policies regarding the cost of the  
45 assessments and fees of planned real estate developments, as defined  
46 in section 3 of P.L.1977, c.419 (C.45:22A-23), on low- and moderate-  
47 income housing units<sup>2</sup>.

(2) The department, in consultation with the agency, shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. The Executive Director of the New Jersey Housing and Mortgage Finance Agency <sup>2</sup>, in consultation with the department,<sup>2</sup> shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), no later than nine months after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), rules and regulations to update the Uniform Housing Affordability Controls as required pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). As part of updating the Uniform Housing Affordability Controls, the agency shall set rules establishing that, for the purpose of <sup>1</sup>newly created<sup>1</sup> low- and moderate-income rental units, a <sup>1</sup>40-year <sup>2</sup>30-year<sup>1</sup> 40-year<sup>2</sup> minimum deed restriction shall be required. For the purpose of for-sale units, a <sup>2</sup>20-year 30-year<sup>2</sup> minimum deed restriction shall be required. <sup>1</sup>For the purpose of housing units for which affordability controls are extended for a new term of affordability <sup>2</sup>[(1) a 20-year minimum deed restriction shall be required if the unit was initially created before October 1, 2001; and (2) a 30-year minimum deed restriction shall be required if the unit was initially created on or following October 1, 2001] , a 30-year minimum deed restriction shall be required, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended term, in combination, total at least 60 years. Any 100 percent affordable rental property shall have a right to extinguish a deed restriction regardless of original length, beginning 30 years following the start of the deed restriction, provided a refinancing or rehabilitation, or both, for the purpose of preservation is commenced and that a new deed restriction of at least 30 years is provided. A municipality shall be eligible to receive credits for all preserved units pursuant to this subsection, as long as the original and extended term total at least 60 years, and this credit may be obtained at the time of preservation. All 100 percent affordable projects shall be eligible for any affordable housing preservation program administered by the State, beginning 30 years following the start of the deed restriction, regardless of original length of the deed restriction. Any State administered preservation program may allow a refinancing funding process to commence prior to the 30th year of the deed restriction when such refinancing or rehabilitation funding is needed to preserve affordable housing<sup>2</sup>.<sup>1</sup>

37. The following sections are repealed:

Section 5 of P.L.1985 c.222 (C.52:27D-305);

Section 6 of P.L.1985, c.222 (C.52:27D-306);

Section 7 of P.L.1985, c.222 (C.52:27D-307);

Section 1 of P.L.1991, c.479 (C.52:27D-307.1);

1 Section 2 of P.L.1991, c.479 (C.52:27D-307.2);  
2 Section 3 of P.L.1991, c.479 (C.52:27D-307.3);  
3 Section 4 of P.L.1991, c.479 (C.52:27D-307.4);  
4 Section 5 of P.L.1991, c.479 (C.52:27D-307.5);  
5 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);  
6 Section 8 of P.L.1985, c.222 (C.52:27D-308);  
7 Section 9 of P.L.1985, c.222 (C.52:27D-309);  
8 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);  
9 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);  
10 Section 14 of P.L.1985, c.222 (C.52:27D-314);  
11 Section 15 of P.L.1985, c.222 (C.52:27D-315);  
12 Section 16 of P.L.1985, c.222 (C.52:27D-316);  
13 Section 17 of P.L.1985, c.222 (C.52:27D-317);  
14 Section 18 of P.L.1985, c.222 (C.52:27D-318);  
15 Section 19 of P.L.1985 c.222 (C.52:27D-319);  
16 Section 22 of P.L.1985, c.222 (C.52:27D-322);  
17 Section 26 of P.L.1985, c.222 (C.52:27D-326);  
18 Section 28 of P.L.1985, c.222 (C.52:27D-328); and  
19 Section 9 of P.L.2008, c.46 (C.52:27D-329.3).  
20

21 38. a. There is appropriated to the Affordable Housing Dispute  
22 Resolution Program, established pursuant to subsection a. of section  
23 5 of P.L. , c. (C. ) (pending before the Legislature as this  
24 bill), from the General Fund \$12,000,000 for the purposes of  
25 carrying out its responsibilities for the fourth round of affordable  
26 housing obligations, as established pursuant to section 5 of  
27 P.L. , c. (C. ) (pending before the Legislature as this bill).  
28

29 b. There is appropriated to the Department of Community  
30 Affairs, from the General Fund, \$4,000,000 for the purposes of  
31 carrying out responsibilities allocated to it pursuant to P.L. , c.  
(C. ) (pending before the Legislature as this bill).  
32

33 39. This act shall take effect immediately, and shall apply to  
34 each new round of affordable housing obligations that begins  
35 following enactment.  
36

37  
38  
39  
40 Reforms municipal responsibilities concerning provision of  
41 affordable housing; abolishes COAH; appropriates \$16 million.

## CHAPTER 2

**AN ACT** concerning affordable housing, including administration and municipal obligations, amending, supplementing, and repealing various parts of the statutory law, and making an appropriation.

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

1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to read as follows:

C.52:27D-302 Findings.

2. The Legislature finds that:

- a. The New Jersey Supreme Court, through its rulings in *Southern Burlington County NAACP v. Mount Laurel*, 67 N.J. 151 (1975) and *Southern Burlington County NAACP v. Mount Laurel*, 92 N.J. 158 (1983), has determined that every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs for housing for low- and moderate-income families.

- b. In the second Mount Laurel ruling, the Supreme Court stated that the determination of the methods for satisfying this constitutional obligation "is better left to the Legislature," that the court has "always preferred legislative to judicial action in their field," and that the judicial role in upholding the Mount Laurel doctrine "could decrease as a result of legislative and executive action."

- c. The interest of all citizens, including low- and moderate-income families in need of affordable housing, and the needs of the workforce, would be best served by a comprehensive planning and implementation response to this constitutional obligation.

- d. There are a number of essential ingredients to a comprehensive planning and implementation response, including the establishment of reasonable fair share housing guidelines and standards, the initial determination of fair share by officials at the municipal level and the preparation of a municipal housing element, State review of the local fair share study and housing element, and continuous State funding for low- and moderate-income housing to replace the federal housing subsidy programs which have been almost completely eliminated.

- e. The State can maximize the number of low- and moderate-income units provided in New Jersey by allowing its municipalities to adopt appropriate phasing schedules for meeting their fair share, so long as the municipalities permit a timely achievement of an appropriate fair share of the regional need for low- and moderate-income housing as required by the Mount Laurel I and II opinions and other relevant court decisions.

- f. The State can also maximize the number of low- and moderate-income units by creating new affordable housing and by rehabilitating existing, but substandard, housing in the State. Because the Legislature has determined, pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.), that it is no longer appropriate or in harmony with the Mount Laurel doctrine to permit the transfer of the fair share obligations among municipalities within a housing region, it is necessary and appropriate to create a new program to create new affordable housing and to foster the rehabilitation of existing, but substandard, housing.

- g. Since the urban areas are vitally important to the State, construction, conversion, and rehabilitation of housing in our urban centers should be encouraged. However, the provision of housing in urban areas must be balanced with the need to provide housing throughout the State for the free mobility of citizens.

- h. The Supreme Court of New Jersey in its Mount Laurel decisions demands that municipal land use regulations affirmatively afford a realistic opportunity for a variety and

choice of housing including low- and moderate-cost housing, to meet the needs of people desiring to live there. While provision for the actual construction of that housing by municipalities is not required, they are encouraged but not mandated to expend their own resources to help provide low- and moderate-income housing.

i. (Deleted by amendment, P.L.2024, c.2)

j. The Legislature finds that the use of regional contribution agreements, which permits municipalities to transfer a certain portion of their fair share housing obligation outside of the municipal borders, should no longer be utilized as a mechanism for the creation of affordable housing.

k. The Legislature finds that the role of the Council on Affordable Housing, as intended in the original enactment of the "Fair Housing Act," has not developed in practice as was intended in the legislation.

l. The council's inability to function ultimately led the Supreme Court in 2015 to order the temporary dissolution of the requirement that administrative remedies be exhausted prior to resolving affordable housing disputes before the court and allowed the courts to resume their role as the forum of first resort for evaluating municipal compliance with Mount Laurel obligations pursuant to guidelines laid out by the Supreme Court's order.

m. The Legislature finds that the council's inability to function led to a "gap period" that frustrated the intent of the Legislature and compliance with constitutional and statutory obligations and that it is necessary to establish definitive deadlines for municipal action and any challenges to those actions to avoid such a "gap period" from being repeated in the future.

n. The Legislature finds that although the court-led system that has developed since 2015 has resulted in a significant number of settlement agreements and increased production of affordable housing, the system could operate more expeditiously to produce affordable housing, and at a lower cost to all parties, if appropriate standards are established by the Legislature to be applied throughout the State, including more clarity on calculation on fair share affordable housing obligations using transparent and established data sources to eliminate the lengthy and costly processes of determining those obligations that have characterized both the Council on Affordable Housing and court-led system.

o. The Legislature determines that, considering the unique history of the "Fair Housing Act," the Council on Affordable Housing shall be abolished and that, pursuant to the formulas and process established pursuant to sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3), a municipality shall be authorized to seek approval of its fair share affordable housing obligation, adopted pursuant to binding resolution and then filed with the court, with the guidance of calculations published by the Department of Community Affairs, but that advocates for the low- and moderate-income households of the State shall be provided with an opportunity to contest the municipal determination.

p. The Legislature declares that the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as amended and supplemented by P.L.2024, c.2 (C.52:27D-304.1 et al.), is intended to implement the Mount Laurel doctrine, and that municipalities in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) are also in compliance with the Mount Laurel doctrine.

q. The Legislature finds that the population of persons aged 65 years and older in the State has grown from approximately 13 percent in 1990, to 17 percent in 2021, and that such growth, in conjunction with expected future growth, makes it appropriate for the Legislature to allow up to 30 percent of the units towards a municipality's prospective affordable housing obligation to be satisfied through the creation of age-restricted housing.

r. The "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.) were enacted concurrently to address the ruling of the New Jersey Supreme Court in Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983) and associated land use planning concerns.

s. The Legislature, in amending and supplementing the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), intends to facilitate comprehensive planning in alignment with smart growth principles and the State Development and Redevelopment Plan.

t. The Legislature declares that the changes made to affordable housing methodologies, obligations, and fair share plans, as determined to be a necessity by the Legislature, through the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), are made with the intention of furthering consistency with the State Development and Redevelopment Plan.

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

C.52:27D-304 Definitions.

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

a. "Council" means the Council on Affordable Housing established in P.L.1985, c.222 (C.52:27D-301 et al.), abolished pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1).

b. "Housing region" means a geographic area established pursuant to subsection b. of section 6 of P.L.2024, c.2 (C.52:27D-304.2).

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

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

e. (Deleted by amendment, P.L.2024, c.2)

f. "Inclusionary development" means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate-income households.

g. "Conversion" means the conversion of existing commercial, industrial, or residential structures for low- and moderate-income housing purposes where a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate-income households.

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

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

j. "Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. Prospective need shall be determined by the methodology set forth pursuant to sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) for the fourth round and all future rounds of housing obligations.

k. "Person with a disability" means a person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

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

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

n. "Accessory dwelling unit" means a residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed or existing primary dwelling, within an existing or proposed structure that is accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling.

o. "Builder's remedy" means court-imposed, site-specific relief for a litigant who seeks to build affordable housing for which the court requires a municipality to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques which provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households.

p. "Commissioner" means the Commissioner of Community Affairs.

q. "Compliance certification" means the certification obtained by a municipality pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1), that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round begins, which is also known as a "judgment of compliance" or "judgment of repose." The term "compliance certification" shall include a judgment of repose granted in an action filed pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313).

r. "County-level housing judge" means a judge appointed pursuant to section 5 of P.L.2024, c.2 (C.52:27D-313.2), to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal fair share plans and housing elements, with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

s. "Deficient housing unit" means housing that: (1) is over fifty years old and overcrowded; (2) lacks complete plumbing; or (3) lacks complete kitchen facilities.

t. "Department" means the Department of Community Affairs.

u. "Exclusionary zoning litigation" means litigation to challenge the fair share plan, housing element, or ordinances or resolutions implementing the fair share plan or housing element of a municipality based on alleged noncompliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.



v. "Fair share plan" means the plan or proposal that is in a form which may readily be adopted, with accompanying ordinances and resolutions, pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

w. "Highlands-conforming municipality" means a municipality that has adopted a land development ordinance implementing the municipality's plan conformance petition and which land development ordinance has been certified by the Highlands Water Protection and Planning Council as consistent with the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et seq.), the Highlands regional master plan, and the municipality's plan conformance approval. The term "land development ordinance" shall be inclusive of any amendment to the municipality's land development ordinances that is adopted to further the municipality's petition of plan conformance.

x. "Housing element" means that portion of a municipality's master plan consisting of reports, statements, proposals, maps, diagrams, and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, and which shall contain the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1).

y. "Program" means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L.2024, c.2 (C.52:27D-313.2).

z. "State Development and Redevelopment Plan" or "State Plan" means the plan prepared pursuant to sections 1 through 12 of the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.), designed to represent a balance of development and conservation objectives best suited to meet the needs of the State, and for the purpose of coordinating planning activities and establishing Statewide planning objectives in the areas of land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination pursuant to subsection f. of section 5 of P.L.1985, c.398 (C.52:18A-200).

aa. "Transitional housing" means temporary housing that:

includes, but is not limited to, single-room occupancy housing or shared living and supportive living arrangements;

provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing;

is licensed by the department; and

allows households to remain for a minimum of six months.

C.52:27D-304.1 Council on Affordable Housing abolished; report to Governor, Legislature, municipalities.

3. a. The Council on Affordable Housing, established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), is abolished. Each municipality shall determine its municipal present and prospective obligations in accordance with the formulas established in sections 6

and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) and may take into consideration the calculations in the report published by the department in accordance with this section.

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

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

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

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

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

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

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

(b) For the fourth round of affordable housing obligations, this determination of present and prospective fair share obligation shall be made by binding resolution no later than January 31, 2025. After adoption of this binding resolution, the municipality shall file an action regarding the resolution with the program no later than 48 hours following adoption. The resolution, along with the date of filing with the program, shall be published on the program's publicly accessible Internet website. The municipality shall also publish the resolution on its publicly accessible Internet website, if the municipality maintains one. If the municipality does not meet this deadline, it shall lose immunity from exclusionary zoning litigation until such time as the municipality is determined to have come into compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. A determination of the municipality's present and prospective obligation may be established before a county-level housing judge as part of any resulting declaratory judgment action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as amended by P.L.2024, c.2 (C.52:27D-304.1 et al.), or through exclusionary zoning litigation. If the municipality meets this January 31 deadline, then the municipality's determination of its obligation shall be established by default and shall bear a presumption of validity beginning on March 1, 2025, as the municipality's obligation for the fourth round, unless challenged by an interested party on or before February 28, 2025. The municipality's determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3), in any challenge initiated through the program. An interested party may file a challenge with the program, after adoption of the binding resolution and prior to March 1, 2025, alleging that the municipality's determination of its present and prospective obligation does not comply with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3). For the fifth round, and each subsequent new round of housing obligations, the deadlines established in this subparagraph shall be on the last day of January, the last day of February, and the first day of March, respectively, of the year of the start of each new round.

(c) The Administrative Director of the Courts shall establish procedures for the program to consider a challenge and resolve a dispute initiated by an interested party pursuant to subparagraph (b) of this paragraph. To resolve a challenge, the program shall apply an objective assessment standard to determine whether or not the municipality's calculation of its obligation is compliant with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3). Any challenge must state with particularity how the municipal calculation fails to comply with sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) and include the challenger's own calculation of the fair share obligations in compliance with sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3). The program shall establish procedures to summarily dismiss any objection or challenge that does not meet these minimum standards. For the purpose of efficiency, the program shall, in its own discretion, permit multiple challenges to the same municipal determination to be consolidated. The program's approach to resolving a dispute may include: (i) a finding that

the municipality's determination of its present and prospective need obligation did not facially comply with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) and thus the municipality's immunity shall be revoked; (ii) an adjustment of the municipality's determination of its present and prospective need obligation to comply with the requirements of sections 6 and 7 of P.L.2024, c.2 (C.52:27D-304.2 and C.52:27D-304.3) without revoking immunity; or (iii) a rejection of a challenge and affirm the municipality's determination. The decision shall be provided to the municipality and all parties that have filed challenges no later than March 31 of the year when the current round is expiring and the new round is beginning and concurrently posted on the program's Internet website. The Administrative Director of the Courts shall establish procedures for any further appellate review of such determinations and may establish an expedited process for consolidated review of any such challenges by the Supreme Court, provided that any party seeking appellate review shall not change the deadlines established for municipal filing of a housing element and fair share plan, and implementing ordinances.

(2) (a) A municipality shall adopt a housing element and fair share plan as provided for by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), and propose drafts of the appropriate zoning and other ordinances and resolutions to implement its present and prospective obligation established in paragraph (1) of this subsection on or before June 30, 2025. After adoption of the housing element and fair share plan, and the proposal of drafts of the appropriate zoning and other ordinances and resolutions, the municipality shall within 48 hours of adoption or by June 30, 2025, whichever is sooner, file the same with the program as part of the action initiated pursuant to subparagraph (b) of paragraph (1) of this subsection through the program's Internet website. Any municipality that does not do so by June 30, 2025, shall not retain immunity from exclusionary zoning litigation until such time as the municipality is determined to have come into compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine and shall be subject to review through the declaratory judgment process as established in paragraph (3) of this subsection. As part of its housing element and fair share plan, the municipality shall include an assessment of the degree to which the municipality has met its fair share obligation from the prior rounds of affordable housing obligations as established by prior court approval, or approval by the council, and determine to what extent this obligation is unfulfilled or whether the municipality has credits in excess of its prior round obligations. If a prior round obligation remains unfulfilled, or a municipality never received an approval from court or the council for any prior round, the municipality shall address such unfulfilled prior round obligation in its housing element and fair share plan. Units included as part of the municipality's unfulfilled prior round obligation shall not count towards the cap on units in the municipality's prospective need obligation. In addressing prior round obligations, the municipality shall retain any sites that, in furtherance of the prior round obligation, are the subject of a contractual agreement with a developer, or for which the developer has filed a complete application seeking subdivision or site plan approval prior to the date by which the housing element and fair share plan are required to be submitted, and shall demonstrate how any sites that were not built in the prior rounds continue to present a realistic opportunity, which may include proposing changes to the zoning on the site to make its development more likely, and which may also include the dedication of municipal affordable housing trust fund dollars or other monetary or in-kind resources. The municipality shall only plan to replace any sites planned for development as provided by a prior court approval, settlement agreement, or approval by the council, with alternative development plans, if it is determined that the previously planned sites no longer present a realistic opportunity, and the sites in the alternative development plan

provide at least an equivalent number of affordable units and are otherwise in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. If a municipality proposes to replace a site for which a complete application seeking subdivision or site plan approval has not been filed prior to the date by which the housing element and fair share plan is required to be submitted, there shall be a rebuttable presumption in any challenge filed to the municipality's plan that any site for which a zoning designation was adopted creating a realistic opportunity for the development of a site prior to July 1, 2020, or July 1 of every 10th year thereafter, as applicable, may be replaced with one or more alternative sites that provide a realistic opportunity for at least the same number of affordable units and is otherwise in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. To the extent a municipality has credits, including bonus credits, from units created during a prior round that are otherwise permitted to be allocated toward the municipality's unfulfilled prior round obligation or present or prospective need obligation in an upcoming round, the municipality shall be entitled to rely on the rules, including rules for bonus credits, applicable for the round during which those credits were accumulated. If a municipality has credits in excess of its prior round obligations, and such excess credits represent housing that will continue to be deed-restricted and affordable through the current round, the municipality may include such housing, and applicable bonus credits, towards addressing the municipality's new calculation of prospective need. Consistent with subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311), the total number of bonus credits shall in no circumstance exceed 25 percent of the municipality's prospective obligation in any round. The municipality may in its plan lower its prospective need obligation to the extent necessary to prevent establishing a prospective need obligation that requires the municipality to provide a realistic opportunity for more than 1,000 housing units, after the application of any excess credits, or to prevent a prospective need obligation that exceeds 20 percent of the total number of households in a municipality according to the most recent federal decennial census, not including any prior round obligation. If a municipality is subject to both a 1,000 unit cap or 20 percent cap, it may apply whichever cap results in a lower prospective need obligation. For the fifth round, and for each subsequent new round of housing obligations, the deadlines in this paragraph shall be June 30 for the adoption of the housing element and fair share plan, and the proposal of drafts of the appropriate zoning and other ordinances and resolutions to implement its present and prospective obligation, of the year of the start of the new round.

(b) Following the filing, in an action, of an adopted housing element and fair share plan pursuant to subparagraph (a) of this paragraph, an interested party may file a response on or before August 31, 2025 alleging that the municipality's fair share plan and housing element are not in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. Such allegation shall not include a claim that a site on real property proposed by the interested party is a better site than a site in the plan, but rather shall be based on whether the housing element and fair share plan as proposed is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. To resolve a challenge, the program shall apply an objective assessment standard to determine whether or not the municipality's housing element and fair share plan is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. Any interested party that files a challenge shall specify with particularity which sites or elements of the municipal fair share plan do not comply with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine, and the basis for alleging such non-compliance. The program shall establish procedures to summarily dismiss any objection or

challenge that does not meet these minimum standards. For the purpose of efficiency, the program shall, in its own discretion, permit multiple challenges to the same municipal housing element and fair share plan to be consolidated. If a municipality's fair share plan and housing element is not challenged on or before August 31, 2025, then the program shall apply an objective standard to conduct a limited review of the fair share plan and housing element for consistency and to determine whether it enables the municipality to satisfy the fair share obligation, applies compliant mechanisms, meets the threshold requirements for rental and family units, does not exceed limits on other unit or category types, and is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. The program shall issue a compliance certification unless these objective standards are not met. The program shall facilitate communication between the municipality and any interested parties for a challenge and provide the municipality until December 31, 2025 to commit to revising its fair share plan and housing element in compliance with the changes requested in the challenge, or provide an explanation as to why it will not make all of the requested changes, or both. Upon resolution of a challenge, the program shall issue compliance certification, conditioned on the municipality's commitment, as necessary, to revise its fair share plan and housing element in accordance with the resolution of the challenge. The program may also terminate immunity if it finds that the municipality is not determined to come into constitutional compliance at any point in the process. If by December 31, 2025 the municipality and any interested party that filed a response have resolved the issues raised in the response through agreement or withdrawal of the filing, then the program shall review the fair share plan and housing element for consistency and to determine whether it is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine and issue a compliance certification unless these objective standards are not met. For the fifth round, and each subsequent new round of housing obligations, the deadline established in this subparagraph for an interested party to file a challenge shall be August 31, and for the municipality to revise its housing element and fair share plan in response, shall be December 31 of the year of the beginning of the new round.

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

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

paragraph. The implementing ordinances and resolutions adopted prior to the resolution of the dispute may be subject to changes to reflect the results of the dispute. As an alternative to adopting all necessary implementing ordinances and resolutions by the March 15 deadline, a municipality involved in a continuing dispute over the issuance of compliance certification may adopt a binding resolution by this date to commit to adopting the implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments to reflect the resolution of the dispute.

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

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

(b) A municipality that has not adopted and published a binding resolution pursuant to paragraph (1) of this subsection or that has not adopted and filed a housing element and fair share plan pursuant to paragraph (2) of this subsection may seek compliance certification by filing an action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), provided that any exclusionary zoning litigation filed by a plaintiff against such a municipality prior to such time may proceed notwithstanding such filing. In a municipality that has adopted and published a binding resolution pursuant to paragraph (1) of this subsection and has adopted and filed a housing element and fair share plan pursuant to paragraph (2) of this subsection, a court shall not consider exclusionary zoning litigation during the timeframe after the timely submission of a binding resolution or fair share plan and housing element of a municipality, or both, and before a challenge is submitted, or during the timeframe of a challenge that is pending resolution with the program pursuant to this subsection. A court may consider exclusionary zoning litigation after such timeframe upon a finding that the municipality: (i) is determined to be constitutionally noncompliant with its responsibilities pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or is participating in the program in bad faith; (ii) has failed to meet the deadlines established pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.); or (iii) has, after receiving compliance certification, failed to comply with the terms of that certification by not actually allowing for the development of the affordable housing as provided for in its fair share plan and housing element through actions or omissions, or both, of a municipality or its subordinate boards.

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

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

(e) A municipality shall not be deemed out of compliance with the deadlines of P.L.2024, c.2 (C.52:27D-304.1 et al.), or lose immunity from exclusionary zoning litigation, due to a

failure by the program to promptly maintain and update its Internet website or other operational failure of the program.

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

4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to read as follows:

C.52:27D-313 Petition for substantive certification.

13. a. If a municipality has adopted a housing element and fair share plan pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1), but has failed to satisfy the June 30 deadline established pursuant to paragraph (2) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), for any round of affordable housing obligations, the municipality may request and be provided with a grace period pursuant to paragraph (3) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), if authorized by the program or county-level housing judge, as determined by the rules of court. If a municipality that has not satisfied this June 30 deadline is not provided with a grace period, the municipality may institute an action for declaratory judgment granting it repose in the Superior Court for the 10-year period constituting the current round of fair share obligations. The municipality shall publish notice of its filing of a declaratory judgment action in a newspaper of general circulation within the municipality and county and shall make available to the public information on the element and ordinances by submitting such information to the program to be published on the Internet website of the program in accordance with section 3 of P.L.2024, c.2 (C.52:27D-304.1).

b. (Deleted by amendment, P.L.2024, c.2)

c. (1) A municipality or other interested party may file an action through the program seeking a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site in the housing element and fair share plan that has not received preliminary site plan approval prior to the midpoint of the 10-year round. If such an action is initiated by a municipality, the municipality may propose one or more alternative sites with an accompanying development plan or plans that provide a realistic opportunity for the same number of affordable units and is otherwise in compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine, provided that if the facts demonstrate that the municipality or its subordinate boards have prevented the site from receiving site plan approval, then the program shall reject the municipality's challenge.

(2) Any party may file a request for information from the program regarding the progress of development at any inclusionary development site in the housing element and fair share plan of a municipality or at any alternative site proposed by the municipality. The program may respond to a request independently or in coordination with the department.

C.52:27D-313.2 "Affordable Housing Dispute Resolution Program" established.

5. a. There is established an Affordable Housing Dispute Resolution Program that shall have the purpose of efficiently resolving disputes involving the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), to consist of an odd number of members, of at least three and no more than seven members who shall lead the administration of the program. The Administrative Director of the Courts shall update the assignment of designated Mount Laurel judges to indicate which current or retired and on-recall judges of the Superior Court shall



serve as members, within 60 days following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). The Administrative Director of the Courts may appoint other qualified experts as members if sufficient current and retired judges are unavailable. The Administrative Director of the Courts shall take into consideration in making such appointments experience in the employment of alternative dispute resolution methods and in relevant subject matter.

b. The Administrative Director of the Courts shall designate a member to serve as chair. The Administrative Director of the Courts shall make new appointments as needs arise for new appointments.

c. The program, in its discretion and in accordance with Rules of Court, may consult or employ the services of one or more special masters or staff to assist it in rendering determinations, resolving disputes, and facilitating communication as required by subparagraph (b) of paragraph (2) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1). In addition, the program may incorporate any existing or newly established court mediation or alternative dispute resolution process to assist the program in resolving disputes and facilitating communication among municipalities and interested parties.

d. The Administrative Director of the Courts shall establish a filing system via an Internet website in which the public is able to access, without cost, filings made pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.) and such other related filings as the Administrative Director of the Courts may include on the filing system.

e. The Administrative Director of the Courts may assign additional responsibilities to the program for resolving disputes arising out of or related to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

f. The Administrative Director of the Courts shall establish procedures for the purpose of efficiently resolving disputes involving the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), for circumstances in which the program is unable to address the dispute within the time limitations established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1). As a part of the procedures established pursuant to this section, in order to facilitate an appropriate level of localized control of affordable housing decisions, for each vicinage, the Chief Justice of the Supreme Court shall designate a Superior Court judge who sits within the vicinage, or a retired judge who, during the judge's tenure as a judge, served within the vicinage, to serve as county-level housing judge to resolve disputes over the compliance, of fair share plans and housing elements of municipalities within their designated county or counties, with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as well as disputes that arise with respect to ongoing compliance or noncompliance with obligations created by fair share plans, housing elements, and the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A judge shall be permitted to serve as a county-level housing judge for more than one county in the same vicinage.

g. The Administrative Director of the Courts shall promulgate, maintain, and apply a Code of Ethics that is modeled upon the Code of Judicial Conduct of the American Bar Association, as amended and adopted by the Supreme Court of New Jersey, and may establish additional, more restrictive ethical standards in order to meet the specific needs of the program and of county-level housing judges.

C.52:27D-304.2 Municipal present need, 10-year round, determination of affordable housing obligations.

6. a. Municipal present need for each 10-year round of affordable housing obligations shall be determined by estimating the deficient housing units occupied by low- and moderate-income households in the region, following a methodology similar to the methodology used to determine third round municipal present need, through the use of most recent datasets made

available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof.

b. For the purpose of determining regional need for the 10-year round of low- and moderate-income housing obligations, running from July 1, 2025 through June 30, 2035, and each 10-year round thereafter:

(1) The regions of the State shall be comprised as follows:

- (a) Region 1 shall consist of the counties of Bergen, Hudson, Passaic, and Sussex;
- (b) Region 2 shall consist of the counties of Essex, Morris, Union, and Warren;
- (c) Region 3 shall consist of the counties of Hunterdon, Middlesex, and Somerset;
- (d) Region 4 shall consist of the counties of Mercer, Monmouth, and Ocean;
- (e) Region 5 shall consist of the counties of Burlington, Camden, and Gloucester; and
- (f) Region 6 shall consist of the counties of Atlantic, Cape May, Cumberland, and Salem.

(2) Regional prospective need for a 10-year round of low- and moderate-income housing obligations shall be determined through the calculation provided in this subsection. Projected household change for a 10-year round in a region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. This household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective need shall be zero.

C.52:27D-304.3 Present, prospective fair share obligation, low- and moderate-income housing, methodologies.

7. a. The present and prospective fair share obligation for low- and moderate-income housing for each municipality in the State shall be determined as described in this section. In addition, the March 8, 2018 unpublished decision of the Superior Court, Law Division, Mercer County, In re Application of Municipality of Princeton shall be referenced as to datasets and methodologies that are not explicitly addressed by this section. These determinations of municipal present and prospective need shall be based on a determination of the present and prospective regional need for low- and moderate-income housing, established pursuant to section 6 of P.L.2024, c.2 (C.52:27D-304.2). These calculations of municipal present and prospective need shall use necessary datasets that are updated to the greatest extent practicable.

b. A municipality's present need obligation shall be determined by estimating the existing deficient housing units currently occupied by low- and moderate-income households within the municipality, following a methodology comparable to the methodology used to determine third round present need, through the use of datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof.

c. A municipality's prospective fair share obligation of the regional prospective need for the upcoming 10-year round shall be determined in accordance with this subsection:

(1) If a municipality is a qualified urban aid municipality, the municipality shall be exempt from responsibility for any fair share prospective need obligation for the upcoming 10-year round. For the purposes of this section, a municipality is a qualified urban aid municipality if the municipality, as of July 1 of the year prior to the beginning of a new round, is designated

by the department, pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid and the municipality meets at least one of the following criteria:

(a) The ratio of substandard existing deficient housing units currently occupied by low- and moderate-income households within the municipality, compared to all existing housing in the municipality, is greater than the equivalent ratio in the region;

(b) The municipality has a population density greater than 10,000 persons per square mile of land area; or

(c) The municipality has a population density of more than 6,000, but less than 10,000 persons per square mile of land area, and less than five percent vacant parcels not used as farmland, as measured by the average of:

(i) The number of vacant land parcels in the municipality as a percentage of the total number of parcels in the municipality; and

(ii) The valuation of vacant land in the municipality as a percentage of total valuations in the municipality.

(2) A municipality's equalized nonresidential valuation factor shall be determined. To determine this factor, the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be calculated using data published by the Division of Local Government Services in the department. For the purposes of this paragraph, the beginning of the round of affordable housing obligations preceding the fourth round shall be the beginning of the gap period in 1999. The change in the municipality's nonresidential valuations shall be divided by the regional total change in nonresidential valuations to determine the municipality's share of the regional change as the equalized nonresidential valuation factor.

(3) A municipality's income capacity factor shall be determined. This factor shall be determined by calculating the average of the following measures:

(a) The municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of \$100 below the lowest median household income in the region; and

(b) The municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality.

(4) A municipality's land capacity factor shall be determined. This factor shall be determined by estimating the area of developable land in the municipality's boundaries, and regional boundaries, that may accommodate development through the use of the "land use / land cover data" most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs and weighing such land based on the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality and in the region shall be determined. The municipality's share of its region's developable land shall be its land capacity factor. Developable land that may accommodate development shall be weighted based on the planning area type in which such land is located, as designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.), P.L.1979, c.111 (C.13:18A-1 et seq.), or P.L.2004, c.120 (C.13:20-1 et seq.), as follows:

(a) Planning Area 1 (Metropolitan) shall have a weighting factor of 1.0;

- (b) Planning Area 2 (Suburban) shall have a weighting factor of 1.0;
- (c) Planning Area 3 (Fringe) shall have a weighting factor of 0.5;
- (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;
- (e) Planning Area 5 (Environmentally Sensitive) shall have a weighting factor of 0.0;
- (f) Centers in Planning Areas 1 and 2 shall have a weighting factor of 1.0;
- (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting factor of 0.5;
- (h) Pinelands Regional Growth Area shall have a weighting factor of 0.5;
- (i) Pinelands Town shall have a weighting factor of 0.5;
- (j) All other Pinelands shall have a weighting factor of 0.0;
- (k) Meadowlands shall have a weighting factor of 1.0;
- (l) Meadowlands Center shall have a weighting factor of 1.0;
- (m) Highlands Preservation Area shall have a weighting factor of 0.0;

(n) Highlands Planning Area Existing Community Zone and Highlands Designated Center in a Highlands-conforming municipality, as determined by the Highlands Water Protection and Planning Council pursuant to the list provided to the department pursuant to subsection d. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), shall have a weighting factor of 1.0;

(o) Highlands Planning Area, State-designated sewer service area, Highlands municipality that is not a Highlands-conforming municipality as determined by the Highlands Water Protection and Planning Council pursuant to the list provided to the department pursuant to subsection d. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), shall have a weighting factor of 1.0; and

- (p) All other Highlands Planning Areas shall have a weighting factor of 0.0.

(5) The equalized nonresidential valuation factor, income capacity factor, and land capacity factor, determined in paragraphs (2), (3), and (4) of this subsection, shall be averaged to yield the municipality's average allocation factor for distributing gross regional prospective need to the municipality. The regional prospective need shall then be multiplied by the municipality's average allocation factor to determine the municipality's gross prospective need for the 10-year round.

8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read as follows:

C.2A:50-56 Notice of intention to foreclose.

4. a. Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give a notice of intention, which shall include a notice of the right to cure the default as provided in section 5 of P.L.1995, c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in advance of such action as provided in this section, to the residential mortgage debtor, and, if the mortgage is secured by a residence for which a restriction on affordability was recorded in the county in which the property is located, the clerk of the municipality in which the subject property is located, the municipal housing liaison, if one has been appointed by the municipality. For the purposes of this section, "restriction on affordability" means any conditions recorded with a mortgage or a deed which would limit the sale of such property to income qualified households pursuant to the rules adopted to effectuate the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

b. Notice of intention to take action as specified in subsection a. of this section shall be in writing, provided to the Department of Community Affairs in accordance with subsection a.

of section 2 of P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or certified mail, return receipt requested, at the debtor's last known address, and, if different, to the address of the property which is the subject of the residential mortgage. The notice is deemed to have been effectuated on the date the notice is delivered in person or mailed to the party.

c. The written notice shall clearly and conspicuously state in a manner calculated to make the debtor aware of the situation:

- (1) the particular obligation or real estate security interest;
- (2) the nature of the default claimed;
- (3) the right of the debtor to cure the default as provided in section 5 of P.L.1995, c.244 (C.2A:50-57);
- (4) what performance, including what sum of money, if any, and interest, shall be tendered to cure the default as of the date specified under paragraph (5) of this subsection c.;
- (5) the date by which the debtor shall cure the default to avoid initiation of foreclosure proceedings, which date shall not be less than 30 days after the date the notice is effective, and the name and address and phone number of a person to whom the payment or tender shall be made;
- (6) that if the debtor does not cure the default by the date specified under paragraph (5) of this subsection c., the lender may take steps to terminate the debtor's ownership in the property by commencing a foreclosure suit in a court of competent jurisdiction;
- (7) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection c., a debtor shall still have the right to cure the default pursuant to section 5 of P.L.1995, c.244 (C.2A:50-57), but that the debtor shall be responsible for the lender's court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules Governing the Courts of the State of New Jersey;
- (8) the right, if any, of the debtor to transfer the real estate to another person subject to the security interest and that the transferee may have the right to cure the default as provided in P.L.1995, c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;
- (9) that the debtor is advised to seek counsel from an attorney of the debtor's own choosing concerning the debtor's residential mortgage default situation, and that, if the debtor is unable to obtain an attorney, the debtor may communicate with the New Jersey Bar Association or Lawyer Referral Service in the county in which the residential property securing the mortgage loan is located; and that, if the debtor is unable to afford an attorney, the debtor may communicate with the Legal Services Office in the county in which the property is located;
- (10) the possible availability of financial assistance for curing a default from programs operated by the State or federal government or nonprofit organizations, if any, as identified by the Commissioner of Banking and Insurance and, if the property is subject to restrictions on affordability, the address and phone number of the municipal affordable housing liaison and of the New Jersey Housing and Mortgage Finance Agency. This requirement shall be satisfied by attaching a list of such programs promulgated by the commissioner;
- (11) the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default;
- (12) that if the lender takes the steps indicated pursuant to paragraph (6) of this subsection, the debtor has the option to participate in the Foreclosure Mediation Program following the filing of a mortgage foreclosure complaint by initiating mediation pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019, c.64 (C.2A:50-77). Notice of the option to participate in the Foreclosure Mediation Program shall adhere to the requirements of section 3 of

P.L.2019, c.64 (C.2A:50-76) and any court rules, procedures, or guidelines adopted by the Supreme Court;

(13) that the debtor is entitled to housing counseling, at no cost to the debtor, through the Foreclosure Mediation Program established by the New Jersey Judiciary, including information on how to contact the program;

(14) that if the property which is the subject of the mortgage has more than one dwelling unit but less than five, one of which is occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated, and is not properly maintained and meets the necessary conditions for receivership eligibility, established pursuant to section 4 of the "Multifamily Housing Preservation and Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall file an order to show cause to appoint a receiver; and

(15) that the lender is either licensed in accordance with the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89) or exempt from licensure under the act in accordance with applicable law.

d. The notice of intention to foreclose required to be provided pursuant to this section shall not be required if the debtor has voluntarily surrendered the property which is the subject of the residential mortgage.

e. The duty of the lender under this section to serve notice of intention to foreclose is independent of any other duty to give notice under the common law, principles of equity, State or federal statute, or rule of court and of any other right or remedy the debtor may have as a result of the failure to give such notice.

f. Compliance with this section and subsection a. of section 2 of P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the pleadings of any legal action referred to in this section. If the plaintiff in any complaint seeking foreclosure of a residential mortgage alleges that the property subject to the residential mortgage has been abandoned or voluntarily surrendered, the plaintiff shall plead the specific facts upon which this allegation is based.

g. If more than 180 days have elapsed since the date the notice required pursuant to this section is sent, and any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage has not yet been commenced, the lender shall send a new written notice at least 30 days, but not more than 180 days, in advance of that action.

h. If the property which is the subject of the notice of intention to foreclose has more than one dwelling unit but less than five, one of which is occupied by the debtor or a member of the debtor's immediate family as the debtor's or member's residence at the time the loan is originated, and is not properly maintained and meets the necessary conditions for receivership eligibility, established pursuant to section 4 of the "Multifamily Housing Preservation and Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential mortgage lender shall file an order to show cause to appoint a receiver.

9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as follows:

C.5:18-2 Grants to assist low-income families.

2. The New Jersey Council on Physical Fitness and Sports, established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is authorized to provide grants to assist low-income families in purchasing the protective eyewear. As used in this section, a "low-income family" means a family which qualifies for low-income housing under the standards promulgated by the New Jersey Housing and Mortgage Finance Agency pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to read as follows:

C.13:20-23 Regional master plan considered in allocation of prospective fair housing share.

25. a. The regional master plan shall be taken into account as part of the determination of obligations pursuant to the method in section 7 of P.L.2024, c.2 (C.52:27D-304.3) regarding the allocation of the prospective fair share of the housing need under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) for any fair share period subsequent to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) if a municipality is in the Highlands Region.

b. Nothing in P.L.2004, c.120 (C.13:20-1 et al.) shall affect protections provided through a grant of substantive certification or a judgment of repose granted prior to August 10, 2004.

11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to read as follows:

C.17:11C-55 Inapplicability of act.

5. The requirements of this act shall not apply to:

a. Depository institutions; but subsidiaries and service corporations of these institutions shall not be exempt. A depository institution may register with the department for the purpose of sponsoring individuals, licensed as mortgage loan originators subject to subparagraph (b) of paragraph (1) of subsection c. of section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such registered entity obtains and maintains bond coverage for mortgage loan originators consistent with section 13 of P.L.2009, c.53 (C.17:11C-63). A depository institution registered with the department in accordance with this subsection a. shall otherwise remain exempt from the licensing requirements of P.L.2009, c.53 (C.17:11C-51 et seq.).

b. A registered mortgage loan originator that is registered under the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.).

c. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a residential mortgage lender, residential mortgage broker, or mortgage loan originator.

d. A person licensed as a real estate broker or salesperson pursuant to R.S.45:15-1 et seq., and not engaged in the business of a residential mortgage lender or residential mortgage broker. Any person holding a license under this act as a residential mortgage lender or broker shall be exempt from the licensing and other requirements of R.S.45:15-1 et seq. in the performance of those functions authorized by this act.

e. Any employer, other than a residential mortgage lender, who provides residential mortgage loans to his employees as a benefit of employment which are at an interest rate which is not in excess of the usury rate in existence at the time the loan is made, as established in accordance with the law of this State, and on which the borrower has not agreed to pay, directly or indirectly, any charge, cost, expense or any fee whatsoever, other than that interest.

f. The State of New Jersey or a municipality, or any agency or instrumentality thereof, which, in accordance with a housing element that has previously received substantive certification from the Council on Affordable Housing, or a judgment of repose or other court approval, pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or in fulfillment of a regional contribution agreement with a municipality that has received a certification, employs or proposes to employ municipally generated funds, funds obtained through any State or federal subsidy, or funds acquired by the municipality under a regional contribution agreement, to finance the provision of affordable housing by extending loans or

advances, the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated.

g. Any individual who offers or negotiates terms of a residential mortgage loan:

- (1) with or on behalf of an immediate family member; or
- (2) secured by a dwelling that serves as the individual's residence.

h. Any person who, during a calendar year takes three or fewer residential mortgage loan applications or offers or negotiates the terms of three or fewer residential mortgage loans or makes three or fewer residential mortgage loans related to manufactured housing structures which are:

- (1) titled by the New Jersey Motor Vehicle Commission;
- (2) located in a mobile home park as defined in subsection e. of section 3 of P.L.1983, c.400 (C.54:4-1.4); and
- (3) exempt from taxation as real property pursuant to subsection b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

i. A bona fide not for profit entity and any individuals directly employed by that entity, so long as the entity maintains its tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986 and otherwise meets the definition of "bona fide not for profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as periodically determined by the department in accordance with rules established by the commissioner.

12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to read as follows:

C.39:4-10.2 Violations, warnings, fines; "Bicycle and Skating Safety Fund."

2. a. A person who violates a requirement of this act shall be warned of the violation by the enforcing official. The parent or legal guardian of that person also may be fined a maximum of \$25 for the person's first offense and a maximum of \$100 for a subsequent offense if it can be shown that the parent or guardian failed to exercise reasonable supervision or control over the person's conduct. Penalties provided in this section for a failure to wear a helmet may be waived if an offender or his parent or legal guardian presents suitable proof that an approved helmet was owned at the time of the violation or has been purchased since the violation occurred.

b. All money collected as fines under subsection a. of this section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-10.6) shall be deposited in a nonlapsing revolving fund to be known as the "Bicycle and Skating Safety Fund." Interest earned on money deposited in the fund shall accrue to the fund. Money in the fund shall be utilized by the director to provide educational programs devoted to bicycle, roller skating and skateboarding safety. If the director determines that sufficient money is available in the fund, he also may use, in a manner prescribed by rule and regulation, the money to assist low-income families in purchasing approved bicycle helmets. For the purposes of this subsection, "low-income family" means a family which qualifies for low-income housing under the standards promulgated by the New Jersey Housing and Mortgage Finance Agency pursuant to the provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).

13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to read as follows:

C.40:55D-8.2 Findings, declarations relative to Statewide non-residential development fees.

33. The Legislature finds and declares:



a. The collection of development fees from builders of residential and non-residential properties has been authorized by the court through the powers established pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). Due to the Legislature's determination that the role of the Council on Affordable Housing has not developed in practice as intended, the Legislature further determines that authority relating to rulemaking on the collection of residential and non-residential development fees is appropriately delegated to the Department of Community Affairs, given the department's existing roles related to local government finance and the funding and financing of affordable housing throughout the State.

b. New Jersey's land resources are becoming more scarce, while its redevelopment needs are increasing. In order to balance the needs of developing and redeveloping communities, a reasonable method of providing for the housing needs of low-, moderate-, and middle-income households, without mandating the inclusion of housing in every non-residential project, must be established.

c. A Statewide non-residential development fee program, which permits municipalities that have obtained or are in the process of seeking compliance certification to retain these fees for use in the municipality will provide a fair and balanced funding method to address the State's affordable housing needs, while providing an incentive to all municipalities to obtain compliance certification.

d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.), organizations are directed to invest in the Casino Reinvestment Development Authority to ensure that the development of housing for families of low and moderate income shall be provided. The Casino Reinvestment Development Authority shall work to effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301 et al.).

e. (Deleted by amendment P.L.2024, c.2)

f. The negative impact of a State policy that over-relies on a municipal fee structure and of State programs that require a municipality to impose fees and charges on developers must be balanced against any public good expected from such regulation. It is undisputable that the charging of fees at high levels dissuades commerce from locating within a State or municipality or locality and halts non-residential and residential development, and these ill effects directly increase the overall costs of housing, and could impede the constitutional obligation to provide for a realistic opportunity for housing for families at all income levels.

14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to read as follows:

C.40:55D-8.3 Definitions relative to Statewide non-residential development fees.

34. As used in sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7):

"Construction" means new construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under the State Uniform Construction Code promulgated pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

"Commissioner" means the Commissioner of Community Affairs.

"Department" means the Department of Community Affairs.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

"Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated,

as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

"Mixed-use development" means any development which includes both a non-residential development component and a residential development component, and shall include developments for which (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including but not limited to lots separated by a street, a river, or another geographical feature.

"Non-residential development" means: (1) any building or structure, or portion thereof, including but not limited to any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code promulgated to effectuate the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), including any subsequent amendments or revisions thereto; (2) hotels, motels, vacation timeshares, and child-care facilities; and (3) the entirety of all continuing care facilities within a continuing care retirement community which is subject to the "Continuing Care Retirement Community Regulation and Financial Disclosure Act," P.L.1986, c.103 (C.52:27D-330 et seq.).

"Non-residential development fee" means the fee authorized to be imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

"Relating to the provision of housing" shall be liberally construed to include the construction, maintenance, or operation of housing, including but not limited to the provision of services to such housing and the funding of any of the above.

"Spending plan" means a method of allocating funds collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) for the purpose of meeting the housing needs of low- and moderate-income individuals.

"Treasurer" means the Treasurer of the State of New Jersey.

15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to read as follows:

C.40:55D-8.4 Fee imposed on construction resulting in non-residential development; exemptions.

35. a. Beginning on the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), a fee is imposed on all construction resulting in non-residential development, as follows:

(1) A fee equal to two and one-half percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots; or

(2) A fee equal to two and one-half percent of the increase in equalized assessed value, of the additions to existing structures to be used for non-residential purposes.

b. All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, which is tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the imposition of a non-residential development fee pursuant to this section, provided that the property continues to maintain its tax exempt status under that statute for a period of at least three years

from the date of issuance of the certificate of occupancy. In addition, the following shall be exempt from the imposition of a non-residential development fee:

(1) parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, such as an office building, or whether the parking lot is developed as an independent non-residential development;

(2) any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer;

(3) non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;

(4) projects that are located within a specifically delineated urban transit hub, as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208);

(5) projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system; and

(6) projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the Department of Transportation.

A developer of a non-residential development exempted from the non-residential development fee pursuant to this section shall be subject to it at such time the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development whichever is later.

For purposes of this subsection, "recreational facilities and community center" means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including but not limited to ball fields, meeting halls, and classrooms, accommodating either organized or informal activity; and "senior center" means any recreational facility or community center with activities and services oriented towards serving senior citizens.

If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

c. (1) Unless authorized to pay directly to the municipality in which the non-residential construction is occurring in accordance with paragraph (2) of this subsection, developers shall pay non-residential development fees imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with subsection g. of this section in a manner and on such forms as required by the Treasurer, provided that a certified proof concerning the payment shall be furnished by the Treasurer, to the municipality.

(2) The department shall maintain on its Internet website a list of each municipality that is authorized to use the development fees collected pursuant to this section and that has a confirmed status of compliance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or is in the process of seeking compliance certification, which compliance shall include a spending plan pursuant to section 8 of P.L.2008, c.46 (C.52:27D-329.2) for all development fees collected.

(3) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), any municipality that is or has been authorized to retain and expend non-residential development fees shall provide the department with a detailed accounting of all such fees that

have been collected and expended since the inception of the municipal authorization to collect and retain said fees.

(4) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, every municipality that is or has been authorized to retain and expend non-residential development fees shall provide the department with a detailed accounting of all such fees that have been collected and expended previous year.

d. The payment of non-residential development fees required pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall be made prior to the issuance of a certificate of occupancy for such development. A final certificate of occupancy shall not be issued for any non-residential development until such time as the fee imposed pursuant to this section has been paid by the developer. A non-residential developer may deposit with the appropriate entity the development fees as calculated by the municipality under protest, and the local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy.

e. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which may be subject to a non-residential development fee. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the non-residential development. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection on property which may be subject to a non-residential development fee. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the non-residential development in accordance with the regulations adopted by the Treasurer pursuant to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential development fee pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the developer of the amount of the non-residential development fee. Should the municipality fail to determine or notify the developer of the amount of the non-residential development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-residential development fee, provided the developer is in full compliance with all other applicable laws, the municipality shall issue a final certificate of occupancy for the subject property. Failure of the municipality to comply with the timeframes or procedures set forth in this subsection may subject it to penalties to be imposed by the commissioner; any penalties so imposed shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320).

A developer of a mixed-use development shall be required to pay the Statewide non-residential development fee relating to the non-residential development component of a mixed-use development subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

Non-residential construction which is connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed under this section to the extent of the increase in equalized assessed valuation in accordance with regulations to be promulgated by the Director of the Division of Taxation, Department of the Treasury.

f. Any municipality that is not in compliance with the requirements established pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or regulations of the commissioner adopted thereto, may be subject to forfeiture of any or all

funds remaining within its municipal development trust fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320).

g. The Treasurer shall credit to the "Urban Housing Assistance Fund," established pursuant to section 13 of P.L.2008, c.46 (C.52:27D-329.7) annually from the receipts of the fees authorized to be imposed pursuant to this section an amount equal to \$20 million; all receipts in excess of this amount shall be deposited into the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of that fund.

The Treasurer shall adopt such regulations as necessary to effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to read as follows:

C.40:55D-8.5 Regulations.

36. a. The commissioner shall promulgate, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the prompt and effective implementation of the provisions and purposes of section 8 of P.L.2008, c.46 (C.52:27D-329.2), including, but not limited to, provisions for the payment of any necessary administrative costs related to the assessment of properties and collection of any development fees by a municipality.

b. The commissioner shall adopt and promulgate, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et al.), including but not limited to, regulations necessary for the establishment, implementation, review, monitoring, and enforcement of a municipal affordable housing trust fund and spending plan.

17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to read as follows:

C.40:55D-8.7 Certain local ordinances void.

38. a. Except as expressly provided in P.L.2008, c.46 (C.52:27D-329.1 et al.), including subsection b. of this section, any provision of a local ordinance which imposes a fee for the development of affordable housing upon a developer of non-residential property, including any and all development fee ordinances adopted in accordance with any regulations of the department, or any provision of an ordinance which imposes an obligation relating to the provision of housing affordable to low- and moderate-income households, or payment in-lieu of building as a condition of non-residential development, shall be void and of no effect. A provision of an ordinance which imposes a development fee which is not prohibited by any provision of P.L.2008, c.46 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

b. No affordable housing obligation shall be imposed concerning a mixed-use development that would result in an affordable housing obligation greater than that which would have been imposed if the residential portion of the mixed-use development had been developed independently of the non-residential portion of the mixed-use development.

c. Whenever the developer of a non-residential development regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or committed itself to make a financial or other contribution relating to the provision of housing affordable to low- and moderate-income households, the non-residential development fee authorized pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)

shall be satisfied through the investment obligations made pursuant to P.L.1977, c.110 (C.5:12-1 et seq.).

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

C.40:55D-8.8 Applicability of section.

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

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

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

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

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

e. (Deleted by amendment, P.L.2024, c.2)

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

19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to read as follows:

C.40:55D-40.3 Site Improvement Advisory Board.

3. a. There is established in, but not of, the department a Site Improvement Advisory Board, to devise statewide site improvement standards pursuant to section 4 of P.L.1993, c.32 (C.40:55D-40.4). The board shall consist of the commissioner or the commissioner's designee, who shall be a non-voting member of the board, the Director of the Division of Codes and Standards in the Department of Community Affairs, who shall be a voting member of the board, the Executive Director of the New Jersey Housing and Mortgage Finance Agency, or the executive director's designee, who shall be a voting member of the board, and nine other voting members, to be appointed by the commissioner. The other members shall include two professional planners, one of whom serves as a planner for a governmental entity or whose professional experience is predominantly in the public sector and who has worked in the public sector for at least the previous five years and the other of whom serves as a planner in private practice and has particular expertise in private residential development and has been involved in private sector planning for at least the previous five years, and one representative each from:

- (1) The New Jersey Society of Professional Engineers;
- (2) The New Jersey Society of Municipal Engineers;
- (3) The New Jersey Association of County Engineers;
- (4) The New Jersey Federation of Planning Officials;
- (5) (Deleted by amendment, P.L.2024, c.2);
- (6) The New Jersey Builders' Association;
- (7) The New Jersey Institute of Technology;
- (8) The New Jersey State League of Municipalities.

b. Among the members to be appointed by the commissioner who are first appointed, four shall be appointed for terms of two years each, four shall be appointed for terms of three years each, and two shall be appointed for terms of four years each. Thereafter, each appointee shall serve for a term of four years. Vacancies in the membership shall be filled in the same manner as original appointments are made, for the unexpired term. The board shall select a chair from among its members. Members may be removed by the commissioner for cause.

c. Board members shall serve without compensation, but may be entitled to reimbursement, from moneys appropriated or otherwise made available for the purposes of this act, for expenses incurred in the performance of their duties.

20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to read as follows:

C.40A:12A-3 Definitions.

3. As used in P.L.1992, c.79 (C.40A:12A-1 et seq.):

"Bonds" means any bonds, notes, interim certificates, debentures or other obligations issued by a municipality, county, redevelopment entity, or housing authority pursuant to P.L.1992, c.79 (C.40A:12A-1 et al.).

"Comparable, affordable replacement housing" means newly-constructed or substantially rehabilitated housing to be offered to a household being displaced as a result of a redevelopment project, that is affordable to that household based on its income under the guidelines established by the New Jersey Housing and Mortgage Finance Agency for maximum affordable sales prices or maximum fair market rents, and that is comparable to the household's dwelling in the redevelopment area with respect to the size and amenities of the

dwelling unit, the quality of the neighborhood, and the level of public services and facilities offered by the municipality in which the redevelopment area is located.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

"Electric vehicle charging station" means an electric component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles by permitting the transfer of electric energy to a battery or other storage device in an electric vehicle.

"Governing body" means the body exercising general legislative powers in a county or municipality according to the terms and procedural requirements set forth in the form of government adopted by the county or municipality.

"Housing authority" means a housing authority created or continued pursuant to this act.

"Housing project" means a project, or distinct portion of a project, which is designed and intended to provide decent, safe and sanitary dwellings, apartments or other living accommodations for persons of low and moderate income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare or other purposes. The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

"Parking authority" means a public corporation created pursuant to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et seq.), and authorized to exercise redevelopment powers within the municipality.

"Persons of low and moderate income" means persons or families who are, in the case of State assisted projects or programs, so defined by the New Jersey Housing and Mortgage Finance Agency, or in the case of federally assisted projects or programs, defined as of "low and very low income" by the United States Department of Housing and Urban Development.

"Public body" means the State or any county, municipality, school district, authority or other political subdivision of the State.

"Public electric vehicle charging station" means an electric vehicle charging station located at a publicly available parking space.

"Public housing" means any housing for persons of low and moderate income owned by a municipality, county, the State or the federal government, or any agency or instrumentality thereof.

"Public hydrogen fueling station" means publicly available equipment to store and dispense hydrogen fuel to vehicles according to industry codes and standards.

"Publicly assisted housing" means privately owned housing which receives public assistance or subsidy, which may be grants or loans for construction, reconstruction, conservation, or rehabilitation of the housing, or receives operational or maintenance subsidies either directly or through rental subsidies to tenants, from a federal, State or local government agency or instrumentality.

"Publicly available parking space" means a parking space that is available to, and accessible by, the public and may include on-street parking spaces and parking spaces in surface lots or parking garages, but shall not include: a parking space that is part of, or associated with, a



private residence; or a parking space that is reserved for the exclusive use of an individual driver or vehicle or for a group of drivers or vehicles, such as employees, tenants, visitors, residents of a common interest development, or residents of an adjacent building.

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by such liens.

"Redeveloper" means any person, firm, corporation or public body that shall enter into or propose to enter into a contract with a municipality or other redevelopment entity for the redevelopment or rehabilitation of an area in need of redevelopment, or an area in need of rehabilitation, or any part thereof, under the provisions of this act, or for any construction or other work forming part of a redevelopment or rehabilitation project.

"Redevelopment" means clearance, replanning, development and redevelopment; the conservation and rehabilitation of any structure or improvement, the construction and provision for construction of residential, commercial, industrial, public or other structures and the grant or dedication of spaces as may be appropriate or necessary in the interest of the general welfare for streets, parks, playgrounds, or other public purposes, including recreational and other facilities incidental or appurtenant thereto, in accordance with a redevelopment plan.

"Redevelopment agency" means a redevelopment agency created pursuant to subsection a. of section 11 of P.L.1992, c.79 (C.40A:12A-11) or established heretofore pursuant to the "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et al.), repealed by this act, which has been permitted in accordance with the provisions of P.L.1992, c.79 (C.40A:12A-1 et seq.) to continue to exercise its redevelopment functions and powers.

"Redevelopment area" or "area in need of redevelopment" means an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6) or determined heretofore to be a "blighted area" pursuant to P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both determinations as made pursuant to the authority of Article VIII, Section III, paragraph 1 of the Constitution. A redevelopment area may include lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part.

"Redevelopment entity" means a municipality or an entity authorized by the governing body of a municipality pursuant to subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to implement redevelopment plans and carry out redevelopment projects in an area in need of redevelopment, or in an area in need of rehabilitation, or in both.

"Redevelopment plan" means a plan adopted by the governing body of a municipality for the redevelopment or rehabilitation of all or any part of a redevelopment area, or an area in need of rehabilitation, which plan shall be sufficiently complete to indicate its relationship to definite municipal objectives as to appropriate land uses, public transportation and utilities, recreational and municipal facilities, and other public improvements; and to indicate proposed land uses and building requirements in the redevelopment area or area in need of rehabilitation, or both.

"Redevelopment project" means any work or undertaking pursuant to a redevelopment plan; such undertaking may include any buildings, land, including demolition, clearance or removal of buildings from land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and administrative, community, health,

recreational, educational, and welfare facilities, and zero-emission vehicle fueling and charging infrastructure.

"Rehabilitation" means an undertaking, by means of extensive repair, reconstruction or renovation of existing structures, with or without the introduction of new construction or the enlargement of existing structures, in any area that has been determined to be in need of rehabilitation or redevelopment, to eliminate substandard structural or housing conditions and arrest the deterioration of that area.

"Rehabilitation area" or "area in need of rehabilitation" means any area determined to be in need of rehabilitation pursuant to section 14 of P.L.1992, c.79 (C.40A:12A-14).

"Zero-emission vehicle" means a vehicle certified as a zero emission vehicle pursuant to the California Air Resources Board zero emission vehicle standards for the applicable model year, including but not limited to, battery electric-powered vehicles and hydrogen fuel cell vehicles.

"Zero-emission vehicle fueling and charging infrastructure" means infrastructure to charge or fuel zero-emission vehicles, including but not limited to, public electric vehicle charging stations and public hydrogen fueling stations.

21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to read as follows:

C.40A:12A-16 Powers of municipality, county, housing authority.

16. a. In order to carry out the housing purposes of this act, a municipality, county, or housing authority may exercise the following powers, in addition to those set forth in section 22 of P.L.1992, c.79 (C.40A:12A-22):

(1) Plan, construct, own, and operate housing projects; maintain, reconstruct, improve, alter, or repair any housing project or any part thereof; and for these purposes, receive and accept from the State or federal government, or any other source, funds or other financial assistance;

(2) Lease or rent any dwelling house, accommodations, lands, buildings, structures or facilities embraced in any housing project; and pursuant to the provisions of this act, establish and revise the rents and charges therefor;

(3) Acquire property pursuant to subsection i. of section 22 of P.L.1992, c.79 (C.40A:12A-22);

(4) Acquire, by condemnation, any land or building which is necessary for the housing project, pursuant to the provisions of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

(5) Issue bonds in accordance with the provisions of section 29 of P.L.1992, c.79 (C.40A:12A-29);

(6) Cooperate with any other municipality, private, county, State or federal entity to provide funds to the municipality or other governmental entity and to homeowners, tenant associations, nonprofit or private developers to acquire, construct, rehabilitate or operate publicly assisted housing, and to provide rent subsidies for persons of low and moderate income, including the elderly, pursuant to applicable State or federal programs;

(7) Encourage the use of demand side subsidy programs such as certificates and vouchers for low-income families and promote the use of project based certificates which provide subsidies for units in newly constructed and substantially rehabilitated structures, and of tenant based certificates which subsidize rent in existing units;

(8) Cooperate with any State or federal entity to secure mortgage assistance for any person of low or moderate income;

(9) Provide technical assistance and support to nonprofit organizations and private developers interested in constructing low- and moderate-income housing;

(10) If it owns and operates public housing units, provide to the tenants public safety services, including protection against substance use disorder, and social services, including counseling and financial management, in cooperation with other agencies;

(11) Provide emergency shelters, transitional housing and supporting services to homeless families and individuals.

b. All housing projects, programs and actions undertaken pursuant to this act shall accord with the housing element of the master plan of the municipality within which undertaken, and with any fair share housing plan of the municipality, adopted pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to read as follows:

C.52:27D-310 Essential components of municipality's housing element.

10. A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing, and shall contain at least:

a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;

b. A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;

d. An analysis of the existing and probable future employment characteristics of the municipality;

e. A determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1);

f. A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing;

g. An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20);

h. For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for

redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and

i. An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

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

C.52:27D-310.1 Computing municipal adjustment, exclusions.

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

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

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

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

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

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

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

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

Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities.

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

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

C.52:27D-311 Provision of fair share by municipality.

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

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

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

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

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

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

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

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

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

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

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

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

d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall require a municipality to raise or expend municipal revenues in order to provide low- and moderate-income housing.

e. When a municipality's housing element includes the provision of rental housing units in a community residence for the developmentally disabled, for the mentally ill, or for persons with head injuries, as those terms are defined in section 2 of P.L.1977, c.448 (C.30:11B-2), or in transitional housing, which will be affordable to persons of low- and moderate-income, and for which adequate measures to retain such affordability pursuant to paragraph (3) of subsection a. of this section are included in the housing element, those housing units shall be fully credited towards the fulfillment of the municipality's fair share of low- and moderate-income housing. A municipality shall not credit transitional housing units towards more than 10 percent of the municipality's fair share obligation.

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

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

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

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

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

k. In the fourth round, and in subsequent rounds of affordable housing obligations, a municipality shall be able to receive one credit against its affordable housing obligation for each unit of low- or moderate-income housing and shall not receive bonus credit for any

particular type of low- or moderate-income housing, unless authority to obtain bonus credit is expressly provided pursuant to this section or other sections of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A municipality shall not receive more than one type of bonus credit for any unit and a municipality shall not be permitted to satisfy more than 25 percent of its prospective need obligation in the fourth round or any subsequent round through the use of bonus credits. This subsection shall not be construed to limit the ability of a municipality to receive a unit of credit for a low- or moderate-income housing unit that is subject to affordability controls that are scheduled to expire, but are extended pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321), to the extent that this affordability control extension would otherwise generate this credit. As a part of a fair share plan and housing element adopted pursuant to subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1), a municipality shall:

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

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

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

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

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

(6) receive one unit of credit and one-half bonus credit for a unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space;

(7) receive one unit of credit and one-half bonus credit for each existing low- or moderate-income rental housing unit for which affordability controls are extended for a new term of affordability, in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency, and the municipality contributes funding towards the costs necessary for this preservation;

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

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

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

l. A municipality may not satisfy more than 30 percent of the affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation through the creation of age-restricted housing. A municipality shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy a minimum of 25 percent of the actual affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation, through rental housing, including at least half of that number available to families with children. All units referred to in this section shall otherwise be in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321).

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

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

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

C.52:27D-311b Assurance of adaptability requirements; council measures.



6. A municipality may take such measures as are necessary to assure compliance with the adaptability requirements imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), including the inspection of those units which are newly constructed and receive housing credit as provided under section 1 of P.L.2005, c.350 (C.52:27D-311a) for adaptability, as part of the monitoring which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). No housing unit subject to the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for inclusion in a municipal fair share plan unless the unit complies with the requirements set forth thereunder. If any units for which credit was granted in accordance with the provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et al.), any party representing the interests of households with disabilities may seek a modification to the approval of the municipal fair share plan to require the municipality to amend its fair share plan within 90 days of such a finding, to address its fair share obligation pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the municipality fails to amend its fair share plan within 90 days of such a finding, the municipality shall lose immunity to exclusionary zoning litigation for the portion of its obligation that is found not to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et al.).

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

C.52:27D-320 "New Jersey Affordable Housing Trust Fund."

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

a. Except as permitted pursuant to subsection g. of this section, and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the commissioner shall award grants or loans from this fund for housing projects and programs in municipalities whose housing elements have obtained compliance certification pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) or in municipalities receiving State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.).

Of those monies deposited into the "New Jersey Affordable Housing Trust Fund" that are derived from municipal development fee trust funds, or from available collections of Statewide

non-residential development fees, a priority for funding shall be established for projects in municipalities that have received compliance certification.

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

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

c. For any period which the commissioner may approve, the commissioner may assist affordable housing programs that are located in municipalities that have a pending request for compliance certification; provided that the affordable housing program will meet all or part of a municipal low- and moderate-income housing obligation.

d. Amounts deposited in the "New Jersey Affordable Housing Trust Fund" shall be targeted to regions based on the region's percentage of the State's low- and moderate-income housing need as determined pursuant to the low- and moderate-income household growth over the prior 10 years, as calculated pursuant to section 6 of P.L.2024, c.2 (C.52:27D-304.2). Amounts in the fund shall be applied for the following purposes in designated neighborhoods:

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

(2) Creation of accessory dwelling units to be occupied by low- and moderate-income households;

(3) Conversion of non-residential space to residential purposes; provided a substantial percentage of the resulting housing units are to be occupied by low- and moderate-income households;

(4) Acquisition of real property, demolition and removal of buildings, or construction of new housing that will be occupied by low- and moderate-income households, or any combination thereof;

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

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

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

e. Any grant or loan agreement entered into pursuant to this section shall incorporate contractual guarantees and procedures by which the division shall ensure that any unit of housing provided for low- and moderate-income households shall continue to be occupied by low- and moderate-income households for a period that conforms to the requirements of

subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321) following the award of the loan or grant, except that the division may approve a guarantee for a period of less duration where necessary to ensure project feasibility.

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

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

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

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

27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to read as follows:

C.52:27D-321 Affordable housing assistance.

21. The agency shall establish affordable housing programs to assist municipalities in meeting the obligation of developing communities to provide low- and moderate-income housing.

a. Of the bond authority allocated to it under section 24 of P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a reasonable period of time established by its board, no less

than 25 percent to be used in conjunction with housing to be constructed or rehabilitated with assistance under P.L.1985, c.222 (C.52:27D-301 et al.).

b. The agency shall to the extent of available funds, award assistance to affordable housing programs located in municipalities whose housing elements have obtained compliance certification, or which have been subject to a builder's remedy. During any period which the agency may approve, the agency may assist affordable housing programs that have a pending request for compliance certification; provided the affordable housing program will meet all or in part a municipal low- and moderate-income housing obligation.

c. Assistance provided pursuant to this section may take the form of grants or awards to municipalities, prospective home purchasers, housing sponsors as defined in P.L.1983, c.530 (C.55:14K-1 et seq.), or as contributions to the issuance of mortgage revenue bonds or multi-family housing development bonds which have the effect of achieving the goal of producing affordable housing.

d. Affordable housing programs which may be financed or assisted under this provision may include, but are not limited to:

(1) Assistance for home purchase and improvement including interest rate assistance, down payment and closing cost assistance, and direct grants for principal reduction;

(2) Rental programs including loans or grants for developments containing low- and moderate-income housing, moderate rehabilitation of existing rental housing, congregate care and retirement facilities;

(3) Financial assistance for the conversion of nonresidential space to residences;

(4) Other housing programs for low- and moderate-income housing, including infrastructure projects directly facilitating the construction of low- and moderate-income housing; and

(5) Grants or loans to municipalities, housing sponsors and community organizations to encourage development of innovative approaches to affordable housing, including:

(a) Such advisory, consultative, training and educational services as will assist in the planning, construction, rehabilitation and operation of housing; and

(b) Encouraging research in and demonstration projects to develop new and better techniques and methods for increasing the supply, types and financing of housing and housing projects in the State.

e. The agency shall establish procedures and guidelines governing the qualifications of applicants, the application procedures and the criteria for awarding grants and loans for affordable housing programs and the standards for establishing the amount, terms and conditions of each grant or loan.

f. The agency, in consultation with the department, shall establish requirements and controls to ensure the maintenance of housing assisted under P.L.1985, c.222 (C.52:27D-301 et al.) as affordable to low- and moderate-income households for a period of not less than 40 years for newly created rental units, 30 years for for-sale units, and 30 years for housing units for which affordability controls are extended for a new term of affordability, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended terms, in combination, total at least 60 years. Any 100 percent affordable rental property shall have a right to extinguish a deed restriction regardless of original length, beginning 30 years following the start of the deed restriction, provided a refinancing or rehabilitation, or both, for the purpose of preservation is commenced and that a new deed restriction of at least 30 years is provided. A municipality shall be eligible to receive credits for all preserved units pursuant to this subsection, as long as the original and extended terms total at least 60 years, and this credit may be obtained at the time of preservation. All 100

percent affordable projects shall be eligible for any affordable housing preservation program administered by the State, beginning 30 years following the start of the deed restriction, regardless of original length of the deed restriction. Any State administered preservation program may allow a refinancing funding process to commence prior to the 30th year of the deed restriction when such refinancing or rehabilitation funding is needed to preserve affordable housing. The agency may update or amend any controls previously adopted by the agency, in consultation with the Council on Affordable Housing, prior to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), provided that the requirements and controls shall, at a minimum, be consistent with the controls as in effect immediately prior to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), including, but not limited to, any requirements concerning bedroom distributions, affordability averages, and affirmative marketing. The controls may include, among others, requirements for recapture of assistance provided pursuant to P.L.1985, c.222 (C.52:27D-301 et al.) or restrictions on return on equity in the event of failure to meet the requirements of the program. With respect to rental housing financed by the agency pursuant to P.L.1985, c.222 (C.52:27D-301 et al.) or otherwise which promotes the provision or maintenance of low- and moderate-income housing, the agency may waive restrictions on return on equity required pursuant to P.L.1983, c.530 (C.55:14K-1 et seq.) which is gained through the sale of the property or of any interest in the property or sale of any interest in the housing sponsor. The agency shall promulgate updated regulations no later than nine months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). All parties may continue to rely on regulations previously adopted by the agency pursuant to the authority provided by this section as in effect immediately prior to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) until new rules and regulations are adopted by the agency. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the agency, after consultation with department, may adopt, immediately, upon filing with the Office of Administrative Law, said regulations, which shall be effective for a period not to exceed one year from the date of the filing. The agency shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

g. The agency may establish affordable housing programs through the use or establishment of subsidiary corporations or development corporations as provided in P.L.1983, c.530 (C.55:14K-1 et seq.). The subsidiary corporations or development corporations shall be eligible to receive funds provided under P.L.1985, c.222 (C.52:27D-301 et al.) for any permitted purpose.

h. The agency shall provide assistance, through its bonding powers or in any other manner within its powers, to the grant and loan program established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

i. (1) The department shall promulgate processes and standards for the certification of administrative agents and municipal housing liaisons in the State, as well as standards for measuring performance of and enforcing compliance by administrative agents and municipal housing liaisons in implementing the affordable housing requirements and controls established pursuant to subsection f. of this section.

(2) Administrative agents shall be responsible for implementing the requirements and controls set by the regulations promulgated pursuant to subsection f. of this section. The department may bring via summary proceeding any findings of violation of the responsibilities set forth in this section before a county-level housing judge to docket the violation and issue corrective orders and levy fines.

(3) Municipal housing liaisons shall be responsible for monitoring administrative agents within their municipality's jurisdiction to ensure compliance with the requirements and controls set by regulation under subsection f. of this section.

(4) Municipal housing liaisons, the department, and interested parties may bring a challenge before a county-level housing judge to determine whether properties subject to the regulations set forth by this section are out of compliance with the regulations. A finding of deliberate noncompliance may result in the department removing the administrative agent's certification.

(5) A county-level housing judge may issue fines and order corrective actions for violations and may consider patterns of violations in determining whether a municipality is meeting its obligations under the compliance certification established by section 3 of P.L.2024, c.2 (C.52:27D-304.1).

(6) Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the department may adopt, immediately, upon filing with the Office of Administrative Law, regulations to implement the provisions of this subsection, which shall be effective for a period not to exceed one year from the date of the filing. The department shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended to read as follows:

C.52:27D-321.1 Allocation of low-income tax credits.

19. Notwithstanding any rules of the New Jersey Housing and Mortgage Finance Agency to the contrary, the allocation of low-income tax credits shall be made by the agency to the full extent such credits are permitted to be allocated under federal law, including allocations of four percent or nine percent federal low-income tax credits and including allocations allowable for partial credits. The affordable portion of any mixed income or mixed-use development that is part of a fair share housing plan that has obtained compliance certification, including a court-approved judgment of repose or compliance, including, but not limited to, a development that has received a density bonus, shall be permitted to receive allocations of low-income tax credits, provided that the applicant can conclusively demonstrate that the market rate residential or commercial units are unable to internally subsidize the affordable units, and the affordable units are developed contemporaneously with the commercial or market rate residential units.

29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to read as follows:

C.52:27D-329.1 Coordination, review of housing elements.

7. Housing elements and fair share plans adopted pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) shall ensure that at least 13 percent of the housing units made available for occupancy by low-income and moderate-income households to address a municipality's prospective need obligation will be reserved for occupancy by very low income households, as that term is defined pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units made available for families with children. The 13 percent shall count towards the minimum 50 percent of the housing units required to be made available for occupancy by low-income households to address a municipality's prospective need obligation. Nothing in this section shall require that a specific percentage of the units in any specific project be reserved as very low-income housing; provided, however, that a municipality shall not receive

bonus credits for the provision of housing units reserved for occupancy by very low-income households unless the 13 percent target has been exceeded within that municipality, and that the agency shall update the regulations adopted pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321) to replace any requirements for very low-income housing inconsistent with the percentages and definitions established pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.) with the percentage and definition specified in this section.

30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to read as follows:

C.52:27D-329.2 Authorization of municipality to impose, collect development fees.

8. a. (1) A municipality that is in the process of seeking compliance certification, has obtained compliance certification, is a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), or that has been so authorized by a court of competent jurisdiction, and which has adopted a municipal development fee ordinance shall be authorized to impose and collect development fees from developers of residential property, in accordance with rules promulgated by the department. Each amount collected shall be deposited and shall be accounted for separately, by payer and date of deposit.

(2) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), any municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended since the inception of the municipal authorization to collect the fees.

(3) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, every municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended the previous year.

(4) A municipality may not spend or commit to spend any affordable housing development fees, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the approval of the expenditure as part of its compliance certification or by the department. A municipality shall include in its housing element and fair share plan adopted pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) a spending plan for current funds in the municipal affordable housing trust fund and projected funds through the current round. Review of that spending plan for consistency with applicable law and the municipality's housing element and fair share plan shall be part of the process specified in section 3 of P.L.2024, c.2 (C.52:27D-304.1). The department shall promulgate updated regulations no later than nine months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) regarding the establishment, administration, reporting, and enforcement of the expenditure of affordable housing development fees by municipalities, which shall include establishing an expedited process for approving spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification and procedures for monitoring the collection and expenditure of trust funds. The department shall develop and publish on the department's Internet website a detailed summary of the municipal affordable housing trust fund expenditures for each municipality and shall update each summary on an annual basis. As part of the regulations adopted pursuant to this section and section 10 of P.L.2008, c.46 (C.52:27D-

329.4), the department shall adopt reporting requirements applicable to municipal affordable housing trust funds to facilitate fulfillment of the department's obligations pursuant to this section. Municipalities may continue to rely on regulations on development fees and spending plans previously adopted by the council until new rules and regulations are adopted by the department. The department shall have jurisdiction regarding the enforcement of these regulations, provided that any municipality which is not in compliance with the regulations adopted by the department may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

b. A municipality shall deposit all fees collected, whether or not such collections were derived from fees imposed upon non-residential or residential construction into a trust fund dedicated to those purposes as required under this section, and such additional purposes as may be approved by the department.

c. (1) A municipality, other than a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), may only spend development fees for an activity approved by the department to address the municipal fair share obligation or approved as part of compliance certification.

(2) Municipal development trust funds shall not be expended unless the municipality has immunity from exclusionary zoning litigation at the time of the expenditure, or said municipality has previously collected such funds while under the protection of presumptive validity or immunity from exclusionary zoning litigation and in accordance with an approved spending plan. However, municipal development trust funds may be expended by a municipality if the municipality is a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), with a development fee ordinance and spending plan approved by the department or a court of competent jurisdiction, regardless of whether this approval occurs prior to or subsequent to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). Municipal development fee trust funds shall not be expended:

(a) to reimburse municipalities for activities which occurred prior to the authorization of a municipality to collect development fees; or

(b) (i) on administrative costs, attorney fees or court costs to obtain a judgment of repose; (ii) to contest a determination of the municipality's fair share obligation; or (iii) on costs of any challenger in connection to a challenge to the municipality's obligation, housing element, or fair share plan.

(3) A municipality shall set aside a portion of its development fee trust fund for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in a municipal fair share plan, in accordance with rules of the department.

(a) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, common maintenance expenses for units located in condominiums, rental assistance, and any other program authorized by the department.

(b) Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low-income units in a municipal fair share plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall not entitle a municipality to bonus credits except as may otherwise be allowed by applicable precedent.

(4) A municipality may contract with a private or public entity to administer any part of its housing element and fair share plan, including the requirement for affordability assistance, or



any program or activity for which the municipality expends development fee proceeds, in accordance with rules of the department.

(5) Not more than 20 percent of the revenues collected from development fees shall be expended on administration, in accordance with rules of the department. Such administration may include expending a portion of its affordable housing trust fund on actions and efforts reasonably related to the determination of its fair share obligation and the development of its housing element and fair share plan pursuant to paragraphs (1) and (2) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1) and for expenses that are reasonably necessary for compliance with the processes of the program, including, but not limited to, the costs to the municipality of resolving a challenge under the program.

d. The department shall establish a time by which all development fees collected within a calendar year shall be expended; provided, however, that all fees shall be committed for expenditure within four years from the date of collection. A municipality that fails to commit to expend the balance required in the development fee trust fund by the time set forth in this section shall be required by the council to transfer the remaining unspent balance at the end of the four-year period to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in the housing region of the transferring municipality for the authorized purposes of that fund.

e. Notwithstanding any provision of this section, or regulations of the department, a municipality shall not collect a development fee from a developer whenever that developer is providing for the construction of affordable units, either on-site or elsewhere within the municipality.

This section shall not apply to the collection of a Statewide development fee imposed upon non-residential development pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through 40:55D-8.7) by the State Treasurer, when such collection is not authorized to be retained by a municipality.

31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended to read as follows:

C.52:27D-329.4 Maintenance, publication of up-to-date municipal status report.

10. a. The department shall maintain on its Internet website, and also publish on an annual basis, an up-to-date municipal status report based on its collection and publication of information concerning the number affordable of housing units actually constructed, construction starts, certificates of occupancy granted, the start and expiration dates of deed restrictions, and residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures, along with the current balance in the municipality's affordable housing trust funds. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of bedrooms, date and expiration of affordability controls, and whether occupancy is reserved for families, senior citizens, or other special populations.

b. (1) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), each municipality shall provide the department with the information necessary to comply with this section.

(2) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, each municipality shall provide the department with the information necessary to comply with this section.

c. The department may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations as may be necessary to effectuate the provisions of this section, including rules and regulations to ensure that municipalities and developers report any information as may be necessary for the department to fulfill its obligations pursuant to this section.

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

C.52:27D-329.9 Developments, certain, in certain regional planning entities.

18. a. Notwithstanding any rules to the contrary, for developments consisting of newly-constructed residential units located, or to be located, within the jurisdiction of any regional planning entity required to adopt a master plan or comprehensive management plan pursuant to statutory law, including the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization Planning Authority pursuant to section 5 of P.L.2006, c.16 (C.52:27I-5), or its successor, and the Highlands Water Protection and Planning Council pursuant to section 11 of P.L.2004, c.120 (C.13:20-11), but excluding joint planning boards formed pursuant to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be required to be reserved for occupancy by low- or moderate-income households at least 20 percent of the residential units constructed with affordability controls as required pursuant to the rules and regulations of the agency.

b. Subject to the provisions of subsection d. of this section, a developer of a project consisting of newly-constructed residential units being financed in whole or in part with State funds, including, but not limited to, transit villages designated by the Department of Transportation and units constructed on State-owned property, shall be required to reserve at least 20 percent of the residential units constructed for occupancy by low- or moderate-income households, as those terms are defined in section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as required under the rules of the agency.

c. (Deleted by amendment, P.L.2024, c.2)

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

33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to read as follows:

C.55:14K-56 Definitions.

3. As used in this act:

"Affordable Home Ownership Opportunities Bonds" means any bonds of the New Jersey Housing and Mortgage Finance Agency that provide funds to facilitate the provisions of this act.

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Annual income" means total income, from all sources, during the last full calendar year preceding the filing of an application for a loan pursuant to this act.

"Bonds" means bonds, notes or any other form of evidence of indebtedness of the agency, bearing either a fixed rate or a variable rate of interest, issued by the agency.

"Eligible project" means a project for the creation of low- or moderate-income housing which meets the standards of eligibility for loans under the program created by this act.

"Eligible purchaser" means a purchaser of a dwelling unit in an eligible project to whom a loan may be made under the program pursuant to section 5 of this act.

"Fund" means the Affordable Home Ownership Opportunities Fund established by section 5 of this act.

"Housing region" means a housing region as defined in subsection b. of section 4 of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-304) and determined pursuant to subsection b. of section 6 of P.L.2024, c.2 (C.52:27D-304.2).

"Local enforcement authority" means any officer or agency of local government responsible for the implementation or enforcement of land-use and building regulations established by or pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

"Low income" means a gross annual household income equal to 50% or less of the median gross annual household income for households of the same size within the relevant housing region.

"Moderate income" means a gross annual household income equal to not more than 80%, but more than 50% of the median gross annual household income for households of the same size within the relevant housing region.

"Program" means the Affordable Home Ownership Opportunities Program created by this act.

"Qualified nonprofit organization" means any corporation or association of persons organized under Title 15A of the New Jersey Statutes, having for its principal purpose, or as a purpose ancillary to its principal purpose, the improvement of realistic opportunities for low income and moderate income housing, as defined pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), being within the description of section 501(c)(3) of the United States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been determined by the agency to be a bona fide organization not under the effective control of any for-profit organization or governmental entity, and appearing capable, by virtue of past activities, qualifications of staff or board, or other features, of furthering the purposes of this act.

"Substantial rehabilitation" means repair, reconstruction or renovation which (1) costs in excess of 60% of the fair market value of a rehabilitated dwelling after such repair, reconstruction or renovation, or (2) renders a previously vacant and uninhabitable dwelling safe, sanitary and decent for residential purposes, or (3) converts to safe, sanitary and decent residential use a structure previously in non-residential use.

34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to read as follows:

C.55:14K-60 Eligibility for loans.

7. A project of new construction or substantial rehabilitation by a nonprofit organization shall be eligible for a loan under this act if (1) the homes to be constructed or substantially rehabilitated under the project are located within an identifiable neighborhood in which median family income does not exceed the current standard of "moderate income" pursuant to the contemporaneous standards established pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the homes to be constructed or substantially rehabilitated under the

project are sufficient in number and located on the same or contiguous parcels of land or within such proximity to each other as to render the cost per unit of housing practicable for acquisition by lower-income purchasers; and (3) each home constructed or substantially rehabilitated within the project will conform to all requirements of the State Uniform Construction Code, except as to the waiver of any fee or other requirement pursuant to subsection b. of section 9 of this act.

35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to read as follows:

C.55:14K-74 Definitions relative to cooperative housing for certain purchasers.

3. As used in this act:

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Annual income" means total income, from all sources, during the last full calendar year preceding the filing of an application for a loan pursuant to this act.

"Bonds" means bonds, notes or any other form of evidence of indebtedness of the agency, bearing either a fixed rate or a variable rate of interest, issued by the agency.

"Eligible project" means a project undertaken by a qualified housing sponsor to create housing for shared occupancy by seniors or persons with disability of low or moderate income, whether for home ownership or rental, which meets the standards of eligibility for loans under the program created by section 4 of P.L.1998, c.128 (C.55:14K-75).

"Eligible purchaser" means a purchaser of a dwelling unit in an eligible project who fulfills the definition of a senior or person with disability pursuant to this section, is of low or moderate income and to whom a loan may be made under the program pursuant to section 4 of P.L.1998, c.128 (C.55:14K-75).

"Fund" means the Senior and Disabled Cooperative Housing Incentive Fund established by section 6 of P.L.1998, c.128 (C.55:14K-77).

"Housing region" means a housing region as defined in subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and determined pursuant to subsection b. of section 6 of P.L.2024, c.2 (C.52:27D-304.2).

"Low income" means a gross annual household income equal to 50% or less of the median gross annual household income for households of the same size within the relevant housing region.

"Moderate income" means a gross annual household income equal to not more than 80%, but more than 50% of the median gross annual household income for households of the same size within the relevant housing region.

"Person with disability" means any person who is 18 years of age or older and who fulfills the definition of having a "disability" pursuant to section 3 of the "Americans with Disabilities Act of 1990," 42 U.S.C. s.12102).

"Program" means the New Jersey Senior and Disabled Cooperative Housing Finance Incentive Program created by P.L.1998, c.128 (C.55:14K-72 et seq.).

"Qualified housing sponsor" means any corporation or association of persons organized under the New Jersey Statutes, or any other corporation having for one of its purposes the improvement of realistic opportunities for low income and moderate income housing, as defined pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by virtue of past activities, qualifications of staff or board, or other features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-72 et seq.).

"Retrofitting" means renovating or remodeling an existing residential or non-residential structure to allow for cooperative living.

"Senior" means an individual who is 55 years of age or older.

"Substantial rehabilitation" means repair, reconstruction or renovation which (1) costs in excess of 60% of the fair market value of a rehabilitated dwelling after such repair, reconstruction or renovation, or (2) renders a previously vacant and uninhabitable dwelling safe, sanitary and decent for residential purposes or (3) converts to safe, sanitary and decent residential use a structure previously in non-residential use.

C.52:27D-313.3 Adoption of transitional rules, regulations, implementation, affordable housing, timeline; Uniform Housing Affordability Controls, update.

36. a. (1) Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of Community Affairs shall, in consultation with the Administrative Director of the Courts and the Executive Director of the New Jersey Housing and Mortgage Finance Agency, adopt, immediately upon filing with the Office of Administrative Law, no later than nine months after the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), such transitional rules and regulations as necessary for the implementation of P.L.2024, c.2 (C.52:27D-304.1 et al.), including for: (a) the identification of any vestigial duties of the Council on Affordable Housing and the transfer of those duties within the Department of Community Affairs to the extent that those duties are not otherwise assumed, pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.), by municipalities or the Affordable Housing Dispute Resolution Program; and (b) the establishment of policies regarding the cost of the assessments and fees of planned real estate developments, as defined in section 3 of P.L.1977, c.419 (C.45:22A-23), on low- and moderate-income housing units.

(2) The department, in consultation with the agency, shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. The Executive Director of the New Jersey Housing and Mortgage Finance Agency, in consultation with the department, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), no later than nine months after the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.), rules and regulations to update the Uniform Housing Affordability Controls as required pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). As part of updating the Uniform Housing Affordability Controls, the agency shall set rules establishing that, for the purpose of newly created low- and moderate-income rental units, a 40-year minimum deed restriction shall be required. For the purpose of for-sale units, a 30-year minimum deed restriction shall be required. For the purpose of housing units for which affordability controls are extended for a new term of affordability, a 30-year minimum deed restriction shall be required, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended terms, in combination, total at least 60 years. Any 100 percent affordable rental property shall have a right to extinguish a deed restriction regardless of original length, beginning 30 years following the start of the deed restriction, provided a refinancing or rehabilitation, or both, for the purpose of preservation is commenced and that a new deed restriction of at least 30 years is provided. A municipality shall be eligible to receive credits for all preserved units pursuant to this subsection, as long as the original and extended terms total at least 60 years, and this credit may be obtained at the time of preservation. All 100 percent affordable projects shall be eligible for any affordable housing preservation program administered by the State, beginning 30 years following the start of the deed restriction, regardless of original length of the deed restriction. Any State administered preservation program may allow a refinancing funding process to commence prior to the 30th year of the deed restriction when such refinancing or rehabilitation funding is needed to preserve affordable housing.

37. The following sections are repealed:

Section 5 of P.L.1985 c.222 (C.52:27D-305);  
Section 6 of P.L.1985, c.222 (C.52:27D-306);  
Section 7 of P.L.1985, c.222 (C.52:27D-307);  
Section 1 of P.L.1991, c.479 (C.52:27D-307.1);  
Section 2 of P.L.1991, c.479 (C.52:27D-307.2);  
Section 3 of P.L.1991, c.479 (C.52:27D-307.3);  
Section 4 of P.L.1991, c.479 (C.52:27D-307.4);  
Section 5 of P.L.1991, c.479 (C.52:27D-307.5);  
Section 6 of P.L.2001, c.435 (C.52:27D-307.6);  
Section 8 of P.L.1985, c.222 (C.52:27D-308);  
Section 9 of P.L.1985, c.222 (C.52:27D-309);  
Section 40 of P.L.2009, c.90 (C.52:27D-311.3);  
Section 2 of P.L.1989, c.142 (C.52:27D-313.1);  
Section 14 of P.L.1985, c.222 (C.52:27D-314);  
Section 15 of P.L.1985, c.222 (C.52:27D-315);  
Section 16 of P.L.1985, c.222 (C.52:27D-316);  
Section 17 of P.L.1985, c.222 (C.52:27D-317);  
Section 18 of P.L.1985, c.222 (C.52:27D-318);  
Section 19 of P.L.1985 c.222 (C.52:27D-319);  
Section 22 of P.L.1985, c.222 (C.52:27D-322);  
Section 26 of P.L.1985, c.222 (C.52:27D-326);  
Section 28 of P.L.1985, c.222 (C.52:27D-328); and  
Section 9 of P.L.2008, c.46 (C.52:27D-329.3).

38. a. There is appropriated to the Affordable Housing Dispute Resolution Program, established pursuant to subsection a. of section 5 of P.L.2024, c.2 (C.52:27D-313.2), from the General Fund \$12,000,000 for the purposes of carrying out its responsibilities for the fourth round of affordable housing obligations, as established pursuant to section 5 of P.L.2024, c.2 (C.52:27D-313.2).

b. There is appropriated to the Department of Community Affairs, from the General Fund, \$4,000,000 for the purposes of carrying out responsibilities allocated to it pursuant to P.L.2024, c.2 (C.52:27D-304.1 et al.).

39. This act shall take effect immediately and shall apply to each new round of affordable housing obligations that begins following enactment.

Approved March 20, 2024.

**ASSEMBLY, No. 4**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED JANUARY 9, 2024

**Sponsored by:**

**Assemblywoman YVONNE LOPEZ**

**District 19 (Middlesex)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**Assemblywoman VERLINA REYNOLDS-JACKSON**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.

**CURRENT VERSION OF TEXT**

As introduced.



1   **AN ACT** concerning affordable housing, including administration  
 2       and municipal obligations, amending, supplementing, and  
 3       repealing various parts of the statutory law, and making an  
 4       appropriation.

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

8  
 9       1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to  
 10      read as follows:

11      2. The Legislature finds that:

12      a. The New Jersey Supreme Court, through its rulings in  
 13      **【South】** Southern Burlington County NAACP v. Mount Laurel, 67  
 14      N.J. 151 (1975) and **【South】** Southern Burlington County NAACP  
 15      v. Mount Laurel, 92 N.J. 158 (1983), has determined that every  
 16      municipality in a growth area has a constitutional obligation to  
 17      provide through its land use regulations a realistic opportunity for a  
 18      fair share of its region's present and prospective needs for housing  
 19      for **【low and moderate income】** low- and moderate-income  
 20      families.

21      b. In the second Mount Laurel ruling, the Supreme Court stated  
 22      that the determination of the methods for satisfying this  
 23      constitutional obligation "is better left to the Legislature," that the  
 24      court has "always preferred legislative to judicial action in their  
 25      field," and that the judicial role in upholding the Mount Laurel  
 26      doctrine "could decrease as a result of legislative and executive  
 27      action."

28      c. The interest of all citizens, including **【low and moderate**  
 29      **income】** low- and moderate-income families in need of affordable  
 30      housing, and the needs of the workforce, would be best served by a  
 31      comprehensive planning and implementation response to this  
 32      constitutional obligation.

33      d. There are a number of essential ingredients to a  
 34      comprehensive planning and implementation response, including  
 35      the establishment of reasonable fair share housing guidelines and  
 36      standards, the initial determination of fair share by officials at the  
 37      municipal level and the preparation of a municipal housing element,  
 38      State review of the local fair share study and housing element, and  
 39      continuous State funding for **【low and moderate income】** low- and  
 40      moderate-income housing to replace the federal housing subsidy  
 41      programs which have been almost completely eliminated.

42      e. The State can maximize the number of **【low and moderate**  
 43      **income】** low- and moderate-income units provided in New Jersey  
 44      by allowing its municipalities to adopt appropriate phasing  
 45      schedules for meeting their fair share, so long as the municipalities

**EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**



1 permit a timely achievement of an appropriate fair share of the  
2 regional need for **low and moderate income** low- and moderate-  
3 income housing as required by the Mt. Laurel I and II opinions and  
4 other relevant court decisions.

5 f. The State can also maximize the number of **low and**  
6 **moderate income** low- and moderate-income units by creating new  
7 affordable housing and by rehabilitating existing, but substandard,  
8 housing in the State. Because the Legislature has determined,  
9 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.), that it is no  
10 longer appropriate or in harmony with the Mount Laurel doctrine to  
11 permit the transfer of the fair share obligations among  
12 municipalities within a housing region, it is necessary and  
13 appropriate to create a new program to create new affordable  
14 housing and to foster the rehabilitation of existing, but substandard,  
15 housing.

16 g. Since the urban areas are vitally important to the State,  
17 construction, conversion and rehabilitation of housing in our urban  
18 centers should be encouraged. However, the provision of housing  
19 in urban areas must be balanced with the need to provide housing  
20 throughout the State for the free mobility of citizens.

21 h. The Supreme Court of New Jersey in its Mount Laurel  
22 decisions demands that municipal land use regulations affirmatively  
23 afford a **reasonable** realistic opportunity for a variety and choice  
24 of housing including low and moderate cost housing, to meet the  
25 needs of people desiring to live there. While provision for the  
26 actual construction of that housing by municipalities is not required,  
27 they are encouraged but not mandated to expend their own  
28 resources to help provide **low and moderate income** low- and  
29 moderate-income housing.

30 i. **Certain amendments to the enabling act of the Council on**  
31 **Affordable Housing are necessary to provide guidance to the**  
32 **council to ensure consistency with the legislative intent, while at the**  
33 **same time clarifying the limitations of the council in its rulemaking.**  
34 **Although the court has remarked in several decisions that the**  
35 **Legislature has granted the council considerable deference in its**  
36 **rulemaking, the Legislature retains its power and obligation to**  
37 **clarify and amend the enabling act from which the council derives**  
38 **its rulemaking power, from time to time, in order to better guide the**  
39 **council.】 (Deleted by amendment, P.L. , c. ) (pending before the**  
40 **Legislature as this bill)**

41 j. The Legislature finds that the use of regional contribution  
42 agreements, which permits municipalities to transfer a certain  
43 portion of their fair share housing obligation outside of the  
44 municipal borders, should no longer be utilized as a mechanism for  
45 the creation of affordable housing **by the council】.**

46 k. The Legislature finds that the role of the Council on  
47 Affordable Housing, as intended in the original enactment of the

1 "Fair Housing Act," has not developed in practice as was intended  
2 in the legislation.

3 l. The council's inability to function ultimately led the Supreme  
4 Court in 2015 to order the temporary dissolution of the requirement  
5 that administrative remedies be exhausted prior to resolving  
6 affordable housing disputes before the court, and allowed the courts  
7 to resume their role as the forum of first resort for evaluating  
8 municipal compliance with Mount Laurel obligations pursuant to  
9 guidelines laid out by the Supreme Court's order.

10 m. The Legislature finds that the council's inability to function  
11 led to a "gap period" that frustrated the intent of the Legislature and  
12 compliance with constitutional and statutory obligations, and that it  
13 is necessary to establish definitive deadlines for municipal action  
14 and any challenges to those actions to avoid such a "gap period"  
15 from being repeated in the future.

16 n. The Legislature finds that although the court-led system that  
17 has developed since 2015 has resulted in a significant number of  
18 settlement agreements and increased production of affordable  
19 housing, the system could operate more expeditiously to produce  
20 affordable housing, and at a lower cost to all parties, if appropriate  
21 standards are established by the Legislature to be applied  
22 throughout the State including more clarity on calculation on fair  
23 share affordable housing obligations using transparent and  
24 established data sources to eliminate the lengthy and costly  
25 processes of determining those obligations that have characterized  
26 both the Council on Affordable Housing and court-led system.

27 o. The Legislature determines that, considering the unique  
28 history of the "Fair Housing Act," the Council on Affordable  
29 Housing shall be abolished, and that, pursuant to the formulas and  
30 process established pursuant to sections 6 and 7 of P.L. , c. (C.  
31 and C. ) (pending before the Legislature as this bill), a  
32 municipality shall be authorized to seek approval of its fair share  
33 affordable housing obligation, adopted pursuant to binding  
34 resolution and then filed with the court, with the guidance of  
35 calculations published by the Department of Community Affairs,  
36 but that advocates for the low- and moderate-income households of  
37 the State shall be provided with an opportunity to contest the  
38 municipal determination.

39 p. The Legislature finds that the population of persons aged 65  
40 years and older in the State has grown from approximately 13  
41 percent in 1990, to 17 percent in 2021, and that such growth, in  
42 conjunction with expected future growth, makes it appropriate for  
43 the Legislature to continue to allow up to 25 percent of the units  
44 towards a municipality's prospective affordable housing obligation  
45 to be satisfied through the creation of age-restricted housing.

46 (cf: P.L.2008, c.46, s.4)

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

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

4        a. "Council" means the Council on Affordable Housing  
5 established in P.L.1985, c.222 (C.52:27D-301 et al.), **【**which shall  
6 have primary jurisdiction for the administration of housing  
7 obligations in accordance with sound regional planning  
8 considerations in this State**】** abolished pursuant to section 3 of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill).

10       b. "Housing region" means a geographic area **【**of not less than  
11 two nor more than four contiguous, whole counties which exhibit  
12 significant social, economic and income similarities, and which  
13 constitute to the greatest extent practicable the primary metropolitan  
14 statistical areas as last defined by the United States Census Bureau  
15 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.)**】**  
16 established pursuant to subsection b. of section 6 of  
17 P.L. , c. (C. ) (pending before the Legislature as this bill).

18       c. **【**"Low income" "Low-income" housing means housing  
19 affordable according to federal Department of Housing and Urban  
20 Development or other recognized standards for home ownership  
21 and rental costs and occupied or reserved for occupancy by  
22 households with a gross household income equal to 50 percent or  
23 less of the median gross household income for households of the  
24 same size within the housing region in which the housing is located.

25       d. **【**"Moderate income" "Moderate-income" housing means  
26 housing affordable according to federal Department of Housing and  
27 Urban Development or other recognized standards for home  
28 ownership and rental costs and occupied or reserved for occupancy  
29 by households with a gross household income equal to more than 50  
30 **【**%**】** percent but less than 80 percent of the median gross household  
31 income for households of the same size within the housing region in  
32 which the housing is located.

33       e. **【**"Resolution of participation" means a resolution adopted by  
34 a municipality in which the municipality chooses to prepare a fair  
35 share plan and housing element in accordance with P.L.1985, c.222  
36 (C.52:27D-301 et al.)**】** (Deleted by amendment, P.L. , c. )  
37 (pending before the Legislature as this bill)

38       f. "Inclusionary development" means a residential housing  
39 development in which a substantial percentage of the housing units  
40 are provided for a reasonable income range of **【**low and moderate  
41 income**】** low- and moderate-income households.

42       g. "Conversion" means the conversion of existing commercial,  
43 industrial, or residential structures for **【**low and moderate income**】**  
44 low- and moderate-income housing purposes where a substantial  
45 percentage of the housing units are provided for a reasonable  
46 income range of **【**low and moderate income**】** low- and moderate-  
47 income households.

- 1 h. "Development" means any development for which  
2 permission may be required pursuant to the "Municipal Land Use  
3 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 4 i. "Agency" means the New Jersey Housing and Mortgage  
5 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et  
6 seq.).
- 7 j. "Prospective need" means a projection of housing needs  
8 based on development and growth which is reasonably likely to  
9 occur in a region or a municipality, as the case may be, as a result  
10 of actual determination of public and private entities. **[In**  
11 **determining prospective need, consideration shall be given to**  
12 **approvals of development applications, real property transfers, and**  
13 **economic projections prepared by the State Planning Commission**  
14 **established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-**  
15 **196 et seq.)]** Prospective need shall be determined by the  
16 methodology set forth pursuant to sections 6 and 7 of P.L. , c.  
17 (C. and C. ) (pending before the Legislature as this bill)  
18 for the fourth round and all future rounds of housing obligations.
- 19 k. "Person with a disability" means a person with a physical  
20 disability, infirmity, malformation, or disfigurement which is  
21 caused by bodily injury, birth defect, aging, or illness including  
22 epilepsy and other seizure disorders, and which shall include, but  
23 not be limited to, any degree of paralysis, amputation, lack of  
24 physical coordination, blindness or visual impairment, deafness or  
25 hearing impairment, the inability to speak or a speech impairment,  
26 or physical reliance on a service animal, wheelchair, or other  
27 remedial appliance or device.
- 28 l. "Adaptable" means constructed in compliance with the  
29 technical design standards of the barrier free subcode adopted by  
30 the Commissioner of Community Affairs pursuant to the "State  
31 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119  
32 et seq.) and in accordance with the provisions of section 5 of  
33 P.L.2005, c.350 (C.52:27D-123.15).
- 34 m. "Very **[low income]** low-income housing" means housing  
35 affordable according to federal Department of Housing and Urban  
36 Development or other recognized standards for home ownership  
37 and rental costs and occupied or reserved for occupancy by  
38 households with a gross household income equal to 30 percent or  
39 less of the median gross household income for households of the  
40 same size within the housing region in which the housing is located.
- 41 n. "Accessory dwelling unit" means a residential dwelling unit  
42 that provides complete independent living facilities with a private  
43 entrance for one or more persons, consisting of provisions for  
44 living, sleeping, eating, sanitation, and cooking, including a stove  
45 and refrigerator, and is located within a proposed or existing  
46 primary dwelling, within an existing or proposed structure that is  
47 accessory to a dwelling on the same lot, constructed in whole or  
48 part as an extension to a proposed or existing primary dwelling, or

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

3 o. "Builder's remedy" means court imposed site-specific relief  
4 for a litigant who seeks to build affordable housing for which the  
5 court requires a municipality to utilize zoning techniques such as  
6 mandatory set-asides or density bonuses, including techniques  
7 which provide for the economic viability of a residential  
8 development by including housing that is not for low- and  
9 moderate-income households.

10 p. "Commissioner" means the Commissioner of Community  
11 Affairs.

12 q. "Compliance certification" means the certification obtained  
13 by a municipality pursuant to section 3 of P.L. , c. (C. )  
14 (pending before the Legislature as this bill), that protects the  
15 municipality from a builder's remedy during the current round of  
16 present and prospective need and through July 1 of the year the next  
17 round begins, which is also known as a "judgment of compliance"  
18 or "judgment of repose." The term "compliance certification" shall  
19 include a judgment of repose granted in an action filed pursuant to  
20 section 13 of P.L.1985, c.222 (C.52:27D-313).

21 r. "County level housing judge" means a judge appointed  
22 pursuant to section 5 of P.L. , c. (C. ) (pending before the  
23 Legislature as this bill), to resolve disputes over the compliance of  
24 municipal fair share affordable housing obligations and municipal  
25 fair share plans and housing elements, with the "Fair Housing Act,"  
26 P.L.1985, c.222 (C.52:27D-301 et al.

27 s. "Deficient housing unit" means housing that: (1) is over fifty  
28 years old and overcrowded; (2) lacks complete plumbing; or (3)  
29 lacks complete kitchen facilities.

30 t. "Department" means the Department of Community Affairs.

31 u. "Fair share plan" means the plan or proposal that is in a form  
32 which may readily be adopted, with accompanying ordinances and  
33 resolutions, pursuant to subsection f. of section 3 of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill),  
35 by which a municipality proposes to satisfy its obligation to create a  
36 realistic opportunity to meet its fair share of low- and moderate-  
37 income housing needs of its region and which details the  
38 affirmative measures the municipality proposes to undertake to  
39 achieve its fair share of low- and moderate-income housing, as  
40 provided in the municipal housing element, and addresses the  
41 development regulations necessary to implement the housing  
42 element, including, but not limited to, inclusionary requirements  
43 and development fees, and the elimination of unnecessary housing  
44 cost-generating features from the municipal land use ordinances and  
45 regulations.

46 v. "Housing element" means that portion of a municipality's  
47 master plan consisting of reports, statements, proposals, maps,  
48 diagrams, and text designed to meet the municipality's fair share of

1 its region's present and prospective housing needs, particularly with  
 2 regard to low- and moderate-income housing, and which shall  
 3 contain the municipal present and prospective obligation for  
 4 affordable housing, determined pursuant to subsection f. of section  
 5 3 of P.L. , c. (C. ) (pending before the Legislature as this  
 6 bill).

7 w. "Program" means the Affordable Housing Dispute Resolution  
 8 Program, established pursuant to section 5 of P.L. , c. (C. )  
 9 (pending before the Legislature as this bill).

10 x. "Transitional housing" means temporary housing that:

11 (1) includes, but is not limited to, single-room occupancy  
 12 housing or shared living and supportive living arrangements;

13 (2) provides access to on-site or off-site supportive services for  
 14 very low-income households who have recently been homeless or  
 15 lack stable housing;

16 (3) is licensed by the department; and

17 (4) allows households to remain for a minimum of six months.

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

19  
 20 3. (New section) a. The Council on Affordable Housing,  
 21 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-  
 22 301 et al.), is abolished. Each municipality shall determine its  
 23 municipal present and prospective obligations in accordance with  
 24 the formulas established in sections 6 and 7 of P.L. , c. (C.  
 25 and C. ) (pending before the Legislature as this bill) and may  
 26 take into consideration the calculations in the report published by  
 27 the department in accordance with this section.

28 b. Following the expiration of the third round of affordable  
 29 housing obligations on July 1, 2025, a municipality shall have  
 30 immunity from a builder's remedy if the municipality complies with  
 31 the deadlines established in P.L. , c. (C. ) (pending before  
 32 the Legislature as this bill) for both determining present and  
 33 prospective obligations, and for adopting a housing element and fair  
 34 share plan to meet those obligations.

35 c. Prior to the beginning of each new 10-year round of housing  
 36 obligations beginning with the fourth round on July 1, 2025, the  
 37 Department of Community Affairs shall conduct a calculation of  
 38 regional need and municipal present and prospective obligations in  
 39 accordance with the formulas established in sections 6 and 7 of  
 40 P.L. , c. (C. and C. ) (pending before the Legislature as  
 41 this bill).

42 d. For the fourth round of affordable housing obligations, the  
 43 department shall prepare and submit a report to the Governor, and,  
 44 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the  
 45 Legislature providing a report on the calculations of regional need  
 46 and municipal obligations for each region of the State on or before  
 47 August 1, 2024. The department shall provide the report to each  
 48 municipality in the State at the same time that it submits the report

1 to the Governor and Legislature and shall also publish such report  
2 on the department's Internet website. For the fifth round, and each  
3 subsequent new round of housing obligations, the department shall  
4 prepare and submit a report to each municipality in the State, the  
5 Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
6 19.1), to the Legislature on these calculations on or before August 1  
7 of the year prior to the start of the new round and shall also publish  
8 such report on the department's Internet website. For each 10-year  
9 round of housing obligations, a municipality may take into  
10 consideration the calculations in the report prepared by the  
11 department pursuant to this subsection in determining its present  
12 and prospective obligations.

13 e. Nothing in the provisions of subsections c., d., or f. of this  
14 section shall be interpreted to render any calculation in a report by  
15 the department published pursuant to this section binding on any  
16 municipality or other entity, nor to render any failure by the  
17 department to timely conduct the calculations or publish a report  
18 required by this section to alter the deadlines or process set forth in  
19 this section. The ultimate determination of a municipality's present  
20 and prospective need shall be through the process as set forth  
21 below.

22 f. (1) (a) With consideration of the calculations contained in  
23 the relevant report published by the department pursuant to this  
24 section, for each 10-year round of affordable housing obligations  
25 beginning with the fourth round, a municipality shall determine its  
26 present and prospective fair share obligation for affordable housing  
27 in accordance with the formulas established in sections 6 and 7 of  
28 P.L. , c. (C. and C. ) (pending before the Legislature as  
29 this bill) by resolution, which shall describe the basis for the  
30 municipality's determination and bind the municipality to adopt a  
31 housing element and fair share plan pursuant to paragraph (2) of  
32 this subsection based on this determination as may be adjusted by  
33 the program as set forth in this subsection.

34 (b) For the fourth round of affordable housing obligations, this  
35 determination of present and prospective fair share obligation shall  
36 be made by binding resolution no later than January 31, 2025.  
37 After adoption of this binding resolution, the municipality shall file  
38 an action regarding the resolution with the program no later than 48  
39 hours following adoption. The resolution, along with the date of  
40 filing with the program, shall be published on the program's  
41 publicly accessible Internet website. The municipality shall also  
42 publish the resolution on its publicly accessible Internet website, if  
43 the municipality maintains one. If the municipality does not meet  
44 this deadline, it immediately shall lose immunity from builder's  
45 remedy litigation until such time as the municipality is determined  
46 to have come into compliance with the "Fair Housing Act,"  
47 P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel  
48 doctrine. A determination of the municipality's present and

1 prospective obligation may be established before a county level  
2 housing judge as part of any resulting declaratory judgment action  
3 pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as  
4 amended by P.L. , c. (C. ) (pending before the Legislature  
5 as this bill), or through builder's remedy litigation. If the  
6 municipality meets this January 31 deadline, then the municipality's  
7 determination of its obligation shall be established by default  
8 beginning on March 1, 2025, as the municipality's obligation for  
9 the fourth round, unless challenged by an interested party on or  
10 before February 28, 2025. An interested party may file a challenge  
11 with the program, after adoption of the binding resolution and prior  
12 to March 1, 2025, alleging that the municipality's determination of  
13 its present and prospective obligation does not comply with the  
14 requirements of sections 6 and 7 of P.L. , c.  
15 (C. and C. ) (pending before the Legislature as this bill).  
16 For the fifth round, and each subsequent new round of housing  
17 obligations, the deadlines established in this subparagraph shall be  
18 on the last day of January, the last day of February, and the first day  
19 of March, respectively, of the year of the start of each new round.

20 (c) The Administrative Director of the Courts shall establish  
21 procedures for the program to consider a challenge and resolve a  
22 dispute initiated by an interested party pursuant to subparagraph (b)  
23 of this paragraph. To resolve a challenge, the program shall apply  
24 an objective assessment standard to determine whether or not the  
25 municipality's calculation of its obligation is compliant with the  
26 requirements of sections 6 and 7 of P.L. , c.  
27 (C. and C. ) (pending before the Legislature as this bill).  
28 Any challenge must state with particularity how the municipal  
29 calculation fails to comply with sections 6 and 7 of P.L. , c. (C.  
30 and C. ) (pending before the Legislature as this bill) and  
31 include the challenger's own calculation of the fair share  
32 obligations in compliance with sections 6 and 7 of P.L. , c. (C.  
33 and C. ) (pending before the Legislature as this bill). The  
34 program shall establish procedures to summarily dismiss any  
35 objection or challenge that does not meet these minimum standards.  
36 For the purpose of efficiency, the program shall, in its own  
37 discretion, permit multiple challenges to the same municipal  
38 determination to be consolidated. The program's approach to  
39 resolving a dispute may include: (i) a finding that the municipality's  
40 determination of its present and prospective need obligation did not  
41 facially comply with the requirements of sections 6 and 7 of P.L. ,  
42 c. (C. and C. ) (pending before the Legislature as this  
43 bill) and thus the municipality's immunity shall be revoked; (ii) an  
44 adjustment of the municipality's determination of its present and  
45 prospective need obligation to comply with the requirements of  
46 sections 6 and 7 of P.L. , c. (C. and C. ) (pending  
47 before the Legislature as this bill) without revoking immunity; or  
48 (iii) a rejection of a challenge and affirm the municipality's



1 determination. The decision shall be provided to the municipality  
2 and all parties that have filed challenges no later than March 31 of  
3 the year when the current round is expiring and the new round is  
4 beginning and concurrently posted on the program's Internet  
5 website. The Administrative Director of the Courts shall establish  
6 procedures for any further appellate review of such determinations,  
7 and may establish an expedited process for consolidated review of  
8 any such challenges by the Supreme Court, provided that any party  
9 seeking appellate review shall not change the deadlines established  
10 for municipal filing of a housing element and fair share plan, and  
11 implementing ordinances.

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

1 to be submitted, and shall demonstrate how any sites that were not  
2 built in the prior rounds continue to present a realistic opportunity,  
3 which may include proposing changes to the zoning on the site to  
4 make its development more likely, and which may also include the  
5 dedication of municipal affordable housing trust fund dollars or  
6 other monetary or in-kind resources. The municipality shall only  
7 plan to replace any sites planned for development as provided by a  
8 prior court approval, settlement agreement, or approval by the  
9 council, with alternative development plans, if it is determined that  
10 the previously planned sites no longer present a realistic  
11 opportunity, and the sites in the alternative development plan  
12 provide at least an equivalent number of affordable units and are  
13 otherwise in compliance with the "Fair Housing Act," P.L.1985,  
14 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. If a  
15 municipality proposes to replace a site for which a complete  
16 application seeking subdivision or site plan approval has not been  
17 filed prior to date by which the housing element and fair share plan  
18 is required to be submitted, there shall be a rebuttable presumption  
19 in any challenge filed to the municipality's plan that any site for  
20 which a zoning designation was adopted creating a realistic  
21 opportunity for the development of a site prior to July 1, 2020, or  
22 July 1 of every 10th year thereafter, as applicable, may be replaced  
23 with one or more alternative sites that provide a realistic  
24 opportunity for at least the same number of affordable units and is  
25 otherwise in compliance with the "Fair Housing Act," P.L.1985,  
26 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. To the  
27 extent a municipality has credits, including bonus credits, from  
28 units created during a prior round that are otherwise permitted to be  
29 allocated toward the municipality's unfulfilled prior round  
30 obligation or present or prospective need obligation in an upcoming  
31 round, the municipality shall be entitled to rely on the rules,  
32 including rules for bonus credits, applicable for the round during  
33 which those credits were accumulated. If a municipality has credits  
34 in excess of its prior round obligations, and such excess credits  
35 represent housing that will continue to be deed-restricted and  
36 affordable through the current round, the municipality may include  
37 such housing, and applicable bonus credits, towards addressing the  
38 municipality's new calculation of prospective need. Consistent  
39 with subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311),  
40 the total number of bonus credits shall in no circumstance exceed  
41 25 percent of the municipality's prospective obligation in any  
42 round. The municipality may in its plan lower its prospective need  
43 obligation to the extent necessary to prevent establishing a  
44 prospective need obligation that requires the municipality to  
45 provide a realistic opportunity for more than 1,000 housing units,  
46 after the application of any excess credits, or to prevent a  
47 prospective need obligation that exceeds 20 percent of the total  
48 number of households in a municipality according to the most

1 recent federal decennial census, not including any prior round  
2 obligation. If a municipality is subject to both a 1,000 unit cap or  
3 20 percent cap it may apply whichever cap results in a lower  
4 prospective need obligation. For the fifth round, and for each  
5 subsequent new round of housing obligations, the deadlines in this  
6 paragraph shall be June 30 for the adoption of the housing element  
7 and fair share plan, and the proposal of drafts of the appropriate  
8 zoning and other ordinances and resolutions to implement its  
9 present and prospective obligation, of the year of the start of the  
10 new round.

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

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

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

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

47 (e) Once a municipality has received a compliance certification  
48 or otherwise has had its fair share obligation and housing element

1 and fair share plan finally determined via judgment of repose or  
2 other judgment, the municipality shall make the municipality's fair  
3 share plan and housing element, as well as any subsequently  
4 adopted implementing ordinances and resolutions, or amendments  
5 thereto, available to the department and the program for publication  
6 on the department's and program's respective Internet websites.

7 (3) (a) If a municipality fails to adhere to any of the deadlines  
8 established in paragraphs (1) or (2) of this subsection due to  
9 circumstances beyond the control of the municipality, including but  
10 not limited to an inability to meet a deadline due to an extreme  
11 weather event, then the program, or the county level housing judge,  
12 in accordance with court rules, may permit a municipality to have a  
13 grace period to come into compliance with the timeline, the length  
14 of which, and effect of which on later deadlines, shall be  
15 determined on a case-by-case basis.

16 (b) A municipality that has not adopted and published a binding  
17 resolution pursuant to paragraph (1) of this subsection or that has  
18 not adopted and filed a housing element and fair share plan pursuant  
19 to paragraph (2) of this subsection may seek compliance  
20 certification by filing an action pursuant to section 13 of P.L.1985,  
21 c.222 (C.52:27D-313), provided that any builder's remedy litigation  
22 filed by a plaintiff against such a municipality prior to such time  
23 may proceed notwithstanding such filing. In a municipality that has  
24 adopted and published a binding resolution pursuant to paragraph  
25 (1) of this subsection and has adopted and filed a housing element  
26 and fair share plan pursuant to paragraph (2) of this subsection, a  
27 court shall not grant a builder's remedy to a plaintiff in  
28 exclusionary zoning litigation during the timeframe after the timely  
29 submission of a binding resolution or fair share plan and housing  
30 element of a municipality, or both, and before a challenge is  
31 submitted, or during the timeframe of a challenge that is pending  
32 resolution with the program pursuant to this subsection. A court  
33 may grant a builder's remedy to a plaintiff in exclusionary zoning  
34 litigation after such timeframe upon a finding that the municipality:  
35 (i) is determined to be constitutionally noncompliant with its  
36 responsibilities pursuant to the "Fair Housing Act," P.L.1985, c.222  
37 (C.52:27D-301 et al.) or is participating in the program in bad faith;  
38 (ii) has failed to meet the deadlines established pursuant to P.L. ,  
39 c. (C. ) (pending before the Legislature as this bill); or (iii)  
40 has, after receiving compliance certification, failed to comply with  
41 the terms of that certification by not actually allowing for the  
42 development of the affordable housing as provided for in its fair  
43 share plan and housing element through actions, omissions, or both,  
44 of a municipality or its subordinate boards.

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

47 (d) A determination by the program as to the present and  
48 prospective need obligation or as to issuance of compliance

1 certification pursuant to this section shall be considered a final  
2 decision, subject to appellate review pursuant to the procedures set  
3 forth in subparagraph (c) of paragraph (1) of subsection f. of this  
4 section.

5 (e) A municipality shall not be deemed out of compliance with  
6 the deadlines of P.L. , c. (C. ) (pending before the  
7 Legislature as this bill), or lose immunity from builder's remedy  
8 litigation, due to a failure by the program to promptly maintain and  
9 update its Internet website, or other operational failure of the  
10 program.

11  
12 4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to  
13 read as follows:

14 13. a. **【A】** If a municipality 【which】 has 【filed a housing  
15 element may, at any time during a two-year period following the  
16 filing of the housing element, petition the council for a substantive  
17 certification of its element and ordinances or】 adopted a housing  
18 element and fair share plan pursuant to section 3 of P.L. ,  
19 c. (C. ) (pending before the Legislature as this bill), but has  
20 failed to satisfy the June 30 deadline established pursuant to  
21 paragraph (2) of subsection f. of section 3 of P.L. , c. (C. )  
22 (pending before the Legislature as this bill), for any round of  
23 affordable housing obligations, the municipality may request and be  
24 provided with a grace period pursuant to paragraph (3) of  
25 subsection f. of section 3 of P.L. , c. (C. ) (pending before  
26 the Legislature as this bill), if authorized by the program or county  
27 level housing judge, as determined by the rules of court. If a  
28 municipality that has not satisfied this June 30 deadline is not  
29 provided with a grace period, the municipality may institute an  
30 action for declaratory judgment granting it repose in the Superior  
31 Court 【, but in no event shall a grant of substantive certification  
32 extend beyond a 10-year period starting on the date the municipality  
33 files its housing element with the council】 for the 10-year period  
34 constituting the current round of fair share obligations. The  
35 municipality shall publish notice of its 【petition】 filing of a  
36 declaratory judgment action in a newspaper of general circulation  
37 within the municipality and county and shall make available to the  
38 public information on the element and ordinances by submitting  
39 such information to the program to be published on the Internet  
40 website of the program in accordance with 【such procedures as the  
41 council shall establish. The council shall also establish a procedure  
42 for providing public notice of each petition which it receives】  
43 section 3 of P.L. , c. (C. ) (pending before the Legislature  
44 as this bill).

45 b. **【**Notwithstanding the provisions of subsection a. of this  
46 section, a municipality which filed a housing element prior to the  
47 effective date of P.L.1990, c.121, shall be permitted to petition for

1 substantive certification at any time within two years following that  
2 filing, or within one year following the effective date of P.L.1990,  
3 c.121, whichever shall result in permitting the municipality the  
4 longer period of time within which to petition.】 (Deleted by  
5 amendment, P.L. , c. ) (pending before the Legislature as this  
6 bill)

7 【The Council shall establish procedures for】 c. (1) A  
8 municipality or other interested party may file an action through the  
9 program seeking a realistic opportunity review 【at the midpoint of  
10 the certification period and shall provide for notice to the public】 at  
11 the midpoint of the certification period and shall provide for notice  
12 to the public, including a realistic opportunity review of any  
13 inclusionary development site in the housing element and fair share  
14 plan that has not received preliminary site plan approval prior to the  
15 midpoint of the 10-year round. If such an action is initiated by a  
16 municipality, the municipality shall propose one or more alternative  
17 sites with an accompanying development plan or plans that provide  
18 a realistic opportunity for the same number of affordable units and  
19 is otherwise in compliance with the "Fair Housing Act," P.L.1985,  
20 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine,  
21 provided that if the facts demonstrate that the municipality or its  
22 subordinate boards have prevented the site from receiving site plan  
23 approval, then the program shall reject the municipality's challenge.

24 (2) Any party may file a request for information from the  
25 program regarding the progress of development at any inclusionary  
26 development site in the housing element and fair share plan of a  
27 municipality, or at any alternative site proposed by the  
28 municipality. The program may respond to a request independently  
29 or in coordination with the department.

30 (cf: P.L.2001, c.435, s.5)

31  
32 5. (New section) a. There is established an Affordable Housing  
33 Dispute Resolution Program that shall have the purpose of  
34 efficiently resolving disputes involving the "Fair Housing Act,"  
35 P.L.1985, c.222 (C.52:27D-301 et al.), to consist of an odd number  
36 of members, of at least three and no more than seven members who  
37 shall lead the administration of the program. The Chief Justice of  
38 the Supreme Court shall update the assignment of designated Mount  
39 Laurel judges to indicate which current or retired and on recall  
40 judges of the Superior Court shall serve as members, within 40 days  
41 following the effective date of P.L. , c. (C. ) (pending  
42 before the Legislature as this bill). The Chief Justice of the  
43 Supreme Court may appoint other qualified experts as members if  
44 sufficient current and retired judges are unavailable. The Chief  
45 Justice of the Supreme Court shall take into consideration in  
46 making such appointments experience in the employment of  
47 alternative dispute resolution methods and in relevant subject  
48 matter.

1       b. The Chief Justice of the Supreme Court shall designate a  
2 member to serve as chair. The Chief Justice of the Supreme Court  
3 shall make new appointments as needs arise for new appointments.

4       c. The program, in its discretion and in accordance with Rules of  
5 Court, may consult or employ the services of one or more special  
6 masters or staff to assist it in rendering determinations, resolving  
7 disputes, and facilitating communication as required by  
8 subparagraph (b) of paragraph (2) of subsection f. of section 3 of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill).  
10 In addition, the program may incorporate any existing or newly  
11 established court mediation or alternative dispute resolution process  
12 to assist the program in resolving disputes and facilitating  
13 communication among municipalities and interested parties.

14       d. The Administrative Director of the Courts shall establish a  
15 filing system via an Internet website in which the public is able to  
16 access, without cost, filings made pursuant to P.L. , c. (C. )  
17 (pending before the Legislature as this bill) and such other related  
18 filings as the Administrative Director of the Courts may include on  
19 the filing system.

20       e. The Administrative Director of the Courts may assign  
21 additional responsibilities to the program for resolving disputes  
22 arising out of or related to the "Fair Housing Act," P.L.1985, c.222  
23 (C.52:27D-301 et al.).

24       f. The Administrative Director of the Courts shall establish  
25 procedures for the purpose of efficiently resolving disputes  
26 involving the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
27 et al.), for circumstances in which the program is unable to address  
28 the dispute within the time limitations established pursuant to  
29 section 3 of P.L. , c. (C. ) (pending before the Legislature  
30 as this bill). As a part of the procedures established pursuant to this  
31 section, in order to facilitate an appropriate level of localized  
32 control of affordable housing decisions, for each vicinage, the Chief  
33 Justice of the Supreme Court shall designate a Superior Court judge  
34 who sits within the vicinage, or a retired judge who, during the  
35 judge's tenure as a judge, served within the vicinage, to serve as  
36 county level housing judge to resolve disputes over the compliance,  
37 of fair share plans and housing elements of municipalities within  
38 their designated county or counties, with the "Fair Housing Act,"  
39 P.L.1985, c.222 (C.52:27D-301 et al.), as well as disputes that arise  
40 with respect to ongoing compliance or noncompliance with  
41 obligations created by fair share plans, housing elements, and the  
42 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A  
43 judge shall be permitted to serve as a county level housing judge for  
44 more than one county in the same vicinage.

45       g. The Administrative Director of the Courts shall promulgate,  
46 maintain, and apply a Code of Ethics that is modeled upon the Code  
47 of Judicial Conduct of the American Bar Association, as amended  
48 and adopted by the Supreme Court of New Jersey, and may



1 establish additional, more restrictive ethical standards in order to  
2 meet the specific needs of the program, and of county level housing  
3 judges.

4  
5 6. (New section) a. Municipal present need for each 10-year  
6 round of affordable housing obligations shall be determined by  
7 estimating the deficient housing units occupied by low- and  
8 moderate-income households in the region, following a  
9 methodology similar to the methodology used to determine third  
10 round municipal present need, through the use of most recent  
11 datasets made available through the federal decennial census and  
12 the American Community Survey.

13 b. For the purpose of determining regional need for the 10-year  
14 round of low- and moderate-income housing obligations, running  
15 from July 1, 2025 through June 30, 2035, and each 10-year round  
16 thereafter:

17 (1) The regions of the State shall be comprised as follows:

18 (a) Region 1 shall consist of the counties of Bergen, Hudson,  
19 Passaic, and Sussex;

20 (b) Region 2 shall consist of the counties of Essex, Morris,  
21 Union, and Warren;

22 (c) Region 3 shall consist of the counties of Hunterdon,  
23 Middlesex, and Somerset;

24 (d) Region 4 shall consist of the counties of Mercer, Monmouth,  
25 and Ocean;

26 (e) Region 5 shall consist of the counties of Burlington,  
27 Camden, and Gloucester; and

28 (f) Region 6 shall consist of the counties of Atlantic, Cape May,  
29 Cumberland, and Salem.

30 (2) Regional prospective need for a 10-year round of low- and  
31 moderate-income housing obligations shall be determined through  
32 the calculation provided in this subsection. Projected household  
33 change for a 10-year round in a region shall be estimated by  
34 establishing the household change experienced in the region  
35 between the most recent federal decennial census, and the second-  
36 most recent federal decennial census. This household change, if  
37 positive, shall be divided by 2.5 to estimate the number of low- and  
38 moderate-income homes needed to address low- and moderate-  
39 income household change in the region, and to determine the  
40 regional prospective need for a 10-year round of low- and  
41 moderate-income housing obligations. If household change is zero  
42 or negative, the number of low- and moderate-income homes  
43 needed to address low- and moderate-income household change in  
44 the region and the regional prospective need shall be zero.

45  
46 7. (New section) a. The present and prospective fair share  
47 obligation for low- and moderate-income housing for each  
48 municipality in the State shall be determined as described in this

1 section. In addition, the March 8, 2018 unpublished decision of the  
2 Superior Court, Law Division, Mercer County, In re Application of  
3 Municipality of Princeton shall be referenced as to datasets and  
4 methodologies that are not explicitly addressed by this section.  
5 These determinations of municipal present and prospective need  
6 shall be based on a determination of the present and prospective  
7 regional need for low- and moderate-income housing, established  
8 pursuant to section 6 of P.L. , c. (C. ) (pending before the  
9 Legislature as this bill). These calculations of municipal present  
10 and prospective need shall use necessary datasets that are updated  
11 to the greatest extent practicable.

12 b. A municipality's present need obligation shall be determined  
13 by estimating the existing deficient housing units currently  
14 occupied by low- and moderate-income households within the  
15 municipality, following a methodology comparable to the  
16 methodology used to determine third round present need, through  
17 the use of datasets made available through the federal decennial  
18 census and the American Community Survey.

19 c. A municipality's prospective fair share obligation of the  
20 regional prospective need for the upcoming 10-year round shall be  
21 determined in accordance with this subsection:

22 (1) If a municipality is a qualified urban aid municipality, the  
23 municipality shall be exempt from responsibility for any fair share  
24 prospective need obligation for the upcoming 10-year round. For  
25 the purposes of this section, a municipality is a qualified urban aid  
26 municipality if the municipality, as of July 1 of the year prior to the  
27 beginning of a new round, is designated by the department, pursuant  
28 to P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid, and  
29 the municipality meets at least one of the following criteria:

30 (a) The ratio of substandard existing deficient housing units  
31 currently occupied by low- and moderate-income households within  
32 the municipality, compared to all existing housing in the  
33 municipality, is greater than the equivalent ratio in the region;

34 (b) The municipality has a population density greater than  
35 10,000 persons per square mile of land area; or

36 (c) The municipality has a population density of more than  
37 6,000, but less than 10,000 persons per square mile of land area,  
38 and less than five percent vacant parcels not used as farmland, as  
39 measured by the average of:

40 (i) The number of vacant land parcels in the municipality as a  
41 percentage of the total number of parcels in the municipality; and

42 (ii) The valuation of vacant land in the municipality as a  
43 percentage of total valuations in the municipality.

44 (2) A municipality's equalized nonresidential valuation factor  
45 shall be determined. To determine this factor, the changes in  
46 nonresidential property valuations in the municipality, since the  
47 beginning of the round preceding the round being calculated, shall  
48 be calculated using data published by the Division of Local

1 Government Services in the department. The change in the  
2 municipality's nonresidential valuations shall be divided by the  
3 regional total change in nonresidential valuations to determine the  
4 municipality's share of the regional change as the equalized  
5 nonresidential valuation factor.

6 (3) A municipality's income capacity factor shall be determined.  
7 This factor shall be determined by calculating the average of the  
8 following measures:

9 (a) The municipal share of the regional sum of the differences  
10 between the median municipal household income, according to the  
11 most recent American Community Survey Five-Year Estimates, and  
12 an income floor of \$100 below the lowest median household  
13 income in the region; and

14 (b) The municipal share of the regional sum of the differences  
15 between the median municipal household incomes and an income  
16 floor of \$100 below the lowest median household income in the  
17 region, weighted by the number of the households in the  
18 municipality.

19 (4) A municipality's land capacity factor shall be determined.  
20 This factor shall be determined by estimating the area of  
21 developable and redevelopable land in the municipality's  
22 boundaries, and regional boundaries, that may accommodate  
23 development through the use of the "land use / land cover data"  
24 most recently published by the Department of Environmental  
25 Protection, and weighing such land based on the planning area type  
26 in which such land is located. After the weighing factors are  
27 applied, the sum of the total developable and redevelopable land  
28 area that may accommodate development in the municipality, and in  
29 the region shall be determined. The municipality's share of its  
30 region's developable and redevelopable land shall be its land  
31 capacity factor. Developable and redevelopable land that may  
32 accommodate development shall be weighted based on the planning  
33 area type in which such land is located, as designated pursuant to  
34 P.L.1985, c.398 (C.52:18A-196 et seq.), P.L.1979, c.111  
35 (C.13:18A-1 et seq.), or P.L.2004, c.120 (C.13:20-1 et seq.), as  
36 follows:

37 (a) Planning Area 1 (Metropolitan) shall have a weighting factor  
38 of 1.0;

39 (b) Planning Area 2 (Suburban) shall have a weighting factor of  
40 1.0;

41 (c) Planning Area 3 (Fringe) shall have a weighting factor of  
42 0.5;

43 (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;

44 (e) Planning Area 5 (Environmentally Sensitive) shall have a  
45 weighting factor of 0.0;

46 (f) Centers in Planning Areas 1 and 2 shall have a weighting  
47 factor of 1.0;

- 1 (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting  
2 factor of 0.5;
- 3 (h) Pinelands Regional Growth Area shall have a weighting  
4 factor of 0.5;
- 5 (i) Pinelands Town shall have a weighting factor of 0.5;
- 6 (j) All other Pinelands shall have a weighting factor of 0.0;
- 7 (k) Meadowlands shall have a weighting factor of 1.0;
- 8 (l) Meadowlands Center shall have a weighting factor of 1.0;
- 9 (m) Highlands Preservation Area shall have a weighting factor  
10 of 0.0;
- 11 (n) Highlands Planning Area Existing Community Zone, opted  
12 in municipality by May 1, 2022 shall have a weighting factor of 1.0;
- 13 (o) Highlands Planning Area, State-designated sewer service  
14 area, municipality not opted in by May 1, 2022, shall have a  
15 weighting factor of 1.0; and
- 16 (p) All other Highlands Planning Areas shall have a weighting  
17 factor of 0.0.
- 18 (5) The equalized nonresidential valuation factor, income  
19 capacity factor, and land capacity factor, determined in paragraphs  
20 (2), (3), and (4) of this subsection, shall be averaged to yield the  
21 municipality's average allocation factor for distributing gross  
22 regional prospective need to the municipality. The regional  
23 prospective need shall then be multiplied by the municipality's  
24 average allocation factor to determine the municipality's gross  
25 prospective need for the 10-year round.
- 26 (6) Secondary sources of supply and demand shall be adjusted  
27 for by first calculating demolitions of low- and moderate-income  
28 housing, and housing creation through low- and moderate-income  
29 residential conversions. A municipality's share of low- and  
30 moderate-income conversions shall then be subtracted from the sum  
31 of each municipality's allocated share of gross prospective need and  
32 demolitions of low- and moderate-income housing.
- 33
- 34 8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read  
35 as follows:  
36 4. a. Upon failure to perform any obligation of a residential  
37 mortgage by the residential mortgage debtor and before any  
38 residential mortgage lender may accelerate the maturity of any  
39 residential mortgage obligation and commence any foreclosure or  
40 other legal action to take possession of the residential property  
41 which is the subject of the mortgage, the residential mortgage  
42 lender shall give a notice of intention, which shall include a notice  
43 of the right to cure the default as provided in section 5 of P.L.1995,  
44 c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in  
45 advance of such action as provided in this section, to the residential  
46 mortgage debtor, and, if the mortgage is secured by a residence for  
47 which a restriction on affordability was recorded in the county in  
48 which the property is located, the clerk of the municipality in which

1 the subject property is located, the municipal housing liaison, if one  
2 has been appointed by the municipality [pursuant to the regulations  
3 of the Council on Affordable Housing, and the Commissioner of  
4 Community Affairs]. For the purposes of this section, "restriction  
5 on affordability" means any conditions recorded with a mortgage or  
6 a deed which would limit the sale of such property to income  
7 qualified households pursuant to the rules adopted to effectuate the  
8 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

9 b. Notice of intention to take action as specified in subsection  
10 a. of this section shall be in writing, provided to the Department of  
11 Community Affairs in accordance with subsection a. of section 2 of  
12 P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or  
13 certified mail, return receipt requested, at the debtor's last known  
14 address, and, if different, to the address of the property which is the  
15 subject of the residential mortgage. The notice is deemed to have  
16 been effectuated on the date the notice is delivered in person or  
17 mailed to the party.

18 c. The written notice shall clearly and conspicuously state in a  
19 manner calculated to make the debtor aware of the situation:

20 (1) the particular obligation or real estate security interest;

21 (2) the nature of the default claimed;

22 (3) the right of the debtor to cure the default as provided in  
23 section 5 of P.L.1995, c.244 (C.2A:50-57);

24 (4) what performance, including what sum of money, if any, and  
25 interest, shall be tendered to cure the default as of the date specified  
26 under paragraph (5) of this subsection c.;

27 (5) the date by which the debtor shall cure the default to avoid  
28 initiation of foreclosure proceedings, which date shall not be less  
29 than 30 days after the date the notice is effective, and the name and  
30 address and phone number of a person to whom the payment or  
31 tender shall be made;

32 (6) that if the debtor does not cure the default by the date  
33 specified under paragraph (5) of this subsection c., the lender may  
34 take steps to terminate the debtor's ownership in the property by  
35 commencing a foreclosure suit in a court of competent jurisdiction;

36 (7) that if the lender takes the steps indicated pursuant to  
37 paragraph (6) of this subsection c., a debtor shall still have the right  
38 to cure the default pursuant to section 5 of P.L.1995, c.244  
39 (C.2A:50-57), but that the debtor shall be responsible for the  
40 lender's court costs and attorneys' fees in an amount not to exceed  
41 that amount permitted pursuant to the Rules Governing the Courts  
42 of the State of New Jersey;

43 (8) the right, if any, of the debtor to transfer the real estate to  
44 another person subject to the security interest and that the transferee  
45 may have the right to cure the default as provided in P.L.1995,  
46 c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;

47 (9) that the debtor is advised to seek counsel from an attorney of  
48 the debtor's own choosing concerning the debtor's residential

1 mortgage default situation, and that, if the debtor is unable to obtain  
2 an attorney, the debtor may communicate with the New Jersey Bar  
3 Association or Lawyer Referral Service in the county in which the  
4 residential property securing the mortgage loan is located; and that,  
5 if the debtor is unable to afford an attorney, the debtor may  
6 communicate with the Legal Services Office in the county in which  
7 the property is located;

8 (10) the possible availability of financial assistance for curing a  
9 default from programs operated by the State or federal government  
10 or nonprofit organizations, if any, as identified by the  
11 Commissioner of Banking and Insurance and, if the property is  
12 subject to restrictions on affordability, the address and phone  
13 number of the municipal affordable housing liaison and of the New  
14 Jersey Housing and Mortgage Finance Agency. This requirement  
15 shall be satisfied by attaching a list of such programs promulgated  
16 by the commissioner;

17 (11) the name and address of the lender and the telephone  
18 number of a representative of the lender whom the debtor may  
19 contact if the debtor disagrees with the lender's assertion that a  
20 default has occurred or the correctness of the mortgage lender's  
21 calculation of the amount required to cure the default;

22 (12) that if the lender takes the steps indicated pursuant to  
23 paragraph (6) of this subsection, the debtor has the option to  
24 participate in the Foreclosure Mediation Program following the  
25 filing of a mortgage foreclosure complaint by initiating mediation  
26 pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019,  
27 c.64 (C.2A:50-77). Notice of the option to participate in the  
28 Foreclosure Mediation Program shall adhere to the requirements of  
29 section 3 of P.L.2019, c.64 (C.2A:50-76) and any court rules,  
30 procedures, or guidelines adopted by the Supreme Court;

31 (13) that the debtor is entitled to housing counseling, at no cost  
32 to the debtor, through the Foreclosure Mediation Program  
33 established by the New Jersey Judiciary, including information on  
34 how to contact the program;

35 (14) that if the property which is the subject of the mortgage has  
36 more than one dwelling unit but less than five, one of which is  
37 occupied by the debtor or a member of the debtor's immediate  
38 family as the debtor's or member's residence at the time the loan is  
39 originated, and is not properly maintained and meets the necessary  
40 conditions for receivership eligibility, established pursuant to  
41 section 4 of the "Multifamily Housing Preservation and  
42 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
43 mortgage lender shall file an order to show cause to appoint a  
44 receiver; and

45 (15) that the lender is either licensed in accordance with the  
46 "New Jersey Residential Mortgage Lending Act," sections 1  
47 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89)

1 or exempt from licensure under the act in accordance with  
2 applicable law.

3 d. The notice of intention to foreclose required to be provided  
4 pursuant to this section shall not be required if the debtor has  
5 voluntarily surrendered the property which is the subject of the  
6 residential mortgage.

7 e. The duty of the lender under this section to serve notice of  
8 intention to foreclose is independent of any other duty to give  
9 notice under the common law, principles of equity, State or federal  
10 statute, or rule of court and of any other right or remedy the debtor  
11 may have as a result of the failure to give such notice.

12 f. Compliance with this section and subsection a. of section 2  
13 of P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the  
14 pleadings of any legal action referred to in this section. If the  
15 plaintiff in any complaint seeking foreclosure of a residential  
16 mortgage alleges that the property subject to the residential  
17 mortgage has been abandoned or voluntarily surrendered, the  
18 plaintiff shall plead the specific facts upon which this allegation is  
19 based.

20 g. If more than 180 days have elapsed since the date the notice  
21 required pursuant to this section is sent, and any foreclosure or  
22 other legal action to take possession of the residential property  
23 which is the subject of the mortgage has not yet been commenced,  
24 the lender shall send a new written notice at least 30 days, but not  
25 more than 180 days, in advance of that action.

26 h. If the property which is the subject of the notice of intention  
27 to foreclose has more than one dwelling unit but less than five, one  
28 of which is occupied by the debtor or a member of the debtor's  
29 immediate family as the debtor's or member's residence at the time  
30 the loan is originated, and is not properly maintained and meets the  
31 necessary conditions for receivership eligibility, established  
32 pursuant to section 4 of the "Multifamily Housing Preservation and  
33 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
34 mortgage lender shall file an order to show cause to appoint a  
35 receiver.

36 (cf: P.L.2019, c.134, s.4)

37

38 9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as  
39 follows:

40 2. The New Jersey Council on Physical Fitness and Sports,  
41 established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is  
42 authorized to provide grants to assist low-income families in  
43 purchasing the protective eyewear. As used in this section, a "low-  
44 income family" means a family which qualifies for low-income  
45 housing under the standards promulgated by the **【Council on**  
46 **Affordable Housing】** New Jersey Housing and Mortgage Finance  
47 Agency pursuant to the "Fair Housing Act," P.L.1985, c.222

1 (C.52:27D-301 et al.).

2 (cf: P.L.2005, c.306, s.2)

3

4 10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to  
5 read as follows:

6 25. a. The **【**Council on Affordable Housing shall take into  
7 consideration the**】** regional master plan **【**prior to making any**】** shall  
8 be taken into account as part of the determination of obligations  
9 pursuant to the method in section 7 of P.L. , c. (C. )  
10 (pending before the Legislature as this bill) regarding the allocation  
11 of the prospective fair share of the housing need **【**in any  
12 municipality in the Highlands Region**】** under the "Fair Housing  
13 Act," P.L.1985, c.222 (C.52:27D-301 et al.) for **【**the**】** any fair share  
14 period subsequent to **【**1999**】** the effective date of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill) if  
16 a municipality is in the Highlands Region.

17 b. Nothing in **【**this act**】** P.L.2004, c.120 (C.13:20-1 et al.) shall  
18 affect protections provided through a grant of substantive  
19 certification or a judgment of repose granted prior to **【**the date of  
20 enactment of this act**】** August 10, 2004.

21 (cf: P.L.2004, c.120, s.25)

22

23 11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to  
24 read as follows:

25 5. The requirements of this act shall not apply to:

26 a. Depository institutions; but subsidiaries and service  
27 corporations of these institutions shall not be exempt. A depository  
28 institution may register with the department for the purpose of  
29 sponsoring individuals, licensed as mortgage loan originators  
30 subject to subparagraph (b) of paragraph (1) of subsection c. of  
31 section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such  
32 registered entity obtains and maintains bond coverage for mortgage  
33 loan originators consistent with section 13 of P.L.2009, c.53  
34 (C.17:11C-63). A depository institution registered with the  
35 department in accordance with this subsection a. shall otherwise  
36 remain exempt from the licensing requirements of P.L.2009, c.53  
37 (C.17:11C-51 et seq.).

38 b. A registered mortgage loan originator that is registered  
39 under the federal "Secure and Fair Enforcement for Mortgage  
40 Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101  
41 et seq.).

42 c. A licensed attorney who negotiates the terms of a residential  
43 mortgage loan on behalf of a client as an ancillary matter to the  
44 attorney's representation of the client, unless the attorney is  
45 compensated by a residential mortgage lender, residential mortgage  
46 broker, or mortgage loan originator.



1 d. A person licensed as a real estate broker or salesperson  
2 pursuant to R.S.45:15-1 et seq., and not engaged in the business of a  
3 residential mortgage lender or residential mortgage broker. Any  
4 person holding a license under this act as a residential mortgage  
5 lender or broker shall be exempt from the licensing and other  
6 requirements of R.S.45:15-1 et seq. in the performance of those  
7 functions authorized by this act.

8 e. Any employer, other than a residential mortgage lender, who  
9 provides residential mortgage loans to his employees as a benefit of  
10 employment which are at an interest rate which is not in excess of  
11 the usury rate in existence at the time the loan is made, as  
12 established in accordance with the law of this State, and on which  
13 the borrower has not agreed to pay, directly or indirectly, any  
14 charge, cost, expense or any fee whatsoever, other than that interest.

15 f. The State of New Jersey or a municipality, or any agency or  
16 instrumentality thereof, which, in accordance with a housing  
17 element that has previously received substantive certification from  
18 the Council on Affordable Housing, or a judgment of repose or  
19 other court approval, pursuant to the "Fair Housing Act," P.L.1985,  
20 c.222 (C.52:27D-301 et al.), or in fulfillment of a regional  
21 contribution agreement with a municipality that has received a  
22 certification, employs or proposes to employ municipally generated  
23 funds, funds obtained through any State or federal subsidy, or funds  
24 acquired by the municipality under a regional contribution  
25 agreement, to finance the provision of affordable housing by  
26 extending loans or advances, the repayment of which is secured by  
27 a lien, subordinate to any prior lien, upon the property that is to be  
28 rehabilitated.

29 g. Any individual who offers or negotiates terms of a  
30 residential mortgage loan:

- 31 (1) with or on behalf of an immediate family member; or  
32 (2) secured by a dwelling that serves as the individual's  
33 residence.

34 h. Any person who, during a calendar year takes three or fewer  
35 residential mortgage loan applications or offers or negotiates the  
36 terms of three or fewer residential mortgage loans or makes three or  
37 fewer residential mortgage loans related to manufactured housing  
38 structures which are:

- 39 (1) titled by the New Jersey Motor Vehicle Commission;  
40 (2) located in a mobile home park as defined in subsection e. of  
41 section 3 of P.L.1983, c.400 (C.54:4-1.4); and  
42 (3) exempt from taxation as real property pursuant to subsection  
43 b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

44 i. A bona fide not for profit entity and any individuals directly  
45 employed by that entity, so long as the entity maintains its tax  
46 exempt status under Section 501(c)(3) of the Internal Revenue Code  
47 of 1986 and otherwise meets the definition of "bona fide not for  
48 profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as

1 periodically determined by the department in accordance with rules  
2 established by the commissioner.

3 (cf: P.L.2018, c.108, s.3)  
4

5 12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to  
6 read as follows:

7 2. a. A person who violates a requirement of this act shall be  
8 warned of the violation by the enforcing official. The parent or  
9 legal guardian of that person also may be fined a maximum of \$25  
10 for the person's first offense and a maximum of \$100 for a  
11 subsequent offense if it can be shown that the parent or guardian  
12 failed to exercise reasonable supervision or control over the  
13 person's conduct. Penalties provided in this section for a failure to  
14 wear a helmet may be waived if an offender or his parent or legal  
15 guardian presents suitable proof that an approved helmet was  
16 owned at the time of the violation or has been purchased since the  
17 violation occurred.

18 b. All money collected as fines under subsection a. of this  
19 section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-  
20 10.6) shall be deposited in a nonlapsing revolving fund to be known  
21 as the "Bicycle and Skating Safety Fund." Interest earned on  
22 money deposited in the fund shall accrue to the fund. Money in the  
23 fund shall be utilized by the director to provide educational  
24 programs devoted to bicycle, roller skating and skateboarding  
25 safety. If the director determines that sufficient money is available  
26 in the fund, he also may use, in a manner prescribed by rule and  
27 regulation, the money to assist **[low income]** low-income families  
28 in purchasing approved bicycle helmets. For the purposes of this  
29 subsection, **["low income family"]** "low-income family" means a  
30 family which qualifies for **[low income]** low-income housing under  
31 the standards promulgated by the **[Council on Affordable Housing]**  
32 New Jersey Housing and Mortgage Finance Agency pursuant to the  
33 provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).  
34 (cf: P.L.1997, c.411, s.11)  
35

36 13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to  
37 read as follows:

38 33. The Legislature finds and declares:

39 a. The collection of development fees from builders of  
40 residential and non-residential properties has been authorized by the  
41 court through the powers **[delegated to the Council on Affordable**  
42 **Housing]** established pursuant to the "Fair Housing Act," P.L.1985,  
43 c.222 (C.52:27D-301 et al.). Due to the Legislature's determination  
44 that the role of the Council on Affordable Housing has not  
45 developed in practice as intended, the Legislature further  
46 determines that authority relating to rulemaking on the collection of  
47 residential and non-residential development fees is appropriately

1 delegated to the Department of Community Affairs, given the  
2 department's existing roles related to local government finance and  
3 the funding and financing of affordable housing throughout the  
4 State.

5 b. New Jersey's land resources are becoming more scarce, while  
6 its redevelopment needs are increasing. In order to balance the  
7 needs of developing and redeveloping communities, a reasonable  
8 method of providing for the housing needs of **low and moderate**  
9 **income** low-, moderate-, and middle income middle-income  
10 households, without mandating the inclusion of housing in every  
11 non-residential project, must be established.

12 c. A Statewide non-residential development fee program, which  
13 permits municipalities **under the council's jurisdiction** that have  
14 obtained or are in the process of seeking compliance certification to  
15 retain these fees for use in the municipality will provide a fair and  
16 balanced funding method to address the State's affordable housing  
17 needs, while providing an incentive to all municipalities to **seek**  
18 **substantive** obtain compliance certification **from the council**.

19 d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),  
20 organizations are directed to invest in the Casino Reinvestment  
21 Development Authority to ensure that the development of housing  
22 for families of **low and moderate income** low- and moderate-  
23 income shall be provided. The Casino Reinvestment Development  
24 Authority **in consultation with the council,** shall work to  
25 effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301  
26 et al.).

27 e. **The "Statewide Non-Residential Development Fee Act,"**  
28 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through  
29 C.40:55D-8.7), prohibits municipalities from imposing their own  
30 fees to fund affordable housing on non-residential development, and  
31 P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this  
32 underlying policy. **Deleted by amendment P.L. , c. (pending**  
33 **before the Legislature as this bill)**

34 f. The negative impact of a State policy that over-relies on a  
35 municipal fee structure and of State programs that require a  
36 municipality to impose fees and charges on developers must be  
37 balanced against any public good expected from such regulation. It  
38 is undisputable that the charging of fees at high levels dissuades  
39 commerce from locating within a State or municipality or locality  
40 and halts non-residential and residential development, and these ill  
41 effects directly increase the overall costs of housing, and could  
42 impede the constitutional obligation to provide for a realistic  
43 opportunity for housing for families at all income levels.  
44 (cf: P.L.2009, c.90, s.36)

45  
46 14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to  
47 read as follows:

1       34. As used in sections 32 through 38 of P.L.2008, c.46  
2 (C.40:55D-8.1 through C.40:55D-8.7):

3       "Construction" means new construction and additions, but does  
4 not include alterations, reconstruction, renovations, and repairs as  
5 those terms are defined under the State Uniform Construction Code  
6 promulgated pursuant to the "State Uniform Construction Code  
7 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

8       "Commissioner" means the Commissioner of Community  
9 Affairs.

10       **["Council" means the Council on Affordable Housing,**  
11 **established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).]**

12       "Department" means the Department of Community Affairs.

13       "Developer" means the legal or beneficial owner or owners of a  
14 lot or of any land proposed to be included in a proposed  
15 development, including the holder of an option or contract to  
16 purchase, or other person having an enforceable proprietary interest  
17 in such land.

18       "Equalized assessed value" means the assessed value of a  
19 property divided by the current average ratio of assessed to true  
20 value for the municipality in which the property is situated, as  
21 determined in accordance with sections 1, 5, and 6 of P.L.1973,  
22 c.123 (C.54:1-35a through C.54:1-35c).

23       "Mixed use development" means any development which  
24 includes both a non-residential development component and a  
25 residential development component, and shall include developments  
26 for which (1) there is a common developer for both the residential  
27 development component and the non-residential development  
28 component, provided that for purposes of this definition, multiple  
29 persons and entities may be considered a common developer if there  
30 is a contractual relationship among them obligating each entity to  
31 develop at least a portion of the residential or non-residential  
32 development, or both, or otherwise to contribute resources to the  
33 development; and (2) the residential and non-residential  
34 developments are located on the same lot or adjoining lots,  
35 including but not limited to lots separated by a street, a river, or  
36 another geographical feature.

37       "Non-residential development" means: (1) any building or  
38 structure, or portion thereof, including but not limited to any  
39 appurtenant improvements, which is designated to a use group other  
40 than a residential use group according to the State Uniform  
41 Construction Code promulgated to effectuate the "State Uniform  
42 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),  
43 including any subsequent amendments or revisions thereto; (2)  
44 hotels, motels, vacation timeshares, and child-care facilities; and (3)  
45 the entirety of all continuing care facilities within a continuing care  
46 retirement community which is subject to the "Continuing Care  
47 Retirement Community Regulation and Financial Disclosure Act,"  
48 P.L.1986, c.103 (C.52:27D-330 et seq.).

1 "Non-residential development fee" means the fee authorized to  
2 be imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
3 (C.40:55D-8.1 through C.40:55D-8.7).

4 "Relating to the provision of housing" shall be liberally  
5 construed to include the construction, maintenance, or operation of  
6 housing, including but not limited to the provision of services to  
7 such housing and the funding of any of the above.

8 "Spending plan" means a method of allocating funds collected  
9 and to be collected pursuant to an approved municipal development  
10 fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)  
11 for the purpose of meeting the housing needs of low and moderate  
12 income individuals.

13 "Treasurer" means the Treasurer of the State of New Jersey.  
14 (cf: P.L.2008, c.46, s.34)

15  
16 15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to  
17 read as follows:

18 35. a. Beginning on the effective date of P.L.2008, c.46  
19 (C.52:27D-329.1 et al.), a fee is imposed on all construction  
20 resulting in non-residential development, as follows:

21 (1) A fee equal to two and one-half percent of the equalized  
22 assessed value of the land and improvements, for all new non-  
23 residential construction on an unimproved lot or lots; or

24 (2) A fee equal to two and one-half percent of the increase in  
25 equalized assessed value, of the additions to existing structures to  
26 be used for non-residential purposes.

27 b. All non-residential construction of buildings or structures on  
28 property used by churches, synagogues, mosques, and other houses  
29 of worship, and property used for educational purposes, which is  
30 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the  
31 imposition of a non-residential development fee pursuant to this  
32 section, provided that the property continues to maintain its tax  
33 exempt status under that statute for a period of at least three years  
34 from the date of issuance of the certificate of occupancy. In  
35 addition, the following shall be exempt from the imposition of a  
36 non-residential development fee:

37 (1) parking lots and parking structures, regardless of whether the  
38 parking lot or parking structure is constructed in conjunction with a  
39 non-residential development, such as an office building, or whether  
40 the parking lot is developed as an independent non-residential  
41 development;

42 (2) any non-residential development which is an amenity to be  
43 made available to the public, including, but not limited to,  
44 recreational facilities, community centers, and senior centers, which  
45 are developed in conjunction with or funded by a non-residential  
46 developer;

1 (3) non-residential construction resulting from a relocation of or  
2 an on-site improvement to a nonprofit hospital or a nursing home  
3 facility;

4 (4) projects that are located within a specifically delineated  
5 urban transit hub, as defined pursuant to section 2 of P.L.2007,  
6 c.346 (C.34:1B-208);

7 (5) projects that are located within an eligible municipality, as  
8 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a  
9 majority of the project is located within a one-half mile radius of  
10 the midpoint of a platform area for a light rail system; and

11 (6) projects determined by the New Jersey Transit Corporation  
12 to be consistent with a transit village plan developed by a transit  
13 village designated by the Department of Transportation.

14 A developer of a non-residential development exempted from the  
15 non-residential development fee pursuant to this section shall be  
16 subject to it at such time the basis for the exemption set forth in this  
17 subsection no longer applies, and shall make the payment of the  
18 non-residential development fee, in that event, within three years  
19 after that event or after the issuance of the final certificate of  
20 occupancy of the non-residential development whichever is later.

21 For purposes of this subsection, "recreational facilities and  
22 community center" means any indoor or outdoor buildings, spaces,  
23 structures, or improvements intended for active or passive  
24 recreation, including but not limited to ball fields, meeting halls,  
25 and classrooms, accommodating either organized or informal  
26 activity; and "senior center" means any recreational facility or  
27 community center with activities and services oriented towards  
28 serving senior citizens.

29 If a property which was exempted from the collection of a non-  
30 residential development fee thereafter ceases to be exempt from  
31 property taxation, the owner of the property shall remit the fees  
32 required pursuant to this section within 45 days of the termination  
33 of the property tax exemption. Unpaid non-residential development  
34 fees under these circumstances may be enforceable by the  
35 municipality as a lien against the real property of the owner.

36 c. (1) Unless authorized to pay directly to the municipality in  
37 which the non-residential construction is occurring in accordance  
38 with paragraph (2) of this subsection, developers shall pay non-  
39 residential development fees imposed pursuant to P.L.2008, c.46  
40 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with  
41 subsection g. of this section in a manner and on such forms as  
42 required by the Treasurer, provided that a certified proof concerning  
43 the payment shall be furnished by the Treasurer, to the  
44 municipality.

45 (2) The **【council】** department shall maintain on its Internet  
46 website a list of each municipality that is authorized to use the  
47 development fees collected pursuant to this section and that has a  
48 confirmed status of compliance with the "Fair Housing Act,"

1 P.L.1985, c.222 (C.52:27D-301 et al.) , or is in the process of  
2 seeking compliance certification, which compliance shall include a  
3 spending plan **【authorized by the council】** pursuant to section 8 of  
4 P.L.2008, c.46 (C.52:27D-329.2) for all development fees collected.

5 (3) No later than 90 days following the enactment of P.L. , c.  
6 (C. ) (pending before the Legislature as this bill), any  
7 municipality that is or has been authorized to retain and expend  
8 non-residential development fees shall provide the department with  
9 a detailed accounting of all such fees that have been collected and  
10 expended since the inception of the municipal authorization to  
11 collect and retain said fees.

12 (4) Beginning with the year after the enactment of P.L. , c.  
13 (C. ) (pending before the Legislature as this bill), by January  
14 15, every municipality that is or has been authorized to retain and  
15 expend non-residential development fees shall provide the  
16 department with a detailed accounting of all such fees that have  
17 been collected and expended previous year.

18 d. The payment of non-residential development fees required  
19 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
20 through C.40:55D-8.7) shall be made prior to the issuance of a  
21 certificate of occupancy for such development. A final certificate  
22 of occupancy shall not be issued for any non-residential  
23 development until such time as the fee imposed pursuant to this  
24 section has been paid by the developer. A non-residential developer  
25 may deposit with the appropriate entity the development fees as  
26 calculated by the municipality under protest, and the local code  
27 enforcement official shall thereafter issue the certificate of  
28 occupancy provided that the construction is otherwise eligible for a  
29 certificate of occupancy.

30 e. The construction official responsible for the issuance of a  
31 building permit shall notify the local tax assessor of the issuance of  
32 the first building permit for a development which may be subject to  
33 a non-residential development fee. Within 90 days of receipt of that  
34 notice, the municipal tax assessor, based on the plans filed, shall  
35 provide an estimate of the equalized assessed value of the non-  
36 residential development. The construction official responsible for  
37 the issuance of a final certificate of occupancy shall notify the local  
38 assessor of any and all requests for the scheduling of a final  
39 inspection on property which may be subject to a non-residential  
40 development fee. Within 10 business days of a request for the  
41 scheduling of a final inspection, the municipal assessor shall  
42 confirm or modify the previously estimated equalized assessed  
43 value of the improvements of the non-residential development in  
44 accordance with the regulations adopted by the Treasurer pursuant  
45 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential  
46 development fee pursuant to sections 32 through 38 of P.L.2008,  
47 c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the  
48 developer of the amount of the non-residential development fee.

1 Should the municipality fail to determine or notify the developer of  
2 the amount of the non-residential development fee within 10  
3 business days of the request for final inspection, the developer may  
4 estimate the amount due and pay that estimated amount consistent  
5 with the dispute process set forth in subsection b. of section 37 of  
6 P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-  
7 residential development fee, provided the developer is in full  
8 compliance with all other applicable laws, the municipality shall  
9 issue a final certificate of occupancy for the subject property.  
10 Failure of the municipality to comply with the timeframes or  
11 procedures set forth in this subsection may subject it to penalties to  
12 be imposed by the commissioner; any penalties so imposed shall be  
13 deposited into the "New Jersey Affordable Housing Trust Fund"  
14 established pursuant to section 20 of P.L.1985, c.222 as amended  
15 by section 17 of P.L.2008, c.46 (C.52:27D-320).

16 A developer of a mixed use development shall be required to pay  
17 the Statewide non-residential development fee relating to the non-  
18 residential development component of a mixed use development  
19 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

20 Non-residential construction which is connected with the  
21 relocation of the facilities of a for-profit hospital shall be subject to  
22 the fee authorized to be imposed under this section to the extent of  
23 the increase in equalized assessed valuation in accordance with  
24 regulations to be promulgated by the Director of the Division of  
25 Taxation, Department of the Treasury.

26 f. Any municipality that is not in compliance with the  
27 requirements established pursuant to sections 32 through 38 of  
28 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or  
29 regulations of the **【council】** commissioner adopted thereto, may be  
30 subject to forfeiture of any or all funds remaining within its  
31 municipal development trust fund. Any funds so forfeited shall be  
32 deposited into the New Jersey Affordable Housing Trust Fund  
33 established pursuant to section 20 of P.L.1985, c.222 as amended  
34 by section 17 of P.L.2008, c.46 (C.52:27D-320).

35 g. The Treasurer shall credit to the "Urban Housing Assistance  
36 Fund," established pursuant to section 13 of P.L.2008, c.46  
37 (C.52:27D-329.7) annually from the receipts of the fees authorized  
38 to be imposed pursuant to this section an amount equal to \$20  
39 million; all receipts in excess of this amount shall be deposited into  
40 the "New Jersey Affordable Housing Trust Fund," established  
41 pursuant to section 20 of P.L.1985, c.222 as amended by section 17  
42 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of  
43 that fund.

44 The Treasurer shall adopt such regulations as necessary to  
45 effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
46 through C.40:55D-8.7), in accordance with the "Administrative  
47 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

48 (cf: P.L.2008, c.46, s.35)



1       16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to  
2 read as follows:

3       36. a. The commissioner **【**, in consultation with the council,**】**  
4 shall promulgate, in accordance with the provisions of the  
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
6 seq.), such regulations as are necessary for the prompt and effective  
7 implementation of the provisions and purposes of **【**P.L.2008, c.46  
8 (C.52:27D-329.1 et al.)**】** section 8 of P.L.2008, c.46 (C.52:27D-  
9 329.2), including, but not limited to, provisions for the payment of  
10 any necessary administrative costs related to the assessment of  
11 properties and collection of any development fees by a  
12 municipality.

13       b. **【**Notwithstanding the authority granted to the commissioner  
14 herein, the council**】** The commissioner shall adopt and promulgate,  
15 in accordance with the provisions of the "Administrative Procedure  
16 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are  
17 necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et  
18 al.), including but not limited to, regulations necessary for the  
19 establishment, implementation, review, monitoring, and  
20 enforcement of a municipal affordable housing trust fund and  
21 spending plan.

22 (cf: P.L.2008, c.46, s.36)

23

24       17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to  
25 read as follows:

26       38. a. Except as expressly provided in P.L.2008, c.46  
27 (C.52:27D-329.1 et al.),<sub>2</sub> including subsection b. of this section, any  
28 provision of a local ordinance which imposes a fee for the  
29 development of affordable housing upon a developer of non-  
30 residential property, including any and all development fee  
31 ordinances adopted in accordance with any regulations of the  
32 **【**Council on Affordable Housing**】** department, or any provision of  
33 an ordinance which imposes an obligation relating to the provision  
34 of housing affordable to **【**low and moderate income**】** low- and  
35 moderate-income households, or payment in-lieu of building as a  
36 condition of non-residential development, shall be void and of no  
37 effect. A provision of an ordinance which imposes a development  
38 fee which is not prohibited by any provision of P.L.2008, c.46  
39 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

40       b. No affordable housing obligation shall be imposed  
41 concerning a mixed use development that would result in an  
42 affordable housing obligation greater than that which would have  
43 been imposed if the residential portion of the mixed use  
44 development had been developed independently of the non-  
45 residential portion of the mixed use development.

46       c. Whenever the developer of a non-residential development  
47 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or

1 committed itself to make a financial or other contribution relating to  
2 the provision of housing affordable to low and moderate income  
3 households, the non-residential development fee authorized  
4 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied  
5 through the investment obligations made pursuant to P.L.1977,  
6 c.110 (C.5:12-1 et seq.).  
7 (cf: P.L.2008, c.46, s.38)  
8

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

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

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

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

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

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

1 e. **【**Notwithstanding the provisions of subsections a., b., c., and  
2 d. of this section, if, on the effective date of P.L.2009, c.90  
3 (C.52:27D-489a et al.), a municipality that has returned all or a  
4 portion of non-residential fees in accordance with subsection a. or  
5 b. of this section shall be reimbursed from the funds available  
6 through the appropriation made into the "New Jersey Affordable  
7 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90  
8 (C.52:27D-320.1) within 30 days of the municipality providing  
9 written notice to the Council on Affordable Housing.**】** (Deleted by  
10 amendment, P.L. , c. ) (pending before the Legislature as this  
11 bill)

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

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

30

31 19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to  
32 read as follows:

33 3. a. There is established in, but not of, the department a Site  
34 Improvement Advisory Board, to devise statewide site improvement  
35 standards pursuant to section 4 of **【this act】** P.L.1993, c.32  
36 (C.40:55D-40.4). The board shall consist of the commissioner or  
37 **【his】** the commissioner's designee, who shall be a non-voting  
38 member of the board, the Director of the Division of **【Housing】**  
39 Codes and Standards in the Department of Community Affairs, who  
40 shall be a voting member of the board, the Executive Director of the  
41 New Jersey Housing and Mortgage Finance Agency, or the  
42 executive director's designee, who shall be a voting member of the  
43 board, and **【10】** nine other voting members, to be appointed by the  
44 commissioner. The other members shall include two professional  
45 planners, one of whom serves as a planner for a governmental entity  
46 or whose professional experience is predominantly in the public  
47 sector and who has worked in the public sector for at least the

1 previous five years and the other of whom serves as a planner in  
 2 private practice and has particular expertise in private residential  
 3 development and has been involved in private sector planning for at  
 4 least the previous five years, and one representative each from:

5 (1) The New Jersey Society of Professional Engineers;

6 (2) The New Jersey Society of Municipal Engineers;

7 (3) The New Jersey Association of County Engineers;

8 (4) The New Jersey Federation of Planning Officials;

9 (5) **【The Council on Affordable Housing】** (Deleted by  
 10 amendment, P.L. , c. (pending before the Legislature as this  
 11 bill);

12 (6) The New Jersey Builders' Association;

13 (7) The New Jersey Institute of Technology;

14 (8) The New Jersey State League of Municipalities.

15 b. Among the members to be appointed by the commissioner  
 16 who are first appointed, four shall be appointed for terms of two  
 17 years each, four shall be appointed for terms of three years each,  
 18 and two shall be appointed for terms of four years each. Thereafter,  
 19 each appointee shall serve for a term of four years. Vacancies in  
 20 the membership shall be filled in the same manner as original  
 21 appointments are made, for the unexpired term. The **【commission】**  
 22 board shall select a chair from among its members **【a chairman】**.  
 23 Members may be removed by the commissioner for cause.

24 c. Board members shall serve without compensation, but may  
 25 be entitled to reimbursement, from moneys appropriated or  
 26 otherwise made available for the purposes of this act, for expenses  
 27 incurred in the performance of their duties.

28 (cf: P.L.1993, c.32, s.3)

29  
 30 20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to  
 31 read as follows:

32 3. As used in **【this act】** P.L.1992, c.79 (C.40A:12A-1 et seq.):

33 "Bonds" means any bonds, notes, interim certificates, debentures  
 34 or other obligations issued by a municipality, county,  
 35 redevelopment entity, or housing authority pursuant to P.L.1992,  
 36 c.79 (C.40A:12A-1 et al.).

37 "Comparable, affordable replacement housing" means newly-  
 38 constructed or substantially rehabilitated housing to be offered to a  
 39 household being displaced as a result of a redevelopment project,  
 40 that is affordable to that household based on its income under the  
 41 guidelines established by the **【Council on Affordable Housing in**  
 42 **the Department of Community Affairs】** New Jersey Housing and  
 43 Mortgage Finance Agency for maximum affordable sales prices or  
 44 maximum fair market rents, and that is comparable to the  
 45 household's dwelling in the redevelopment area with respect to the  
 46 size and amenities of the dwelling unit, the quality of the

1 neighborhood, and the level of public services and facilities offered  
2 by the municipality in which the redevelopment area is located.

3 "Development" means the division of a parcel of land into two or  
4 more parcels, the construction, reconstruction, conversion,  
5 structural alteration, relocation, or enlargement of any building or  
6 other structure, or of any mining, excavation or landfill, and any use  
7 or change in the use of any building or other structure, or land or  
8 extension of use of land, for which permission may be required  
9 pursuant to the "Municipal Land Use Law," P.L.1975, c.291  
10 (C.40:55D-1 et seq.).

11 "Electric vehicle charging station" means an electric component  
12 assembly or cluster of component assemblies designed specifically  
13 to charge batteries within electric vehicles by permitting the transfer  
14 of electric energy to a battery or other storage device in an electric  
15 vehicle.

16 "Governing body" means the body exercising general legislative  
17 powers in a county or municipality according to the terms and  
18 procedural requirements set forth in the form of government  
19 adopted by the county or municipality.

20 "Housing authority" means a housing authority created or  
21 continued pursuant to this act.

22 "Housing project" means a project, or distinct portion of a  
23 project, which is designed and intended to provide decent, safe and  
24 sanitary dwellings, apartments or other living accommodations for  
25 persons of **low and moderate income** low- and moderate-income;  
26 such work or undertaking may include buildings, land, equipment,  
27 facilities and other real or personal property for necessary,  
28 convenient or desirable appurtenances, streets, sewers, water  
29 service, parks, site preparation, gardening, administrative,  
30 community, health, recreational, educational, welfare or other  
31 purposes. The term "housing project" also may be applied to the  
32 planning of the buildings and improvements, the acquisition of  
33 property, the demolition of existing structures, the construction,  
34 reconstruction, alteration and repair of the improvements and all  
35 other work in connection therewith.

36 "Parking authority" means a public corporation created pursuant  
37 to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et  
38 seq.), and authorized to exercise redevelopment powers within the  
39 municipality.

40 "Persons of **low and moderate income** low- and moderate-  
41 income" means persons or families who are, in the case of State  
42 assisted projects or programs, so defined by the **Council on**  
43 **Affordable Housing in the Department of Community Affairs** New  
44 Jersey Housing and Mortgage Finance Agency, or in the case of  
45 federally assisted projects or programs, defined as of **low and**  
46 **very low income** low- and very low-income by the United  
47 States Department of Housing and Urban Development.

1 "Public body" means the State or any county, municipality,  
2 school district, authority or other political subdivision of the State.

3 "Public electric vehicle charging station" means an electric  
4 vehicle charging station located at a publicly available parking  
5 space.

6 "Public housing" means any housing for persons of **low and**  
7 **moderate income** low- and moderate-income owned by a  
8 municipality, county, the State or the federal government, or any  
9 agency or instrumentality thereof.

10 "Public hydrogen fueling station" means publicly available  
11 equipment to store and dispense hydrogen fuel to vehicles  
12 according to industry codes and standards.

13 "Publicly assisted housing" means privately owned housing  
14 which receives public assistance or subsidy, which may be grants or  
15 loans for construction, reconstruction, conservation, or  
16 rehabilitation of the housing, or receives operational or maintenance  
17 subsidies either directly or through rental subsidies to tenants, from  
18 a federal, State or local government agency or instrumentality.

19 "Publicly available parking space" means a parking space that is  
20 available to, and accessible by, the public and may include on-street  
21 parking spaces and parking spaces in surface lots or parking  
22 garages, but shall not include: a parking space that is part of, or  
23 associated with, a private residence; or a parking space that is  
24 reserved for the exclusive use of an individual driver or vehicle or  
25 for a group of drivers or vehicles, such as employees, tenants,  
26 visitors, residents of a common interest development, or residents  
27 of an adjacent building.

28 "Real property" means all lands, including improvements and  
29 fixtures thereon, and property of any nature appurtenant thereto or  
30 used in connection therewith, and every estate, interest and right,  
31 legal or equitable, therein, including terms for years and liens by  
32 way of judgment, mortgage or otherwise, and indebtedness secured  
33 by such liens.

34 "Redeveloper" means any person, firm, corporation or public  
35 body that shall enter into or propose to enter into a contract with a  
36 municipality or other redevelopment entity for the redevelopment or  
37 rehabilitation of an area in need of redevelopment, or an area in  
38 need of rehabilitation, or any part thereof, under the provisions of  
39 this act, or for any construction or other work forming part of a  
40 redevelopment or rehabilitation project.

41 "Redevelopment" means clearance, replanning, development and  
42 redevelopment; the conservation and rehabilitation of any structure  
43 or improvement, the construction and provision for construction of  
44 residential, commercial, industrial, public or other structures and  
45 the grant or dedication of spaces as may be appropriate or necessary  
46 in the interest of the general welfare for streets, parks, playgrounds,  
47 or other public purposes, including recreational and other facilities

1 incidental or appurtenant thereto, in accordance with a  
2 redevelopment plan.

3 "Redevelopment agency" means a redevelopment agency created  
4 pursuant to subsection a. of section 11 of P.L.1992, c.79  
5 (C.40A:12A-11) or established heretofore pursuant to the  
6 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et  
7 al.), repealed by this act, which has been permitted in accordance  
8 with the provisions of **【this act】** P.L.1992, c.79 (C.40A:12A-1 et  
9 seq.) to continue to exercise its redevelopment functions and  
10 powers.

11 "Redevelopment area" or "area in need of redevelopment" means  
12 an area determined to be in need of redevelopment pursuant to  
13 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6)  
14 or determined heretofore to be a "blighted area" pursuant to  
15 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both  
16 determinations as made pursuant to the authority of Article VIII,  
17 Section III, paragraph 1 of the Constitution. A redevelopment area  
18 may include lands, buildings, or improvements which of themselves  
19 are not detrimental to the public health, safety or welfare, but the  
20 inclusion of which is found necessary, with or without change in  
21 their condition, for the effective redevelopment of the area of which  
22 they are a part.

23 "Redevelopment entity" means a municipality or an entity  
24 authorized by the governing body of a municipality pursuant to  
25 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to  
26 implement redevelopment plans and carry out redevelopment  
27 projects in an area in need of redevelopment, or in an area in need  
28 of rehabilitation, or in both.

29 "Redevelopment plan" means a plan adopted by the governing  
30 body of a municipality for the redevelopment or rehabilitation of all  
31 or any part of a redevelopment area, or an area in need of  
32 rehabilitation, which plan shall be sufficiently complete to indicate  
33 its relationship to definite municipal objectives as to appropriate  
34 land uses, public transportation and utilities, recreational and  
35 municipal facilities, and other public improvements; and to indicate  
36 proposed land uses and building requirements in the redevelopment  
37 area or area in need of rehabilitation, or both.

38 "Redevelopment project" means any work or undertaking  
39 pursuant to a redevelopment plan; such undertaking may include  
40 any buildings, land, including demolition, clearance or removal of  
41 buildings from land, equipment, facilities, or other real or personal  
42 properties which are necessary, convenient, or desirable  
43 appurtenances, such as but not limited to streets, sewers, utilities,  
44 parks, site preparation, landscaping, and administrative, community,  
45 health, recreational, educational, and welfare facilities, and zero-  
46 emission vehicle fueling and charging infrastructure.

47 "Rehabilitation" means an undertaking, by means of extensive  
48 repair, reconstruction or renovation of existing structures, with or

1 without the introduction of new construction or the enlargement of  
2 existing structures, in any area that has been determined to be in  
3 need of rehabilitation or redevelopment, to eliminate substandard  
4 structural or housing conditions and arrest the deterioration of that  
5 area.

6 "Rehabilitation area" or "area in need of rehabilitation" means  
7 any area determined to be in need of rehabilitation pursuant to  
8 section 14 of P.L.1992, c.79 (C.40A:12A-14).

9 "Zero-emission vehicle" means a vehicle certified as a zero  
10 emission vehicle pursuant to the California Air Resources Board  
11 zero emission vehicle standards for the applicable model year,  
12 including but not limited to, battery electric-powered vehicles and  
13 hydrogen fuel cell vehicles.

14 "Zero-emission vehicle fueling and charging infrastructure"  
15 means infrastructure to charge or fuel zero-emission vehicles,  
16 including but not limited to, public electric vehicle charging  
17 stations and public hydrogen fueling stations.

18 (cf: P.L.2021, c.168, s.1)

19  
20 21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to  
21 read as follows:

22 16. a. In order to carry out the housing purposes of this act, a  
23 municipality, county, or housing authority may exercise the  
24 following powers, in addition to those set forth in section 22 of  
25 P.L.1992, c.79 (C.40A:12A-22):

26 (1) Plan, construct, own, and operate housing projects; maintain,  
27 reconstruct, improve, alter, or repair any housing project or any part  
28 thereof; and for these purposes, receive and accept from the State or  
29 federal government, or any other source, funds or other financial  
30 assistance;

31 (2) Lease or rent any dwelling house, accommodations, lands,  
32 buildings, structures or facilities embraced in any housing project;  
33 and pursuant to the provisions of this act, establish and revise the  
34 rents and charges therefor;

35 (3) Acquire property pursuant to subsection i. of section 22 of  
36 P.L.1992, c.79 (C.40A:12A-22);

37 (4) Acquire, by condemnation, any land or building which is  
38 necessary for the housing project, pursuant to the provisions of the  
39 "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

40 (5) Issue bonds in accordance with the provisions of section 29  
41 of P.L.1992, c.79 (C.40A:12A-29);

42 (6) Cooperate with any other municipality, private, county, State  
43 or federal entity to provide funds to the municipality or other  
44 governmental entity and to homeowners, tenant associations,  
45 nonprofit or private developers to acquire, construct, rehabilitate or  
46 operate publicly assisted housing, and to provide rent subsidies for  
47 persons of **low and moderate income** low- and moderate-income,



1 including the elderly, pursuant to applicable State or federal  
2 programs;

3 (7) Encourage the use of demand side subsidy programs such as  
4 certificates and vouchers for low-income families and promote the  
5 use of project based certificates which provide subsidies for units in  
6 newly constructed and substantially rehabilitated structures, and of  
7 tenant based certificates which subsidize rent in existing units;

8 (8) Cooperate with any State or federal entity to secure  
9 mortgage assistance for any person of **low or moderate income**  
10 low- or moderate-income;

11 (9) Provide technical assistance and support to nonprofit  
12 organizations and private developers interested in constructing **low**  
13 **and moderate income** low- and moderate-income housing;

14 (10) If it owns and operates public housing units, provide to the  
15 tenants public safety services, including protection against  
16 substance use disorder, and social services, including counseling  
17 and financial management, in cooperation with other agencies;

18 (11) Provide emergency shelters, transitional housing and  
19 supporting services to homeless families and individuals.

20 b. All housing projects, programs and actions undertaken  
21 pursuant to this act shall accord with the housing element of the  
22 master plan of the municipality within which undertaken, and with  
23 any fair share housing plan **filed by** of the municipality **with the**  
24 **Council on Affordable Housing, based upon the council's criteria**  
25 **and guidelines**, adopted pursuant to the "Fair Housing Act,"  
26 P.L.1985, c.222 (C.52:27D-301 et al.) **], whether or not the**  
27 **municipality has petitioned for substantive certification of the**  
28 **plan**.

29 (cf: P.L.2017, c.131, s.176)

30

31 22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to  
32 read as follows:

33 10. A municipality's housing element shall be designed to  
34 achieve the goal of access to affordable housing to meet present and  
35 prospective housing needs, with particular attention to **low and**  
36 **moderate income** low- and moderate-income housing, and shall  
37 contain at least:

38 a. An inventory of the municipality's housing stock by age,  
39 condition, purchase or rental value, occupancy characteristics, and  
40 type, including the number of units affordable to **low and moderate**  
41 **income** low- and moderate-income households and substandard  
42 housing capable of being rehabilitated, and in conducting this  
43 inventory the municipality shall have access, on a confidential basis  
44 for the sole purpose of conducting the inventory, to all necessary  
45 property tax assessment records and information in the assessor's  
46 office, including but not limited to the property record cards;

1       b. A projection of the municipality's housing stock, including  
2 the probable future construction of **low and moderate income**  
3 low- and moderate-income housing, for the next ten years, taking  
4 into account, but not necessarily limited to, construction permits  
5 issued, approvals of applications for development and probable  
6 residential development of lands;

7       c. An analysis of the municipality's demographic  
8 characteristics, including but not necessarily limited to, household  
9 size, income level and age;

10      d. An analysis of the existing and probable future employment  
11 characteristics of the municipality;

12      e. A determination of the municipality's present and prospective  
13 fair share for **low and moderate income** low- and moderate-  
14 income housing and its capacity to accommodate its present and  
15 prospective housing needs, including its fair share for **low and**  
16 **moderate income** low- and moderate-income housing, as  
17 established pursuant to section 3 of P.L. , c. (C. ) (pending  
18 before the Legislature as this bill);

19      f. A consideration of the lands that are most appropriate for  
20 construction of **low and moderate income** low- and moderate-  
21 income housing and of the existing structures most appropriate for  
22 conversion to, or rehabilitation for, **low and moderate income**  
23 low- and moderate-income housing, including a consideration of  
24 lands of developers who have expressed a commitment to provide  
25 **low and moderate income** low- and moderate-income housing;  
26 and

27      g. An analysis of the extent to which municipal ordinances and  
28 other local factors advance or detract from the goal of preserving  
29 multigenerational family continuity as expressed in the  
30 recommendations of the Multigenerational Family Housing  
31 Continuity Commission, adopted pursuant to paragraph (1) of  
32 subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20).  
33 (cf: P.L.2021, c.273, s.2)

34  
35      23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended  
36 to read as follows:

37      1. Any municipality that receives an adjustment of its  
38 prospective need obligations for the fourth round or subsequent  
39 rounds based on a lack of vacant land shall as part of the process of  
40 adopting and implementing its housing element and fair share plan  
41 identify sufficient parcels likely to redevelop during the current  
42 round of obligations to address at least 25 percent of the prospective  
43 need obligation that has been adjusted, and adopt realistic zoning  
44 that allows for such adjusted obligation, or demonstrate why the  
45 municipality is unable to do so. When computing a municipal  
46 adjustment regarding available land resources as part of the  
47 determination of a municipality's fair share of affordable housing,

1 the **【Council on Affordable Housing】** municipality, in filing a  
2 housing element and fair share plan pursuant to subsection f. of  
3 section 3 of P.L. , c. (C. and C. ) (pending before the  
4 Legislature as this bill), shall exclude from designating , and the  
5 process set forth pursuant to sections 3 and 4 of P.L. , c. (C.  
6 and C. ) (pending before the Legislature as this bill) shall  
7 confirm was correctly excluded, as vacant land:

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

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

23 (c) any vacant contiguous parcels of land in private ownership  
24 of a size which would accommodate fewer than five housing units  
25 **【if current standards of the council were applied】** based on  
26 appropriate standards pertaining to housing density;

27 (d) historic and architecturally important sites listed on the State  
28 Register of Historic Places or National Register of Historic Places  
29 prior to the **【submission of the petition of substantive certification】**  
30 date of filing a housing element and fair share plan pursuant to  
31 section 3, or initiation of an action pursuant to section 4 of P.L. ,  
32 c. (C. or C. ) (pending before the Legislature as this  
33 bill);

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

36 (f) sites designated for active recreation that are designated for  
37 recreational purposes in the municipal master plan; and

38 (g) environmentally sensitive lands where development is  
39 prohibited by any State or federal agency.

40 No municipality shall be required to utilize for affordable  
41 housing purposes land that is excluded from being designated as  
42 vacant land. (cf: P.L.2008, c.46, s.39)

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

46 11. a. In adopting its housing element, the municipality may  
47 provide for its fair share of **【low and moderate income】** low- and  
48 moderate-income housing by means of any technique or

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

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

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

22 (3) Determination of measures that the municipality will take to  
23 assure that **low and moderate income** low- and moderate-income  
24 units remain affordable to **low and moderate income** low- and  
25 moderate-income households for an appropriate period of not less  
26 than **six years** the period required by the regulations adopted by  
27 the Department of Community Affairs pursuant to section 21 of  
28 P.L.1985, c.222 (C.52:27D-321);

29 (4) A plan for infrastructure expansion and rehabilitation and  
30 conversion or redevelopment of unused or underutilized real  
31 property, including existing structures, if necessary to assure the  
32 achievement of the municipality's fair share of **low and moderate**  
33 **income** low- and moderate-income housing;

34 (5) Donation or use of municipally owned land or land  
35 condemned by the municipality for purposes of providing **low and**  
36 **moderate income** low- and moderate-income housing;

37 (6) Tax abatements for purposes of providing **low and**  
38 **moderate income** low- and moderate-income housing;

39 (7) Utilization of funds obtained from any State or federal  
40 subsidy toward the construction of **low and moderate income**  
41 low- and moderate-income housing;

42 (8) Utilization of municipally generated funds toward the  
43 construction of **low and moderate income** low- and moderate-  
44 income housing; and

45 (9) The purchase of privately owned real property used for  
46 residential purposes at the value of all liens secured by the property,

1 excluding any tax liens, notwithstanding that the total amount of  
2 debt secured by liens exceeds the appraised value of the property,  
3 pursuant to regulations promulgated by the Commissioner of  
4 Community Affairs pursuant to subsection b. of section 41 of  
5 P.L.2000, c.126 (C.52:27D-311.2).

6 b. The municipality may provide for a phasing schedule for the  
7 achievement of its fair share of **low and moderate income** low-  
8 and moderate-income housing.

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

10 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall  
11 require a municipality to raise or expend municipal revenues in  
12 order to provide **low and moderate income** low- and moderate-  
13 income housing.

14 e. When a municipality's housing element includes the  
15 provision of rental housing units in a community residence for the  
16 developmentally disabled , for the mentally ill, or for persons with  
17 head injuries, as those terms are defined in section 2 of P.L.1977,  
18 c.448 (C.30:11B-2), or in transitional housing, which will be  
19 affordable to persons of **low and moderate income** low- and  
20 moderate-income, and for which adequate measures to retain such  
21 affordability pursuant to paragraph (3) of subsection a. of this  
22 section are included in the housing element, those housing units  
23 shall be fully credited **as permitted under the rules of the council**  
24 towards the fulfillment of the municipality's fair share of **low and**  
25 **moderate income** low- and moderate-income housing. A  
26 municipality shall not credit transitional housing units towards more  
27 than 10 percent of the municipality's fair share obligation.

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

36 g. A municipality **which** that has received **substantive**  
37 **certification from the council** approval of its housing element and  
38 fair share plan for the current round, and **which** that has actually  
39 effected the construction of the affordable housing units it is  
40 obligated to provide, may amend its affordable housing element or  
41 zoning ordinances without **the approval of the council** losing  
42 immunity from builder's remedy litigation.

43 h. Whenever affordable housing units are proposed to be  
44 provided through an inclusionary development, a municipality shall  
45 provide, through its zoning powers, incentives to the developer,  
46 which shall include increased densities and reduced costs **in**, in  
47 accordance with the regulations of the council and this subsection**in**.

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

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

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

1 construed to limit the ability of a municipality to receive a unit of  
2 credit for a low- or moderate-income housing unit that is subject to  
3 affordability controls that are scheduled to expire, but are extended  
4 in accordance with the Uniform Housing Affordability Controls  
5 promulgated by the New Jersey Housing and Mortgage Finance  
6 Agency, to the extent that this affordability control extension would  
7 otherwise generate this credit. As a part of a fair share plan and  
8 housing element adopted pursuant to subsection f. of section 3 of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill), a  
10 municipality shall:

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

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

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

30 (4) receive one unit of credit and one-half bonus credit for a unit  
31 of age-restricted housing, provided that a bonus credit for age-  
32 restricted housing shall not be applied to more than 15 percent of  
33 the units of age-restricted housing constructed in compliance with  
34 the Uniform Housing Affordability Controls promulgated by the  
35 New Jersey Housing and Mortgage Finance Agency in a  
36 municipality that count towards the municipality's affordable  
37 housing obligation for any single 10-year round of affordable  
38 housing obligations;

39 (5) receive one unit of credit and one-half bonus credit for each  
40 unit of low- or moderate-income family housing with at least three  
41 bedrooms above the minimum number required by the bedroom  
42 distribution in a given development;

43 (6) receive one unit of credit and one-half bonus credit for a unit  
44 of low- or moderate-income housing constructed on land that is or  
45 was previously developed and utilized for retail, office, or  
46 commercial space;

47 (7) receive one unit of credit and one-half bonus credit for each  
48 existing low- or moderate-income rental housing unit for which

1 affordability controls are extended for a new term of affordability,  
2 in compliance with the Uniform Housing Affordability Controls  
3 promulgated by the New Jersey Housing and Mortgage Finance  
4 Agency, and the municipality contributes funding towards the costs  
5 necessary for this preservation;

6 (8) receive one unit of credit and one-half bonus credit for each  
7 unit of low- or moderate-income housing in a 100 percent  
8 affordable housing project toward which the municipality either  
9 contributes property without which the project would not be  
10 feasible, or makes contributions from the municipal affordable  
11 housing trust fund that cover no less than 10 percent of the project  
12 cost; and

13 (9) receive one unit of credit and one-half bonus credit for each  
14 unit of very low-income housing for families above the 13 percent  
15 of units required to be reserved for very low-income housing  
16 pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).

17 l. A municipality may not satisfy more than 25 percent of the  
18 affordable housing units, exclusive of any bonus credits, to address  
19 its prospective need affordable housing obligation through the  
20 creation of age-restricted housing. A municipality shall satisfy a  
21 minimum of 50 percent of the actual affordable housing units,  
22 exclusive of any bonus credits, created to address its prospective  
23 need affordable housing obligation through the creation of housing  
24 available to families with children and otherwise in compliance  
25 with the requirements and controls established pursuant to section  
26 21 of P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy  
27 a minimum of 25 percent of the actual affordable housing units,  
28 exclusive of any bonus credits, to address its prospective need  
29 affordable housing obligation, through rental housing, including at  
30 least half of that number available to families with children. All  
31 units referred to in this section shall otherwise be in compliance  
32 with the requirements and controls established pursuant to section  
33 21 of P.L.1985, c.222 (C.52:27D-321).

34 m. All parties shall be entitled to rely upon regulations on  
35 municipal credits, adjustments, and compliance mechanisms  
36 adopted by the Council on Affordable Housing unless those  
37 regulations are contradicted by statute, including but not limited to  
38 P.L. c. (C. ) (pending before the Legislature as this bill), or  
39 binding court decisions.

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

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

44 6. **【The council】** A municipality may take such measures as are  
45 necessary to assure compliance with the adaptability requirements  
46 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),  
47 including the inspection of those units which are newly constructed  
48 and receive housing credit as provided under section 1 of P.L.2005,



1 c.350 (C.52:27D-311a) for adaptability, as part of the monitoring  
 2 which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).  
 3 No housing unit subject to the provisions of section 5 of P.L.2005,  
 4 c.350 (C.52:27D-123.15) and to the provisions of the barrier free  
 5 subcode adopted by the Commissioner of Community Affairs  
 6 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
 7 c.217 (C.52:27D-119 et seq.) shall be eligible for inclusion in a  
 8 municipal fair share plan unless the unit complies with the  
 9 requirements set forth thereunder. If any units for which credit was  
 10 granted in accordance with the provisions of P.L.2005, c.350  
 11 (C.52:27D-311a et al.) are found not to conform to the requirements  
 12 of P.L.2005, c.350 (C.52:27D-311a et al.), **【the council may】** any  
 13 party representing the interests of households with disabilities may  
 14 seek a modification to the approval of the municipal fair share plan  
 15 to require the municipality to amend its fair share plan within 90  
 16 days of 【receiving notice from the council】 such a finding, to  
 17 address its fair share obligation pursuant to P.L.1985, c.222  
 18 (C.52:27D-301 et al.). In the event that the municipality fails to  
 19 amend its fair share plan within 90 days of **【receiving such notice,**  
 20 **the council may revoke substantive certification】** such a finding, the  
 21 municipality shall lose immunity to a builder's remedy for the  
 22 portion of its obligation that is found not to conform to the  
 23 requirements of P.L.2005, c.350 (C.52:27D-311a et al.).  
 24 (cf: P.L.2005, c.350, s.6)

25  
 26 26. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to  
 27 read as follows:

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

1 of the monies available in the fund for the payment of any  
2 necessary administrative costs related to the administration of the  
3 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any  
4 costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et  
5 al.).

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,**  
11 obtained compliance certification pursuant to section 3 of P.L. , c.  
12 (C. ) (pending before the Legislature as this bill), or in  
13 municipalities receiving State aid pursuant to P.L.1978, c.14  
14 (C.52:27D-178 et seq.) **],** in municipalities subject to a builder's  
15 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328),  
16 or in receiving municipalities in cases where the council has  
17 approved a regional contribution agreement and a project plan  
18 developed by the receiving municipality**].**

19 Of those monies deposited into the "New Jersey Affordable  
20 Housing Trust Fund" that are derived from municipal development  
21 fee trust funds, or from available collections of Statewide non-  
22 residential development fees, a priority for funding shall be  
23 established for projects in municipalities that have **petitioned the**  
24 **council for substantive** received compliance certification.

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

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

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

42 d. Amounts deposited in the "New Jersey Affordable Housing  
43 Trust Fund" shall be targeted to regions based on the region's  
44 percentage of the State's **[low and moderate income]** low- and  
45 moderate-income housing need as determined **[by the council]**  
46 pursuant to the low- and moderate-income household growth over  
47 the prior 10 years, as calculated pursuant to section 6 of P.L. , c.

1 (C. \_\_\_\_\_) (pending before the Legislature as this bill). Amounts in  
2 the fund shall be applied for the following purposes in designated  
3 neighborhoods:

4 (1) Rehabilitation of substandard housing units occupied or to  
5 be occupied by **low and moderate income** low- and moderate-  
6 income households;

7 (2) Creation of accessory **apartments** dwelling units to be  
8 occupied by **low and moderate income** low- and moderate-  
9 income households;

10 (3) Conversion of non-residential space to residential purposes;  
11 provided a substantial percentage of the resulting housing units are  
12 to be occupied by **low and moderate income** low- and moderate-  
13 income households;

14 (4) Acquisition of real property, demolition and removal of  
15 buildings, or construction of new housing that will be occupied by  
16 **low and moderate income** low- and moderate-income households,  
17 or any combination thereof;

18 (5) Grants of assistance to eligible municipalities for costs of  
19 necessary studies, surveys, plans, and permits; engineering,  
20 architectural, and other technical services; costs of land acquisition  
21 and any buildings thereon; and costs of site preparation, demolition,  
22 and infrastructure development for projects undertaken pursuant to  
23 an approved regional contribution agreement;

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

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

43 e. Any grant or loan agreement entered into pursuant to this  
44 section shall incorporate contractual guarantees and procedures by  
45 which the division **will** shall ensure that any unit of housing  
46 provided for **low and moderate income** low- and moderate-  
47 income households shall continue to be occupied by **low and**

1 moderate income】 low- and moderate-income households for 【at  
2 least 20 years】 a period that conforms to the requirements of  
3 subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321)  
4 following the award of the loan or grant, except that the division  
5 may approve a guarantee for a period of less 【than 20 years】  
6 duration where necessary to ensure project feasibility.

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

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

38 h. The department and the State Treasurer shall submit the  
39 "New Jersey Affordable Housing Trust Fund" for an audit annually  
40 by the State Auditor or State Comptroller, at the discretion of the  
41 Treasurer. In addition, the department shall prepare an annual  
42 report for each fiscal year, and submit it by November 30th of each  
43 year to the Governor and the Legislature, and the Joint Committee  
44 on Housing Affordability, or its successor, and post the information  
45 to its 【web site】 Internet website, of all activity of the fund,  
46 including details of the grants and loans by number of units, number  
47 and income ranges of recipients of grants or loans, location of the

1 housing renovated or constructed using monies from the fund, the  
2 number of units upon which affordability controls were placed, and  
3 the length of those controls. The report also shall include details  
4 pertaining to those monies allocated from the fund for use by the  
5 State rental assistance program pursuant to section 3 of P.L.2004,  
6 c.140 (C.52:27D-287.3) and subsection g. of this section.

7 i. The commissioner may award or grant the amount of any  
8 appropriation deposited in the "New Jersey Affordable Housing  
9 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-  
10 320.1) to municipalities pursuant to the provisions of section 39 of  
11 P.L.2009, c.90 (C.40:55D-8.8).

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

13  
14 27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to  
15 read as follows:

16 21. The agency shall establish affordable housing programs to  
17 assist municipalities in meeting the obligation of developing  
18 communities to provide **low and moderate income** low- and  
19 moderate-income housing.

20 a. Of the bond authority allocated to it under section 24 of  
21 P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a  
22 reasonable period of time established by its board, no less than  
23 **25%** 25 percent to be used in conjunction with housing to be  
24 constructed or rehabilitated with assistance under **this act**  
25 P.L.1985, c.222 (C.52:27D-301 et al.).

26 b. The agency shall to the extent of available funds, award  
27 assistance to affordable housing programs located in municipalities  
28 whose housing elements have **received substantive** obtained  
29 compliance certification **from the council** , or which have been  
30 subject to a builder's remedy **or which are in furtherance of a**  
31 **regional contribution agreement approved by the council**. During  
32 **the first 12 months from the effective date of this act and for** any  
33 **additional** period which the **council** agency may approve, the  
34 agency may assist affordable housing programs **which are not**  
35 **located in municipalities whose housing elements have been granted**  
36 **substantive certification or which are not in furtherance of a**  
37 **regional contribution agreement** that have a pending request for  
38 compliance certification; provided the affordable housing program  
39 will meet all or in part a municipal **low and moderate income**  
40 low- and moderate-income housing obligation.

41 c. Assistance provided pursuant to this section may take the  
42 form of grants or awards to municipalities, prospective home  
43 purchasers, housing sponsors as defined in P.L.1983, c.530  
44 (C.55:14K-1 et seq.), or as contributions to the issuance of  
45 mortgage revenue bonds or multi-family housing development  
46 bonds which have the effect of achieving the goal of producing  
47 affordable housing.

- 1 d. Affordable housing programs which may be financed or  
2 assisted under this provision may include, but are not limited to:
- 3 (1) Assistance for home purchase and improvement including  
4 interest rate assistance, down payment and closing cost assistance,  
5 and direct grants for principal reduction;
- 6 (2) Rental programs including loans or grants for developments  
7 containing **low and moderate income** low- and moderate-income  
8 housing, moderate rehabilitation of existing rental housing,  
9 congregate care and retirement facilities;
- 10 (3) Financial assistance for the conversion of nonresidential  
11 space to residences;
- 12 (4) Other housing programs for **low and moderate income**  
13 low- and moderate-income housing, including infrastructure  
14 projects directly facilitating the construction of **low and moderate**  
15 **income** low- and moderate-income housing; and
- 16 (5) Grants or loans to municipalities, housing sponsors and  
17 community organizations to encourage development of innovative  
18 approaches to affordable housing, including:
- 19 (a) Such advisory, consultative, training and educational  
20 services as will assist in the planning, construction, rehabilitation  
21 and operation of housing; and
- 22 (b) Encouraging research in and demonstration projects to  
23 develop new and better techniques and methods for increasing the  
24 supply, types and financing of housing and housing projects in the  
25 State.
- 26 e. The agency shall establish procedures and guidelines  
27 governing the qualifications of applicants, the application  
28 procedures and the criteria for awarding grants and loans for  
29 affordable housing programs and the standards for establishing the  
30 amount, terms and conditions of each grant or loan.
- 31 f. **In consultation with the council, the** The agency , in  
32 consultation with the department, shall establish requirements and  
33 controls to **insure** ensure the maintenance of housing assisted  
34 under **this act** P.L.1985, c.222 (C.52:27D-301 et al.) as affordable  
35 to **low and moderate income** low- and moderate-income  
36 households for a period of not less than 40 years for rental units and  
37 20 years for for-sale units; provided that the agency **may establish**  
38 a shorter period upon a determination that the economic feasibility  
39 of the program is jeopardized by the requirement and the public  
40 purpose served by the program outweighs the shorter period **may**  
41 update or amend any controls previously adopted by the agency, in  
42 consultation with the Council on Affordable Housing, prior to the  
43 effective date of P.L. , c. (C. ) (pending before the  
44 Legislature as this bill), provided that the requirements and controls  
45 shall, at a minimum, be consistent with the controls as in effect  
46 immediately prior to the effective date of P.L. , c. (C. )  
47 (pending before the Legislature as this bill), including, but not

1 limited to, any requirements concerning bedroom distributions,  
2 affordability averages, and affirmative marketing. The controls  
3 may include, among others, requirements for recapture of assistance  
4 provided pursuant to **【this act】** P.L.1985, c.222 (C.52:27D-301 et  
5 al.) or restrictions on return on equity in the event of failure to meet  
6 the requirements of the program. With respect to rental housing  
7 financed by the agency pursuant to **【this act】** P.L.1985, c.222  
8 (C.52:27D-301 et al.) or otherwise which promotes the provision or  
9 maintenance of **【low and moderate income】** low- and moderate-  
10 income housing, the agency may waive restrictions on return on  
11 equity required pursuant to P.L.1983, c.530 (C.55:14K-1 et seq.)  
12 which is gained through the sale of the property or of any interest in  
13 the property or sale of any interest in the housing sponsor. The  
14 agency shall promulgate updated regulations no later than nine  
15 months following the effective date of P.L. , c. (C. )  
16 (pending before the Legislature as this bill). All parties may  
17 continue to rely on regulations previously adopted by the agency  
18 pursuant to the authority provided by this section as in effect  
19 immediately prior to the effective date of P.L. , c. (C. )  
20 (pending before the Legislature as this bill) until new rules and  
21 regulations are adopted by the agency. Notwithstanding the  
22 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
23 (C.52:14B-1 et seq.) to the contrary, the agency, after consultation  
24 with department, may adopt, immediately, upon filing with the  
25 Office of Administrative Law, said regulations, which shall be  
26 effective for a period not to exceed one year from the date of the  
27 filing. The agency shall thereafter amend, adopt, or readopt the  
28 regulations in accordance with the requirements of P.L.1968, c.410  
29 (C.52:14B-1 et seq.).

30 g. The agency may establish affordable housing programs  
31 through the use or establishment of subsidiary corporations or  
32 development corporations as provided in P.L.1983, c.530  
33 (C.55:14K-1 et seq.). The subsidiary corporations or development  
34 corporations shall be eligible to receive funds provided under **【this**  
35 **act】** P.L.1985, c.222 (C.52:27D-301 et al.) for any permitted  
36 purpose.

37 h. The agency shall provide assistance, through its bonding  
38 powers or in any other manner within its powers, to the grant and  
39 loan program established pursuant to section 20 of P.L.1985, c.222  
40 (C.52:27D-320).

41 i. (1) The department shall promulgate processes and standards  
42 for the certification of administrative agents and municipal housing  
43 liaisons in the State, as well as standards for measuring  
44 performance of and enforcing compliance by administrative agents  
45 and municipal housing liaisons in implementing the affordable  
46 housing requirements and controls established pursuant to  
47 subsection f. of this section.

(2) Administrative agents shall be responsible for implementing the requirements and controls set by the regulations promulgated pursuant to subsection (f) of this section. The department may bring via summary proceeding any findings of violation of the responsibilities set forth in this section before a county level housing judge, to docket the violation and issue corrective orders and levy fines.

(3) Municipal housing liaisons shall be responsible for monitoring administrative agents within their municipality's jurisdiction to ensure compliance with the requirements and controls set by regulation under subsection f. of this section.

(4) Municipal housing liaisons, the department, and interested parties may bring a challenge before a county level housing judge to determine whether properties subject to the regulations set forth by this section are out of compliance with the regulations. A finding of deliberate noncompliance may result in the department removing the administrative agent's certification.

(5) A County level housing judge may issue fines and order corrective actions for violations and may consider patterns of violations in determining whether a municipality is meeting its obligations under the compliance certification established by section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

(6) Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the department may adopt, immediately, upon filing with the Office of Administrative Law, regulations to implement the provisions of this subsection, which shall be effective for a period not to exceed one year from the date of the filing. The department shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

(cf: P.L.2004, c.140, s.5)

28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended to read as follows:

19. Notwithstanding any rules of the New Jersey Housing and Mortgage Finance Agency to the contrary, the allocation of **low income** low-income tax credits shall be made by the agency to the full extent such credits are permitted to be allocated under federal law, including allocations of **[4]** four percent or **[9]** nine percent federal **low income** low-income tax credits, and including allocations allowable for partial credits. The affordable portion of any mixed income or mixed use development that is part of a fair share housing plan **[approved by the council, or]** that has obtained compliance certification, including a court-approved judgment of repose or compliance, including, but not limited to, a development that has received a density bonus, shall be permitted to receive



1 allocations of **low income** low-income tax credits, provided that  
2 the applicant can conclusively demonstrate that the market rate  
3 residential or commercial units are unable to internally subsidize  
4 the affordable units, and the affordable units are developed  
5 contemporaneously with the commercial or market rate residential  
6 units.

7 (cf: P.L.2008, c.46, s.19)

8  
9 29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to  
10 read as follows:

11 7. **The council shall coordinate and review the housing**  
12 **elements as filed pursuant to section 11 of P.L.1985, c.222**  
13 **(C.52:27D-311), and the housing activities under section 20 of**  
14 **P.L.1985, c.222 (C.52:27D-320), at least once every three years, to**  
15 **Housing elements and fair share plans adopted pursuant to section 3**  
16 **of P.L. , c. (C. ) (pending before the Legislature as this bill)**  
17 **shall ensure that at least 13 percent of the housing units made**  
18 **available for occupancy by low-income and moderate income**  
19 **moderate-income households to address a municipality's**  
20 **prospective need obligation** will be reserved for occupancy by very  
21 low income households, as that term is defined pursuant to section 4  
22 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units  
23 made available for families with children. The 13 percent shall  
24 count towards the minimum 50 percent of the housing units  
25 required to be made available for occupancy by low-income  
26 households to address a municipality's prospective need obligation.  
27 Nothing in this section shall require that a specific percentage of the  
28 units in any specific project be reserved as very **low income** low-  
29 income housing; provided, however, that a municipality shall not  
30 receive bonus credits for the provision of housing units reserved for  
31 occupancy by very **low income** low-income households unless  
32 the 13 percent target has been exceeded within that municipality **.**  
33 The council shall coordinate all efforts to meet the goal of this  
34 section in a manner that will result in a balanced number of housing  
35 units being reserved for very low income households throughout all  
36 housing regions. For the purposes of this section, housing activities  
37 under section 20 of P.L.1985, c.222 (C.52:27D-320) shall include  
38 any project-based assistance provided from the "New Jersey  
39 Affordable Housing Trust Fund" pursuant to P.L.2004, c.140  
40 (C.52:27D-287.1 et al.), regardless of whether the housing activity  
41 is counted toward the municipal obligation under the "Fair Housing  
42 Act," P.L.1985, c.222 (C.52:27D-301 et al.) **], and that the agency**  
43 **shall update the regulations adopted pursuant to section 21 of**  
44 **P.L.1985, c.222 (C.52:27D-321) to replace any requirements for**  
45 **very low-income housing inconsistent with the percentages and**  
46 **definitions established pursuant to P.L. , c. (C. ) (pending**

1 before the Legislature as this bill) with the percentage and  
2 definition specified in this section.

3 (cf: P.L.2008, c.46, s.7)

4  
5 30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to  
6 read as follows:

7 8. a. **【The council may authorize a】** (1) A municipality that is  
8 in the process of seeking compliance certification, has **【petitioned**  
9 **for substantive】** obtained compliance certification, or that has been  
10 so authorized by a court of competent jurisdiction, and which has  
11 adopted a municipal development fee ordinance shall be authorized  
12 to impose and collect development fees from developers of  
13 residential property, in accordance with rules promulgated by the  
14 **【council】** department. Each amount collected shall be deposited  
15 and shall be accounted for separately, by payer and date of deposit.

16 (2) No later than 90 days following the enactment of P.L. , c.  
17 (C. ) (pending before the Legislature as this bill), any  
18 municipality that is or has been authorized to impose and collect  
19 development fees from developers of residential property, or  
20 payments in lieu of constructing affordable housing, shall provide  
21 the Department of Community Affairs with a detailed accounting of  
22 all such fees that have been collected and expended since the  
23 inception of the municipal authorization to collect the fees.

24 (3) Beginning with the year after the enactment of P.L. , c.  
25 (C. ) (pending before the Legislature as this bill), by January  
26 15, every municipality that is or has been authorized to impose and  
27 collect development fees from developers of residential property, or  
28 payments in lieu of constructing affordable housing, shall provide  
29 the Department of Community Affairs with a detailed accounting of  
30 all such fees that have been collected and expended the previous  
31 year.

32 (4) A municipality may not spend or commit to spend any  
33 affordable housing development fees, including Statewide non-  
34 residential fees collected and deposited into the municipal  
35 affordable housing trust fund, without first obtaining the 【council's】  
36 approval of the expenditure as part of its compliance certification or  
37 by the department. A municipality shall include in its housing  
38 element and fair share plan adopted pursuant to section 3 of P.L. ,  
39 c. (C. ) (pending before the Legislature as this bill) a  
40 spending plan for current funds in the municipal affordable housing  
41 trust fund and projected funds through the current round. Review  
42 of that spending plan for consistency with applicable law and the  
43 municipality's Housing Element and Fair Share Plan shall be part of  
44 the process specified in section 3 of P.L. , c. (C. ) (pending  
45 before the Legislature as this bill). The 【council】 department shall  
46 promulgate updated regulations no later than nine months following  
47 the effective date of P.L. , c. (C. ) (pending before the

1 Legislature as this bill) regarding the establishment, administration,  
2 reporting, and enforcement of the expenditure of affordable housing  
3 development fees by municipalities, which shall include  
4 establishing an expedited process for approving spending plan  
5 expenditures for emergent opportunities to create affordable  
6 housing after a municipality has obtained compliance certification  
7 and procedures for monitoring the collection and expenditure of  
8 trust funds. The department shall develop and publish on the  
9 department's Internet website a detailed summary of the municipal  
10 affordable housing trust fund expenditures for each municipality,  
11 and shall update each summary on an annual basis. As part of the  
12 regulations adopted pursuant to this section and section 10 of  
13 P.L.2008, c.46 (C.52:27D-329.4), the department shall adopt  
14 reporting requirements applicable to municipal affordable housing  
15 trust funds to facilitate fulfillment of the department's obligations  
16 pursuant to this section. Municipalities may continue to rely on  
17 regulations on development fees and spending plans previously  
18 adopted by the council until new rules and regulations are adopted  
19 by the department. The [council] department shall have  
20 [exclusive] jurisdiction regarding the enforcement of these  
21 regulations, provided that any municipality which is not in  
22 compliance with the regulations adopted by the [council]  
23 department may be subject to forfeiture of any or all funds  
24 remaining within its municipal trust fund. Any funds so forfeited  
25 shall be deposited into the "New Jersey Affordable Housing Trust  
26 Fund" established pursuant to section 20 of P.L.1985, c.222  
27 (C.52:27D-320).

28 b. A municipality shall deposit all fees collected, whether or  
29 not such collections were derived from fees imposed upon non-  
30 residential or residential construction into a trust fund dedicated to  
31 those purposes as required under this section, and such additional  
32 purposes as may be approved by the [council] department.

33 c. (1) A municipality may only spend development fees for an  
34 activity approved by the [council] department to address the  
35 municipal fair share obligation, or approved as part of compliance  
36 certification.

37 (2) Municipal development trust funds shall not be expended  
38 unless the municipality has immunity from builder's remedy  
39 litigation at the time of the expenditure, and shall not be expended:

40 (a) to reimburse municipalities for activities which occurred  
41 prior to the authorization of a municipality to collect development  
42 fees; or

43 (b) (i) on administrative costs, attorney fees or court costs to  
44 obtain a judgment of repose; (ii) to contest a determination of the  
45 municipality's fair share obligation; or (iii) on costs of any  
46 challenger in connection to a challenge to the municipality's  
47 obligation, housing element, or fair share plan.

1 (3) A municipality shall set aside a portion of its development  
2 fee trust fund for the purpose of providing affordability assistance  
3 to **low and moderate income** low- and moderate-income  
4 households in affordable units included in a municipal fair share  
5 plan, in accordance with rules of the **council** department.

6 (a) Affordability assistance programs may include down  
7 payment assistance, security deposit assistance, low interest loans,  
8 common maintenance expenses for units located in condominiums,  
9 rental assistance, and any other program authorized by the  
10 **council** department.

11 (b) Affordability assistance to households earning 30 percent or  
12 less of median income may include buying down the cost of **low**  
13 **income** low-income units in a municipal fair share plan to make  
14 them affordable to households earning 30 percent or less of median  
15 income. The use of development fees in this manner shall not  
16 entitle a municipality to bonus credits except as may **be provided**  
17 **by the rules of the council** otherwise be allowed by applicable  
18 precedent.

19 (4) A municipality may contract with a private or public entity  
20 to administer any part of its housing element and fair share plan,  
21 including the requirement for affordability assistance, or any  
22 program or activity for which the municipality expends  
23 development fee proceeds, in accordance with rules of the  
24 **council** department.

25 (5) Not more than 20 percent of the revenues collected from  
26 development fees shall be expended on administration, in  
27 accordance with rules of the **council** department. Such  
28 administration may include expending a portion of its affordable  
29 housing trust fund on actions and efforts reasonably related to the  
30 determination of its fair share obligation and the development of its  
31 housing element and fair share plan pursuant to paragraphs (1) and  
32 (2) of subsection f. of section 3 of P.L. , c. (C. ) (pending  
33 before the Legislature as this bill), and for expenses that are  
34 reasonably necessary for compliance with the processes of the  
35 program, including but not limited to, the costs to the municipality  
36 of resolving a challenge under the program.

37 d. The **council** department shall establish a time by which all  
38 development fees collected within a calendar year shall be  
39 expended; provided, however, that all fees shall be committed for  
40 expenditure within four years from the date of collection. A  
41 municipality that fails to commit to expend the balance required in  
42 the development fee trust fund by the time set forth in this section  
43 shall be required by the council to transfer the remaining unspent  
44 balance at the end of the four-year period to the "New Jersey  
45 Affordable Housing Trust Fund," established pursuant to section 20  
46 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46

1 (C.52:27D-329.1 et al.), to be used in the housing region of the  
2 transferring municipality for the authorized purposes of that fund.

3 e. Notwithstanding any provision of this section, or regulations  
4 of the **【council】 department**, a municipality shall not collect a  
5 development fee from a developer whenever that developer is  
6 providing for the construction of affordable units, either on-site or  
7 elsewhere within the municipality.

8 This section shall not apply to the collection of a Statewide  
9 development fee imposed upon non-residential development  
10 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
11 **【et seq.】** through C.40:55D-8.7) by the State Treasurer, when such  
12 collection is not authorized to be retained by a municipality.

13 (cf: P.L.2008, c.46, s.8)

14  
15 31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended  
16 to read as follows:

17 10. a. The **【council】 department** shall maintain on its Internet  
18 website, and also publish on **【a regular】 an annual** basis, an up-to-  
19 date municipal status report **【concerning the petitions for**  
20 substantive certification of each municipality that has submitted to  
21 the council's jurisdiction, and shall collect and publish **】 based on its**  
22 collection and publication of information concerning the number  
23 affordable of housing units actually constructed, construction starts,  
24 certificates of occupancy granted, **【rental units maintained, and the**  
25 number of housing units transferred or sold within the previous 12-  
26 month period **】 the start and expiration dates of deed restrictions,**  
27 and residential and non-residential development fees collected and  
28 expended, including purposes and amounts of such expenditures,  
29 along with the current balance in the municipality's affordable  
30 housing trust funds. With respect to units actually constructed, the  
31 information shall specify the characteristics of the housing,  
32 including housing type, tenure, affordability level, number of  
33 bedrooms, date and expiration of affordability controls, and whether  
34 occupancy is reserved for families, senior citizens, or other special  
35 populations. **【No later than 60 months after the effective date of**  
36 P.L.2008, c.46 (C.52:27D-329.1 et al.), the council shall require  
37 each municipality, as a condition of substantive certification, to  
38 provide, in a standardized electronic media format as determined by  
39 the council, the details of the fair share plan as adopted by the  
40 municipality and approved by the council. The council shall  
41 publish and maintain such approved plans on its website. **】**

42 b. (1) No later than 90 days following the enactment of P.L. ,  
43 c. (C. ) (pending before the Legislature as this bill), each  
44 municipality shall provide the department with the information  
45 necessary to comply with this section.

46 (2) Beginning with the year after the enactment of P.L. , c.  
47 (C. ) (pending before the Legislature as this bill), by January

1 15, each municipality shall provide the department with the  
2 information necessary to comply with this section.

3 c. The department may adopt, pursuant to the "Administrative  
4 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
5 regulations as may be necessary to effectuate the provisions of this  
6 section, including rules and regulations to ensure that municipalities  
7 and developers report any information as may be necessary for the  
8 department to fulfill its obligations pursuant to this section.

9 (cf: P.L.2008, c.46, s.10)

10  
11 32. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended  
12 to read as follows:

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

32 b. Subject to the provisions of subsection d. of this section, a  
33 developer of a project consisting of newly-constructed residential  
34 units being financed in whole or in part with State funds, including,  
35 but not limited to, transit villages designated by the Department of  
36 Transportation and units constructed on State-owned property, shall  
37 be required to reserve at least 20 percent of the residential units  
38 constructed for occupancy by **【low or moderate income】** low- or  
39 moderate-income households, as those terms are defined in section  
40 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as  
41 required under the rules of the **【council**, unless the municipality in  
42 which the property is located has received substantive certification  
43 from the council and such a reservation is not required under the  
44 approved affordable housing plan, or the municipality has been  
45 given a judgment of repose or a judgment of compliance by the  
46 court, and such a reservation is not required under the approved  
47 affordable housing plan**】** agency.

1 c. **[(1)** The Legislature recognizes that regional planning  
2 entities are appropriately positioned to take a broader role in the  
3 planning and provision of affordable housing based on regional  
4 planning considerations. In recognition of the value of sound  
5 regional planning, including the desire to foster economic growth,  
6 create a variety and choice of housing near public transportation,  
7 protect critical environmental resources, including farmland and  
8 open space preservation, and maximize the use of existing  
9 infrastructure, there is created a new program to foster regional  
10 planning entities.

11 (2) The regional planning entities identified in subsection a. of  
12 this section shall identify and coordinate regional affordable  
13 housing opportunities in cooperation with municipalities in areas  
14 with convenient access to infrastructure, employment opportunities,  
15 and public transportation. Coordination of affordable housing  
16 opportunities may include methods to regionally provide housing in  
17 line with regional concerns, such as transit needs or opportunities,  
18 environmental concerns, or such other factors as the council may  
19 permit; provided, however, that such provision by such a regional  
20 entity may not result in more than a 50 percent change in the fair  
21 share obligation of any municipality; provided that this limitation  
22 shall not apply to affordable housing units directly attributable to  
23 development by the New Jersey Sports and Exposition Authority  
24 within the New Jersey Meadowlands District.

25 (3) In addition to the entities identified in subsection a. of this  
26 section, the Casino Reinvestment Development Authority, in  
27 conjunction with the Atlantic County Planning Board, shall identify  
28 and coordinate regional affordable housing opportunities directly  
29 attributable to Atlantic City casino development, which may be  
30 provided anywhere within Atlantic County, subject to the  
31 restrictions of paragraph (4) of this subsection.

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

45 d. Notwithstanding the provisions of subsection b. of this  
46 section, or any other law or regulation to the contrary, for purposes  
47 of mixed use projects or qualified residential projects in which a  
48 business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-

207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90 (C.34:1B-209.3), or both, an "eligible municipality," as defined in section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of deciding the percentage of newly-constructed residential units within the project, up to 20 percent of the total, required to be reserved for occupancy by **low or moderate income** low- or moderate-income households. For a mixed use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of P.L.2011, c.89, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for **low or moderate income** low- or moderate-income households in accordance with the terms and conditions of such approval.  
(cf: P.L.2011, c.89, s.5)

33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to read as follows:

3. As used in this act:

"Affordable Home Ownership Opportunities Bonds" means any bonds of the New Jersey Housing and Mortgage Finance Agency that provide funds to facilitate the provisions of this act.

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Annual income" means total income, from all sources, during the last full calendar year preceding the filing of an application for a loan pursuant to this act.

"Bonds" means bonds, notes or any other form of evidence of indebtedness of the agency, bearing either a fixed rate or a variable rate of interest, issued by the agency.

"Eligible project" means a project for the creation of low or moderate income housing which meets the standards of eligibility for loans under the program created by this act.

"Eligible purchaser" means a purchaser of a dwelling unit in an eligible project to whom a loan may be made under the program pursuant to section 5 of this act.

"Fund" means the Affordable Home Ownership Opportunities Fund established by section 5 of this act.

"Housing region" means a housing region as defined in subsection b. of section 4 of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-304) and determined **by the Council on Affordable Housing pursuant to section 7 of that act, P.L.1985, c.222 (C.52:27D-307)** pursuant to subsection b. of section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).

"Local enforcement authority" means any officer or agency of local government responsible for the implementation or enforcement of land-use and building regulations established by or pursuant to the "State Uniform Construction Code Act," P.L.1975,



1 c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law,"  
2 P.L.1975, c.291 (C.40:55D-1 et seq.).

3 "Low income" means a gross annual household income equal to  
4 50% or less of the median gross annual household income for  
5 households of the same size within the relevant housing region.

6 "Moderate income" means a gross annual household income  
7 equal to not more than 80%, but more than 50% of the median gross  
8 annual household income for households of the same size within the  
9 relevant housing region.

10 "Program" means the Affordable Home Ownership Opportunities  
11 Program created by this act.

12 "Qualified nonprofit organization" means any corporation or  
13 association of persons organized under Title 15A of the New Jersey  
14 Statutes, having for its principal purpose, or as a purpose ancillary  
15 to its principal purpose, the improvement of realistic opportunities  
16 for low income and moderate income housing, as defined pursuant  
17 to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.),  
18 being within the description of section 501(c)(3) of the United  
19 States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been  
20 determined by the agency to be a bona fide organization not under  
21 the effective control of any for-profit organization or governmental  
22 entity, and appearing capable, by virtue of past activities,  
23 qualifications of staff or board, or other features, of furthering the  
24 purposes of this act.

25 "Substantial rehabilitation" means repair, reconstruction or  
26 renovation which (1) costs in excess of 60% of the fair market value  
27 of a rehabilitated dwelling after such repair, reconstruction or  
28 renovation, or (2) renders a previously vacant and uninhabitable  
29 dwelling safe, sanitary and decent for residential purposes, or (3)  
30 converts to safe, sanitary and decent residential use a structure  
31 previously in non-residential use.

32 (cf: P.L.1995, c.343, s.3)

33

34 34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to  
35 read as follows:

36 7. A project of new construction or substantial rehabilitation by  
37 a nonprofit organization shall be eligible for a loan under this act if  
38 (1) the homes to be constructed or substantially rehabilitated under  
39 the project are located within an identifiable neighborhood in which  
40 median family income does not exceed the current standard of  
41 "moderate income" pursuant to the contemporaneous standards **【**of  
42 the Council on Affordable Housing**】** established pursuant to the  
43 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the  
44 homes to be constructed or substantially rehabilitated under the  
45 project are sufficient in number and located on the same or  
46 contiguous parcels of land or within such proximity to each other as  
47 to render the cost per unit of housing practicable for acquisition by  
48 lower-income purchasers; and (3) each home constructed or

1 substantially rehabilitated within the project will conform to all  
2 requirements of the State Uniform Construction Code, except as to  
3 the waiver of any fee or other requirement pursuant to subsection b.  
4 of section 9 of this act.

5 (cf: P.L.1995, c.343, s.7)

6  
7 35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to  
8 read as follows:

9 3. As used in this act:

10 "Agency" means the New Jersey Housing and Mortgage Finance  
11 Agency.

12 "Annual income" means total income, from all sources, during  
13 the last full calendar year preceding the filing of an application for a  
14 loan pursuant to this act.

15 "Bonds" means bonds, notes or any other form of evidence of  
16 indebtedness of the agency, bearing either a fixed rate or a variable  
17 rate of interest, issued by the agency.

18 "Eligible project" means a project undertaken by a qualified  
19 housing sponsor to create housing for shared occupancy by seniors  
20 or persons with disability of low or moderate income, whether for  
21 home ownership or rental, which meets the standards of eligibility  
22 for loans under the program created by section 4 of P.L.1998, c.128  
23 (C.55:14K-75).

24 "Eligible purchaser" means a purchaser of a dwelling unit in an  
25 eligible project who fulfills the definition of a senior or person with  
26 disability pursuant to this section, is of low or moderate income and  
27 to whom a loan may be made under the program pursuant to section  
28 4 of P.L.1998, c.128 (C.55:14K-75).

29 "Fund" means the Senior and Disabled Cooperative Housing  
30 Incentive Fund established by section 6 of P.L.1998, c.128  
31 (C.55:14K-77).

32 "Housing region" means a housing region as defined in  
33 subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and  
34 determined **【by the Council on Affordable Housing pursuant to**  
35 **section 7 of P.L.1985, c.222 (C.52:27D-307)】** pursuant to  
36 subsection b. of section 6 of P.L. , c. (C. ) (pending before  
37 the Legislature as this bill).

38 "Low income" means a gross annual household income equal to  
39 50% or less of the median gross annual household income for  
40 households of the same size within the relevant housing region.

41 "Moderate income" means a gross annual household income  
42 equal to not more than 80%, but more than 50% of the median gross  
43 annual household income for households of the same size within the  
44 relevant housing region.

45 "Person with disability" means any person who is 18 years of age  
46 or older and who fulfills the definition of having a "disability"  
47 pursuant to section 3 of the "Americans with Disabilities Act of  
48 1990," 42 U.S.C. s.12102).

1 "Program" means the New Jersey Senior and Disabled  
2 Cooperative Housing Finance Incentive Program created by  
3 P.L.1998, c.128 (C.55:14K-72 et seq.).

4 "Qualified housing sponsor" means any corporation or  
5 association of persons organized under the New Jersey Statutes, or  
6 any other corporation having for one of its purposes the  
7 improvement of realistic opportunities for low income and moderate  
8 income housing, as defined pursuant to the "Fair Housing Act,"  
9 P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by  
10 virtue of past activities, qualifications of staff or board, or other  
11 features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-  
12 72 et seq.).

13 "Retrofitting" means renovating or remodeling an existing  
14 residential or non-residential structure to allow for cooperative  
15 living.

16 "Senior" means an individual who is 55 years of age or older.

17 "Substantial rehabilitation" means repair, reconstruction or  
18 renovation which (1) costs in excess of 60% of the fair market value  
19 of a rehabilitated dwelling after such repair, reconstruction or  
20 renovation, or (2) renders a previously vacant and uninhabitable  
21 dwelling safe, sanitary and decent for residential purposes or (3)  
22 converts to safe, sanitary and decent residential use a structure  
23 previously in non-residential use.

24 (cf: P.L.1998, c.128, s.3)

25

26 36. (New section) a. (1) Notwithstanding the provisions of the  
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
28 seq.) to the contrary, the Commissioner of Community Affairs  
29 shall, in consultation with the Administrative Director of the Courts  
30 and the Executive Director of the New Jersey Housing and  
31 Mortgage Finance Agency, adopt, immediately upon filing with the  
32 Office of Administrative Law, no later than nine months after the  
33 effective date of P.L. , c. (C. ) (pending before the  
34 Legislature as this bill), such transitional rules and regulations as  
35 necessary for the implementation of P.L. , c. (C. ) (pending  
36 before the Legislature as this bill), including for the identification  
37 of any vestigial duties of the Council on Affordable Housing and  
38 for the transfer of those duties within the Department of Community  
39 Affairs to the extent that those duties are not otherwise assumed,  
40 pursuant to P.L. , c. (C. ) (pending before the Legislature as  
41 this bill), by municipalities or the Affordable Housing Dispute  
42 Resolution Program.

43 (2) The department, in consultation with the agency, shall  
44 thereafter amend, adopt, or readopt the regulations in accordance  
45 with the requirements of the "Administrative Procedure Act,"  
46 P.L.1968, c.410 (C.52:14B-1 et seq.).

47 b. The Executive Director of the New Jersey Housing and  
48 Mortgage Finance Agency shall adopt, pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
2 seq.), no later than nine months after the effective date of P.L. , c.  
3 (C. ) (pending before the Legislature as this bill), rules and  
4 regulations to update the Uniform Housing Affordability Controls  
5 as required pursuant to the "Fair Housing Act," P.L.1985, c.222  
6 (C.52:27D-301 et al.). As part of updating the Uniform Housing  
7 Affordability Controls, the agency shall set rules establishing that,  
8 for the purpose of low- and moderate-income rental units, a 40-year  
9 minimum deed restriction shall be required. For the purpose of for-  
10 sale units, a 20-year minimum deed restriction shall be required.

11  
12 37. The following sections are repealed:

13 Section 5 of P.L.1985 c.222 (C.52:27D-305);  
14 Section 6 of P.L.1985, c.222 (C.52:27D-306);  
15 Section 7 of P.L.1985, c.222 (C.52:27D-307);  
16 Section 1 of P.L.1991, c.479 (C.52:27D-307.1);  
17 Section 2 of P.L.1991, c.479 (C.52:27D-307.2);  
18 Section 3 of P.L.1991, c.479 (C.52:27D-307.3);  
19 Section 4 of P.L.1991, c.479 (C.52:27D-307.4);  
20 Section 5 of P.L.1991, c.479 (C.52:27D-307.5);  
21 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);  
22 Section 8 of P.L.1985, c.222 (C.52:27D-308);  
23 Section 9 of P.L.1985, c.222 (C.52:27D-309);  
24 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);  
25 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);  
26 Section 14 of P.L.1985, c.222 (C.52:27D-314);  
27 Section 15 of P.L.1985, c.222 (C.52:27D-315);  
28 Section 16 of P.L.1985, c.222 (C.52:27D-316);  
29 Section 17 of P.L.1985, c.222 (C.52:27D-317);  
30 Section 18 of P.L.1985, c.222 (C.52:27D-318);  
31 Section 19 of P.L.1985 c.222 (C.52:27D-319);  
32 Section 22 of P.L.1985, c.222 (C.52:27D-322);  
33 Section 26 of P.L.1985, c.222 (C.52:27D-326);  
34 Section 28 of P.L.1985, c.222 (C.52:27D-328); and  
35 Section 9 of P.L.2008, c.46 (C.52:27D-329.3).

36  
37 38. a. There is appropriated to the Affordable Housing Dispute  
38 Resolution Program, established pursuant to subsection a. of section  
39 5 of P.L. , c. (C. ) (pending before the Legislature as this  
40 bill), from the General Fund \$12,000,000 for the purposes of  
41 carrying out its responsibilities for the fourth round of affordable  
42 housing obligations, as established pursuant to section 5 of  
43 P.L. , c. (C. ) (pending before the Legislature as this bill).

44 b. There is appropriated to the Department of Community  
45 Affairs, from the General Fund, \$4,000,000 for the purposes of  
46 carrying out responsibilities allocated to it pursuant to P.L. , c.  
47 (C. ) (pending before the Legislature as this bill).

1       39. This act shall take effect immediately, and shall apply to  
2 each new round of affordable housing obligations that begins  
3 following enactment.

4  
5  
6                               STATEMENT  
7

8       This bill would abolish the Council on Affordable Housing  
9 (COAH), initially established by the "Fair Housing Act," and would  
10 establish a process to enable a municipality to determine its own  
11 present and prospective fair share affordable housing obligation  
12 based on the formulas established in the bill, as calculated the  
13 Department of Community Affairs (DCA). In advance of the  
14 fourth, 10-year round of affordable housing obligations, beginning  
15 on July 1, 2025, the bill requires DCA to complete these  
16 calculations, and provide for their publication, on or before August  
17 1, 2024.

18       The bill permits a municipality to diverge from DCA's  
19 calculations in determining its obligation as long as it adheres to the  
20 methodology established by the bill. In advance of the fourth  
21 round, the bill requires a municipality to adopt its obligation by  
22 binding resolution, on or before January 31, 2025, in order to be  
23 assured of protection from a builder's remedy lawsuit, as defined in  
24 the bill, through which a municipality may otherwise be compelled  
25 to permit development, when the fourth round begins. If the  
26 municipality meets this deadline, then the municipality's  
27 determination of its obligation would be established by default,  
28 beginning on March 1, 2025, as the municipality's obligation for  
29 the fourth round. However, if a challenge is filed with the  
30 "Affordable Housing Dispute Resolution Program" ("program"),  
31 established in the bill, on or before February 28, 2025, the program  
32 would be required to facilitate a resolution of the dispute prior to  
33 April 1, 2025.

34       The bill requires a municipality to establish a "housing element"  
35 to encompass its obligation, and a fair share plan to meet its  
36 obligation, in advance of the fourth round, and propose necessary  
37 changes to associated ordinances, on or before June 30, 2025, in  
38 order to be assured of protection from a builder's remedy lawsuit.

39       A municipality would be required to submit its adopted fair share  
40 plan and housing element to the program. The bill permits an  
41 interested party to initiate a challenge to a municipal fair share plan  
42 and housing element, if submitted through the program on or before  
43 August 31, 2025. The program would facilitate communication  
44 over the challenge, and provide the municipality until December 31,  
45 2025 to commit to revising its fair share plan and housing element  
46 in response to the challenge, or provide an explanation as to why it  
47 will not make all or the requested changes, or both. The bill  
48 requires municipalities to adopt associated changes to municipal

1 ordinances on or before March 15, 2026. If a municipality fails to  
2 meet these deadlines, then the immunity of the municipality from  
3 builder's remedy litigation would end unless the program  
4 determines that the municipality's immunity shall be extended. If a  
5 municipality fails to adhere to any of these deadlines due to  
6 circumstances beyond the municipality's control, the bill directs the  
7 program to permit a grace period for the municipality to come into  
8 compliance with the timeline, the length of which, and effect of  
9 which on later deadlines, would be determined on a case-by-case  
10 basis.

11 After providing immunity, the bill also authorizes the program to  
12 subsequently terminate immunity under certain circumstances if it  
13 becomes apparent that the municipality is not determined to come  
14 into constitutional compliance. The municipality would still be  
15 permitted to seek immunity from a builder's remedy by initiating an  
16 action in Superior Court. A court would not grant a builder's  
17 remedy to a plaintiff in exclusionary zoning litigation during certain  
18 timeframes. The deadlines for subsequent 10-year rounds of  
19 affordable housing obligations would conform to the dates  
20 established in the bill for the fourth round.

21 In any challenge to a municipality's determination of its  
22 affordable housing obligation, or to its fair share plan and housing  
23 element, the bill requires the program to apply an objective  
24 assessment standard to determine whether or not the municipality's  
25 obligation determination, or its fair share plan and housing element,  
26 fails to comply with the requirements of the bill. Further, the  
27 challenger would be required to provide the basis for its challenge  
28 based on applicable law, and the program would have the power to  
29 dismiss challenges that do not provide such a basis.

30 All parties would be required to bear their own fees and costs for  
31 proceedings within the program. A determination by the program  
32 as to municipal obligations or compliance certification would be  
33 considered a final decision, subject to appellate review.

34 The Chief Justice of the Supreme Court would appoint an odd  
35 number of at least three and no more than seven members to serve  
36 as program leaders for the program established by the bill,  
37 consisting of retired and on recall judges, or other qualified experts.  
38 The members and employees of the program would be considered  
39 State officers and employees for the purposes of the "New Jersey  
40 Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.).  
41 The Administrative Director of the Courts would also establish  
42 procedures for the purpose of efficiently resolving circumstances in  
43 which the program is unable to address a dispute over compliance  
44 certification within the time limitations established in the bill. As a  
45 part of these procedures, in order to facilitate an appropriate level of  
46 localized control of affordable housing decisions, for each vicinage,  
47 the bill directs the Chief Justice of the Supreme Court to designate a  
48 Superior Court judge who sits within the vicinage, or a retired judge

1 who, during his or her tenure as a judge, served within the vicinage,  
2 to serve as county level housing judge to resolve disputes over the  
3 compliance, of fair share plans and housing elements of  
4 municipalities within their county, with the "Fair Housing Act,"  
5 when those disputes are not be resolved within the deadlines  
6 established in the bill. The Administrative Director of the Courts  
7 would adopt and apply a Code of Ethics for the program and county  
8 level housing judges modeled on the Code of Judicial Conduct of  
9 the American Bar Association, adopted by the State Supreme Court,  
10 and may establish additional more restrictive ethical standards in  
11 order to meet the specific needs of the program and of county level  
12 housing judges.

13 Each municipality's determination of its fair share obligation  
14 would be made through the guidance of preliminary calculations  
15 made by DCA. No later than August 1 of the year prior to the year  
16 when a new round of housing obligations begins, the bill requires  
17 DCA to calculate regional need and municipal present and  
18 prospective obligations in accordance with formulas established in  
19 the bill. DCA's calculations would be made publicly available, and  
20 provided to each municipality for use in determining their present  
21 and prospective obligations.

22 Municipal fair share obligations would be determined by  
23 applying the methods provided in the bill, along with the methods  
24 used by the Superior Court for the third round, to the extent that  
25 applicable methodologies are not explicitly articulated in the bill.  
26 Municipal present need obligations would be determined by  
27 estimating the existing deficient housing currently occupied by low-  
28 and moderate- income households within the municipality.

29 Regional prospective need would next be determined, upon  
30 which to base the municipal obligation, by estimating the regional  
31 growth of low- and moderate-income households during the  
32 housing round at issue. The bill would simplify the regional need  
33 estimation from the processes used in previous rounds in order to  
34 ease the administrative burden that has been associated with this  
35 process. First, projected household change for a 10-year round in a  
36 region would be estimated by establishing the household change  
37 experienced in the region between the most recent federal decennial  
38 census, the second-most recent federal decennial census. Although  
39 this relies on historical data, recent household change in a region is  
40 relevant to estimating future household change and associated  
41 housing need. This household change would be divided by 2.5 to  
42 estimate the number of low- and moderate-income homes needed to  
43 address population change in the region, thereby determining the  
44 regional prospective need for the 10-year round. If household  
45 change is zero or negative, the number of low- and moderate-  
46 income homes needed to address low- and moderate-income  
47 household change in the region and the regional prospective would  
48 be zero.

1       After determining regional prospective need, each municipality's  
2 fair share prospective obligation of that regional prospective need  
3 would be determined. To do this, DCA would first determine  
4 whether a municipality is a qualified urban aid municipality, and if  
5 so, the municipality would not have a prospective need obligation.

6       If the municipality is not a qualified urban aid municipality,  
7 three factors necessary for the prospective fair share determination  
8 would be calculated. First, the equalized nonresidential valuation  
9 factor, representing the municipality's share of the regional change  
10 in the value of nonresidential property, would be calculated. In  
11 prior rounds, this calculation, concerning nonresidential  
12 (commercial and industrial) property values, has been adopted as a  
13 representation of a municipality's employment potential. Data  
14 available from the Division of Local Government Services in DCA  
15 would be used for this calculation. Next, an income capacity factor  
16 would be determined, using a formula comparable to one used in  
17 prior rounds to estimate the municipality's ability to absorb low-  
18 and moderate-income households. The municipality's land capacity  
19 factor would then be determined, representing the municipality's  
20 relative share of developable and redevelopable land, available to  
21 accommodate development, using data made available by the  
22 Department of Environmental Protection or the Division of  
23 Taxation in the Department of Treasury. The average of these three  
24 factors would be determined and multiplied by the regional  
25 prospective need to determine the municipality's gross prospective  
26 need.

27       Finally, the bill would require, where appropriate, adjustments  
28 for secondary sources of housing supply and demand by first  
29 calculating demolitions of low- and moderate-income housing, and  
30 housing creation through residential conversions. To do this, a  
31 municipality's share of conversions would be subtracted from the  
32 sum of each municipality's allocated share of gross prospective  
33 need and demolitions of low- and moderate-income housing. After  
34 applying these secondary sources, as appropriate, the municipality's  
35 prospective fair share obligation for the 10-year round would be  
36 established.

37       A municipality would be permitted to make adjustments for a  
38 lack of available land resources as part of the determination of a  
39 municipality's fair share of affordable housing when, for example  
40 certain municipal lands are devoted for conservation purposes.  
41 However, the bill would require a municipality that receives such a  
42 vacant land adjustment to its fair share obligation to identify parcels  
43 for redevelopment to address at least 25 percent of the prospective  
44 need obligation that has been adjusted, and adopt zoning that allows  
45 for the adjusted obligation, or demonstrate why this is not possible.

46       A municipality would ultimately be permitted to reduce its  
47 prospective need if necessary to prevent establishing a prospective  
48 need obligation that exceeds 1,000 units in total or 20 percent of the



1 estimated occupied housing stock at the beginning of the 10-year  
2 round, whichever limitation results in a lower number.

3 The bill requires that a municipality is required to satisfy a  
4 minimum of 50 percent of the actual affordable housing units,  
5 exclusive of any bonus credits, created to address its prospective  
6 need affordable housing obligation through the creation of housing  
7 available to families with children. The bill amends existing  
8 statutory language to ensure that affordable housing is constructed  
9 that is accessible to persons with disabilities.

10 The bill permits a municipality to be credited for as much as 10  
11 percent of its affordable housing obligation through transitional  
12 housing, and defines "transitional housing" as temporary housing,  
13 including but not limited to, single room occupancy housing or  
14 shared living and supportive living arrangements, that provides  
15 access to on-site or off-site supportive services for very low-income  
16 households who have recently been homeless or lack stable  
17 housing.

18 The bill would establish limitations on the use of municipal  
19 affordable housing trust fund moneys for administrative costs,  
20 attorney fees, court costs to obtain immunity from a builder's  
21 remedy, to contest the municipality's fair share obligation, or use of  
22 the trust fund moneys while a municipality does not have immunity  
23 from builder's remedy litigation. The bill would authorize a  
24 municipality to expend a portion of its affordable housing trust fund  
25 on actions and efforts reasonably related to or necessary for certain  
26 processes of the program, as provided in the bill. The bill would  
27 require each municipality authorized to retain and expend non-  
28 residential development fees to periodically provide DCA with an  
29 accounting of all such fees that have been collected and expended.

30 The bill would prohibit a municipality from receiving bonus  
31 credit for any particular type of low- or moderate-income housing,  
32 unless authority to obtain bonus credit is expressly provided by the  
33 "Fair Housing Act," as amended and supplemented by the bill. The  
34 bill expressly prohibits a municipality from receiving more than one  
35 type of bonus credit for any unit, or from satisfying more than 25  
36 percent of its prospective need obligation through the use of bonus  
37 credits. The bill expressly authorizes bonus credits in the amounts  
38 provided in the bill for: (1) housing for individuals with special  
39 needs or permanent supportive housing; (2) ownership units created  
40 in partnership sponsorship with a non-profit housing developer; (3)  
41 housing located in a Garden State Growth Zone or certain transit-  
42 oriented locations; (4) certain age-restricted housing units; (5)  
43 family housing with at least three bedrooms above the minimum  
44 number required by the bedroom distribution in a given  
45 development; (6) housing constructed on certain land previously  
46 used for retail, office, or commercial space; (7) certain existing  
47 rental housing for which affordability controls are extended through  
48 municipal contributions; (8) certain 100 percent affordable

1 developments built through municipal contributions of land or  
2 funding; and (9) certain housing for very low-income households.  
3 The bill also clarifies that all parties would be entitled to rely upon  
4 regulations on municipal credits, adjustments, and compliance  
5 mechanisms previously adopted by COAH unless those regulations  
6 are contradicted by statute, including but not limited to this bill, or  
7 binding court decisions.

8 The bill would require DCA to maintain certain affordable  
9 housing-related information on its website, including: (1) the start  
10 and expiration dates of deed restrictions; (2) residential and non-  
11 residential development fees collected and expended, including  
12 purposes and amounts of such expenditures; and (3) the current  
13 balance in the municipality's affordable housing trust funds. The  
14 bill would also direct municipalities to provide the information to  
15 DCA necessary to comply with this requirement.

16 The bill would amend various parts of the statutory law to  
17 remove references to COAH, and to transfer rulemaking authority,  
18 to the extent necessary, from COAH to DCA and the New Jersey  
19 Housing and Mortgage Finance Agency (HMFA). The bill directs  
20 HMFA to update the Uniform Housing Affordability Controls  
21 within nine months following the effective date of the bill. With  
22 certain exceptions, for the purpose of affordable rental units, a 40-  
23 year minimum deed restriction would be required, and in the case of  
24 for-sale units, a 20-year minimum deed restriction would be  
25 required.

26 The bill would appropriate \$12 million to the program, and \$4  
27 million to DCA, from the General Fund, for the purposes of  
28 carrying out their respective responsibilities for the fourth round of  
29 affordable housing obligations.

30 The bill would take effect immediately, and would apply to each  
31 new round of affordable housing obligations beginning after  
32 enactment of the bill.

[First Reprint]

**ASSEMBLY, No. 4**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED JANUARY 9, 2024

**Sponsored by:**

**Assemblywoman YVONNE LOPEZ**

**District 19 (Middlesex)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**Assemblyman BENJIE E. WIMBERLY**

**District 35 (Bergen and Passaic)**

**Assemblywoman VERLINA REYNOLDS-JACKSON**

**District 15 (Hunterdon and Mercer)**

**Co-Sponsored by:**

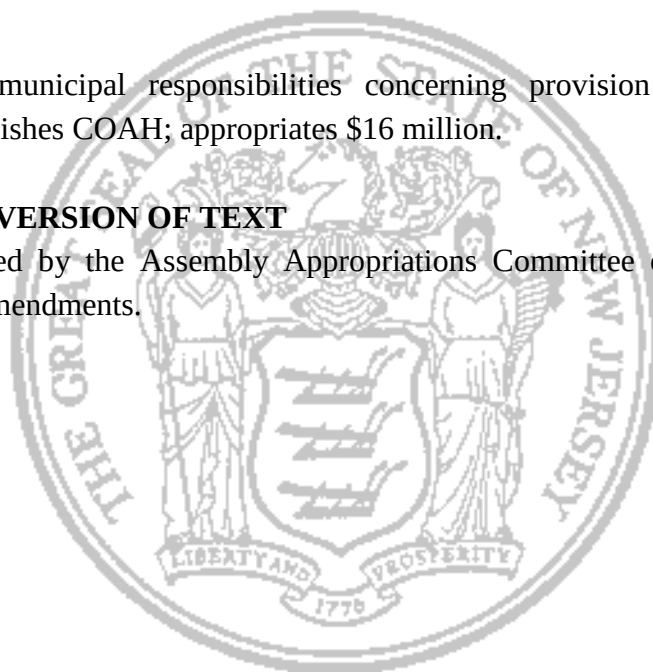
**Assemblymen Moen, Stanley, Assemblywomen Quijano, Speight,  
Assemblyman Sampson, Assemblywomen McCann Stamato, Haider, Hall  
and Assemblyman Verrelli**

**SYNOPSIS**

Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Appropriations Committee on February 8, 2024, with amendments.



**(Sponsorship Updated As Of: 2/12/2024)**

1 **AN ACT** concerning affordable housing, including administration  
2 and municipal obligations, amending, supplementing, and  
3 repealing various parts of the statutory law, and making an  
4 appropriation.

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

8  
9 1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to  
10 read as follows:

11 2. The Legislature finds that:

12 a. The New Jersey Supreme Court, through its rulings in **【South】**  
13 Southern Burlington County NAACP v. Mount Laurel, 67 N.J. 151  
14 (1975) and **【South】** Southern Burlington County NAACP v. Mount  
15 Laurel, 92 N.J. 158 (1983), has determined that every municipality in a  
16 growth area has a constitutional obligation to provide through its land  
17 use regulations a realistic opportunity for a fair share of its region's  
18 present and prospective needs for housing for **【low and moderate**  
19 **income】** low- and moderate-income families.

20 b. In the second Mount Laurel ruling, the Supreme Court stated  
21 that the determination of the methods for satisfying this constitutional  
22 obligation "is better left to the Legislature," that the court has "always  
23 preferred legislative to judicial action in their field," and that the  
24 judicial role in upholding the Mount Laurel doctrine "could decrease  
25 as a result of legislative and executive action."

26 c. The interest of all citizens, including **【low and moderate**  
27 **income】** low- and moderate-income families in need of affordable  
28 housing, and the needs of the workforce, would be best served by a  
29 comprehensive planning and implementation response to this  
30 constitutional obligation.

31 d. There are a number of essential ingredients to a comprehensive  
32 planning and implementation response, including the establishment of  
33 reasonable fair share housing guidelines and standards, the initial  
34 determination of fair share by officials at the municipal level and the  
35 preparation of a municipal housing element, State review of the local  
36 fair share study and housing element, and continuous State funding for  
37 **【low and moderate income】** low- and moderate-income housing to  
38 replace the federal housing subsidy programs which have been almost  
39 completely eliminated.

40 e. The State can maximize the number of **【low and moderate**  
41 **income】** low- and moderate-income units provided in New Jersey by  
42 allowing its municipalities to adopt appropriate phasing schedules for  
43 meeting their fair share, so long as the municipalities permit a timely  
44 achievement of an appropriate fair share of the regional need for **【low**

**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:

<sup>1</sup>Assembly AAP committee amendments adopted February 8, 2024.

1 and moderate income】 low- and moderate-income housing as required  
2 by the Mt. Laurel I and II opinions and other relevant court decisions.

3 f. The State can also maximize the number of 【low and moderate  
4 income】 low- and moderate-income units by creating new affordable  
5 housing and by rehabilitating existing, but substandard, housing in the  
6 State. Because the Legislature has determined, pursuant to P.L.2008,  
7 c.46 (C.52:27D-329.1 et al.), that it is no longer appropriate or in  
8 harmony with the Mount Laurel doctrine to permit the transfer of the  
9 fair share obligations among municipalities within a housing region, it  
10 is necessary and appropriate to create a new program to create new  
11 affordable housing and to foster the rehabilitation of existing, but  
12 substandard, housing.

13 g. Since the urban areas are vitally important to the State,  
14 construction, conversion and rehabilitation of housing in our urban  
15 centers should be encouraged. However, the provision of housing in  
16 urban areas must be balanced with the need to provide housing  
17 throughout the State for the free mobility of citizens.

18 h. The Supreme Court of New Jersey in its Mount Laurel  
19 decisions demands that municipal land use regulations affirmatively  
20 afford a 【reasonable】 realistic opportunity for a variety and choice of  
21 housing including low and moderate cost housing, to meet the needs of  
22 people desiring to live there. While provision for the actual  
23 construction of that housing by municipalities is not required, they are  
24 encouraged but not mandated to expend their own resources to help  
25 provide 【low and moderate income】 low- and moderate-income  
26 housing.

27 i. 【Certain amendments to the enabling act of the Council on  
28 Affordable Housing are necessary to provide guidance to the council  
29 to ensure consistency with the legislative intent, while at the same time  
30 clarifying the limitations of the council in its rulemaking. Although  
31 the court has remarked in several decisions that the Legislature has  
32 granted the council considerable deference in its rulemaking, the  
33 Legislature retains its power and obligation to clarify and amend the  
34 enabling act from which the council derives its rulemaking power,  
35 from time to time, in order to better guide the council.】 (Deleted by  
36 amendment, P.L. , c. ) (pending before the Legislature as this bill)

37 j. The Legislature finds that the use of regional contribution  
38 agreements, which permits municipalities to transfer a certain portion  
39 of their fair share housing obligation outside of the municipal borders,  
40 should no longer be utilized as a mechanism for the creation of  
41 affordable housing 【by the council】.

42 k. The Legislature finds that the role of the Council on Affordable  
43 Housing, as intended in the original enactment of the "Fair Housing  
44 Act," has not developed in practice as was intended in the legislation.

45 l. The council's inability to function ultimately led the Supreme  
46 Court in 2015 to order the temporary dissolution of the requirement  
47 that administrative remedies be exhausted prior to resolving affordable

1 housing disputes before the court, and allowed the courts to resume  
2 their role as the forum of first resort for evaluating municipal  
3 compliance with Mount Laurel obligations pursuant to guidelines laid  
4 out by the Supreme Court's order.

5 m. The Legislature finds that the council's inability to function led  
6 to a "gap period" that frustrated the intent of the Legislature and  
7 compliance with constitutional and statutory obligations, and that it is  
8 necessary to establish definitive deadlines for municipal action and  
9 any challenges to those actions to avoid such a "gap period" from  
10 being repeated in the future.

11 n. The Legislature finds that although the court-led system that has  
12 developed since 2015 has resulted in a significant number of  
13 settlement agreements and increased production of affordable housing,  
14 the system could operate more expeditiously to produce affordable  
15 housing, and at a lower cost to all parties, if appropriate standards are  
16 established by the Legislature to be applied throughout the State  
17 including more clarity on calculation on fair share affordable housing  
18 obligations using transparent and established data sources to eliminate  
19 the lengthy and costly processes of determining those obligations that  
20 have characterized both the Council on Affordable Housing and court-  
21 led system.

22 o. The Legislature determines that, considering the unique history  
23 of the "Fair Housing Act," the Council on Affordable Housing shall be  
24 abolished, and that, pursuant to the formulas and process established  
25 pursuant to sections 6 and 7 of P.L. , c. (C. and C. )  
26 (pending before the Legislature as this bill), a municipality shall be  
27 authorized to seek approval of its fair share affordable housing  
28 obligation, adopted pursuant to binding resolution and then filed with  
29 the court, with the guidance of calculations published by the  
30 Department of Community Affairs, but that advocates for the low- and  
31 moderate-income households of the State shall be provided with an  
32 opportunity to contest the municipal determination.

33 p. <sup>1</sup>The Legislature declares that the "Fair Housing Act,"  
34 P.L.1985, c.222 (C.52:27D-301 et al.), as amended and supplemented  
35 by P.L. , c. (C. ) (pending before the Legislature as this bill), is  
36 intended to implement the Mount Laurel doctrine, and that  
37 municipalities in compliance with the "Fair Housing Act," P.L.1985,  
38 c.222 (C.52:27D-301 et al.) are also in compliance with the Mount  
39 Laurel doctrine.

40 q.<sup>1</sup> The Legislature finds that the population of persons aged 65  
41 years and older in the State has grown from approximately 13 percent  
42 in 1990, to 17 percent in 2021, and that such growth, in conjunction  
43 with expected future growth, makes it appropriate for the Legislature  
44 to <sup>1</sup>【continue to】<sup>1</sup> allow up to <sup>1</sup>【25】 30<sup>1</sup> percent of the units towards a  
45 municipality's prospective affordable housing obligation to be  
46 satisfied through the creation of age-restricted housing.

47 (cf: P.L.2008, c.46, s.4)

- 1        2. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to  
2 read as follows:
- 3        4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):
- 4        a. "Council" means the Council on Affordable Housing  
5 established in P.L.1985, c.222 (C.52:27D-301 et al.), **【which shall**  
6 **have primary jurisdiction for the administration of housing obligations**  
7 **in accordance with sound regional planning considerations in this**  
8 **State】** abolished pursuant to section 3 of P.L. , c. (C. )  
9 (pending before the Legislature as this bill).
- 10        b. "Housing region" means a geographic area **【of not less than**  
11 **two nor more than four contiguous, whole counties which exhibit**  
12 **significant social, economic and income similarities, and which**  
13 **constitute to the greatest extent practicable the primary metropolitan**  
14 **statistical areas as last defined by the United States Census Bureau**  
15 **prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.)】**  
16 established pursuant to subsection b. of section 6 of  
17 P.L. , c. (C. ) (pending before the Legislature as this bill).
- 18        c. **【"Low income】** "Low-income housing" means housing  
19 affordable according to federal Department of Housing and Urban  
20 Development or other recognized standards for home ownership and  
21 rental costs and occupied or reserved for occupancy by households  
22 with a gross household income equal to 50 percent or less of the  
23 median gross household income for households of the same size within  
24 the housing region in which the housing is located.
- 25        d. **【"Moderate income】** "Moderate-income housing" means  
26 housing affordable according to federal Department of Housing and  
27 Urban Development or other recognized standards for home ownership  
28 and rental costs and occupied or reserved for occupancy by households  
29 with a gross household income equal to more than 50 **【%】** percent but  
30 less than 80 percent of the median gross household income for  
31 households of the same size within the housing region in which the  
32 housing is located.
- 33        e. **【"Resolution of participation" means a resolution adopted by a**  
34 **municipality in which the municipality chooses to prepare a fair share**  
35 **plan and housing element in accordance with P.L.1985, c.222**  
36 **(C.52:27D-301 et al.).】** (Deleted by amendment, P.L. , c. )  
37 (pending before the Legislature as this bill)
- 38        f. "Inclusionary development" means a residential housing  
39 development in which a substantial percentage of the housing units are  
40 provided for a reasonable income range of **【low and moderate**  
41 **income】** low- and moderate-income households.
- 42        g. "Conversion" means the conversion of existing commercial,  
43 industrial, or residential structures for **【low and moderate income】**  
44 low- and moderate-income housing purposes where a substantial  
45 percentage of the housing units are provided for a reasonable income  
46 range of **【low and moderate income】** low- and moderate-income  
47 households.

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

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

6 j. "Prospective need" means a projection of housing needs based  
7 on development and growth which is reasonably likely to occur in a  
8 region or a municipality, as the case may be, as a result of actual  
9 determination of public and private entities. **【In determining**  
10 **prospective need, consideration shall be given to approvals of**  
11 **development applications, real property transfers, and economic**  
12 **projections prepared by the State Planning Commission established by**  
13 **sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.)】**  
14 Prospective need shall be determined by the methodology set forth  
15 pursuant to sections 6 and 7 of P.L. , c. (C. and C. )  
16 (pending before the Legislature as this bill) for the fourth round and all  
17 future rounds of housing obligations.

18 k. "Person with a disability" means a person with a physical  
19 disability, infirmity, malformation, or disfigurement which is caused  
20 by bodily injury, birth defect, aging, or illness including epilepsy and  
21 other seizure disorders, and which shall include, but not be limited to,  
22 any degree of paralysis, amputation, lack of physical coordination,  
23 blindness or visual impairment, deafness or hearing impairment, the  
24 inability to speak or a speech impairment, or physical reliance on a  
25 service animal, wheelchair, or other remedial appliance or device.

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

32 m. "Very **【low income】** low-income housing" means housing  
33 affordable according to federal Department of Housing and Urban  
34 Development or other recognized standards for home ownership and  
35 rental costs and occupied or reserved for occupancy by households  
36 with a gross household income equal to 30 percent or less of the  
37 median gross household income for households of the same size within  
38 the housing region in which the housing is located.

39 n. "Accessory dwelling unit" means a residential dwelling unit  
40 that provides complete independent living facilities with a private  
41 entrance for one or more persons, consisting of provisions for living,  
42 sleeping, eating, sanitation, and cooking, including a stove and  
43 refrigerator, and is located within a proposed or existing primary  
44 dwelling, within an existing or proposed structure that is accessory to a  
45 dwelling on the same lot, constructed in whole or part as an extension  
46 to a proposed or existing primary dwelling, or constructed as a  
47 separate detached structure on the same lot as the existing or proposed  
48 primary dwelling.



1       o. "Builder's remedy" means court imposed site-specific relief for  
2 a litigant who seeks to build affordable housing for which the court  
3 requires a municipality to utilize zoning techniques such as mandatory  
4 set-asides or density bonuses, including techniques which provide for  
5 the economic viability of a residential development by including  
6 housing that is not for low- and moderate-income households.

7       p. "Commissioner" means the Commissioner of Community  
8 Affairs.

9       q. "Compliance certification" means the certification obtained by a  
10 municipality pursuant to section 3 of P.L. , c. (C. ) (pending  
11 before the Legislature as this bill), that protects the municipality from  
12 '[a builder's remedy] exclusionary zoning litigation' during the  
13 current round of present and prospective need and through July 1 of  
14 the year the next round begins, which is also known as a "judgment of  
15 compliance" or "judgment of repose." The term "compliance  
16 certification" shall include a judgment of repose granted in an action  
17 filed pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313).

18       r. "County level housing judge" means a judge appointed pursuant  
19 to section 5 of P.L. , c. (C. ) (pending before the Legislature  
20 as this bill), to resolve disputes over the compliance of municipal fair  
21 share affordable housing obligations and municipal fair share plans  
22 and housing elements, with the "Fair Housing Act," P.L.1985, c.222  
23 (C.52:27D-301 et al.

24       s. "Deficient housing unit" means housing that: (1) is over fifty  
25 years old and overcrowded; (2) lacks complete plumbing; or (3) lacks  
26 complete kitchen facilities.

27       t. "Department" means the Department of Community Affairs.

28       u. '"Exclusionary zoning litigation" means litigation to challenge  
29 the fair share plan, housing element, or ordinances or resolutions  
30 implementing the fair share plan or housing element of a municipality  
31 based on alleged noncompliance with the "Fair Housing Act,"  
32 P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine,  
33 which litigation shall include, but shall not be limited to, litigation  
34 seeking a builder's remedy.

35       v.<sup>1</sup> "Fair share plan" means the plan or proposal that is in a form  
36 which may readily be adopted, with accompanying ordinances and  
37 resolutions, pursuant to subsection f. of section 3 of  
38 P.L. , c. (C. ) (pending before the Legislature as this bill), by  
39 which a municipality proposes to satisfy its obligation to create a  
40 realistic opportunity to meet its fair share of low- and moderate-  
41 income housing needs of its region and which details the affirmative  
42 measures the municipality proposes to undertake to achieve its fair  
43 share of low- and moderate-income housing, as provided in the  
44 municipal housing element, and addresses the development regulations  
45 necessary to implement the housing element, including, but not limited  
46 to, inclusionary requirements and development fees, and the  
47 elimination of unnecessary housing cost-generating features from the  
48 municipal land use ordinances and regulations.

1 <sup>1</sup>**[v.] w.** <sup>1</sup> "Housing element" means that portion of a  
 2 municipality's master plan consisting of reports, statements, proposals,  
 3 maps, diagrams, and text designed to meet the municipality's fair share  
 4 of its region's present and prospective housing needs, particularly with  
 5 regard to low- and moderate-income housing, and which shall contain  
 6 the municipal present and prospective obligation for affordable  
 7 housing, determined pursuant to subsection f. of section 3 of P.L. , c.  
 8 (C. ) (pending before the Legislature as this bill).

9 <sup>1</sup>**[w.] x.** <sup>1</sup> "Program" means the Affordable Housing Dispute  
 10 Resolution Program, established pursuant to section 5 of P.L. , c.  
 11 (C. ) (pending before the Legislature as this bill).

12 <sup>1</sup>**[x.] y.** <sup>1</sup> "Transitional housing" means temporary housing that:  
 13 (1) includes, but is not limited to, single-room occupancy housing  
 14 or shared living and supportive living arrangements;  
 15 (2) provides access to on-site or off-site supportive services for  
 16 very low-income households who have recently been homeless or lack  
 17 stable housing;  
 18 (3) is licensed by the department; and  
 19 (4) allows households to remain for a minimum of six months.  
 20 (cf: P.L.2017, c.131, s.199)

21  
 22 3. (New section) a. The Council on Affordable Housing,  
 23 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
 24 et al.), is abolished. Each municipality shall determine its municipal  
 25 present and prospective obligations in accordance with the formulas  
 26 established in sections 6 and 7 of P.L. , c. (C. and C. )  
 27 (pending before the Legislature as this bill) and may take into  
 28 consideration the calculations in the report published by the  
 29 department in accordance with this section.

30 b. Following the expiration of the third round of affordable  
 31 housing obligations on July 1, 2025, a municipality shall have  
 32 immunity from <sup>1</sup>**[a builder's remedy]** exclusionary zoning litigation<sup>1</sup>  
 33 if the municipality complies with the deadlines established in P.L. ,  
 34 c. (C. ) (pending before the Legislature as this bill) for both  
 35 determining present and prospective obligations, and for adopting a  
 36 housing element and fair share plan to meet those obligations.

37 <sup>1</sup>(1) Immunity from exclusionary zoning litigation shall not limit  
 38 the ability of an interested party to challenge a municipality for failure  
 39 to comply with the terms of its compliance certification. However, a  
 40 municipality's actions to comply with the terms of its compliance  
 41 certification shall retain a presumption of validity if challenged for an  
 42 alleged failure described in this paragraph.

43 (2) Immunity from exclusionary zoning litigation shall not limit  
 44 the ability of an interested party to challenge the program alleging that,  
 45 despite the issuance of compliance certification, a municipality's fair  
 46 share obligation, fair share plan, housing element, or ordinances  
 47 implementing the fair share plan or housing element are in violation of

1 the Mount Laurel doctrine. However, the program and its actions shall  
2 retain a presumption of validity if challenged for an alleged violation  
3 described in this paragraph.<sup>1</sup>

4 c. Prior to the beginning of each new 10-year round of housing  
5 obligations beginning with the fourth round on July 1, 2025, the  
6 Department of Community Affairs shall conduct a calculation of  
7 regional need and municipal present and prospective obligations in  
8 accordance with the formulas established in sections 6 and 7 of  
9 P.L. , c. (C. and C. ) (pending before the Legislature as  
10 this bill).

11 d. For the fourth round of affordable housing obligations, the  
12 department shall prepare and submit a report to the Governor, and,  
13 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the  
14 Legislature providing a report on the calculations of regional need and  
15 municipal obligations for each region of the State <sup>1</sup>**【on or before**  
16 **August】** within the earlier of seven months following the effective  
17 date of P.L. , c. (C. ) (pending before the Legislature as this  
18 bill) or December<sup>1</sup> 1, 2024. The department shall provide the report to  
19 each municipality in the State at the same time that it submits the  
20 report to the Governor and Legislature and shall also publish such  
21 report on the department's Internet website. For the fifth round, and  
22 each subsequent new round of housing obligations, the department  
23 shall prepare and submit a report to each municipality in the State, the  
24 Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
25 19.1), to the Legislature on these calculations on or before August 1 of  
26 the year prior to the start of the new round and shall also publish such  
27 report on the department's Internet website. For each 10-year round of  
28 housing obligations, a municipality may take into consideration the  
29 calculations in the report prepared by the department pursuant to this  
30 subsection in determining its present and prospective obligations.

31 e. Nothing in the provisions of subsections c., d., or f. of this  
32 section shall be interpreted to render any calculation in a report by the  
33 department published pursuant to this section binding on any  
34 municipality or other entity, nor to render any failure by the  
35 department to timely conduct the calculations or publish a report  
36 required by this section to alter the deadlines or process set forth in  
37 this section. The ultimate determination of a municipality's present  
38 and prospective need shall be through the process as set forth below.

39 f. (1) (a) With consideration of the calculations contained in the  
40 relevant report published by the department pursuant to this section,  
41 for each 10-year round of affordable housing obligations beginning  
42 with the fourth round, a municipality shall determine its present and  
43 prospective fair share obligation for affordable housing in accordance  
44 with the formulas established in sections 6 and 7 of P.L. , c. (C.  
45 and C. ) (pending before the Legislature as this bill) by resolution,  
46 which shall describe the basis for the municipality's determination and  
47 bind the municipality to adopt a housing element and fair share plan  
48 pursuant to paragraph (2) of this subsection based on this

1 determination as may be adjusted by the program as set forth in this  
2 subsection.

3 (b) For the fourth round of affordable housing obligations, this  
4 determination of present and prospective fair share obligation shall be  
5 made by binding resolution no later than January 31, 2025. After  
6 adoption of this binding resolution, the municipality shall file an action  
7 regarding the resolution with the program no later than 48 hours  
8 following adoption. The resolution, along with the date of filing with  
9 the program, shall be published on the program's publicly accessible  
10 Internet website. The municipality shall also publish the resolution on  
11 its publicly accessible Internet website, if the municipality maintains  
12 one. If the municipality does not meet this deadline, it  
13 **'[immediately]'** shall lose immunity from **'[builder's remedy]**  
14 **exclusionary zoning**<sup>1</sup> litigation until such time as the municipality is  
15 determined to have come into compliance with the "Fair Housing  
16 Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel  
17 doctrine. A determination of the municipality's present and  
18 prospective obligation may be established before a county level  
19 housing judge as part of any resulting declaratory judgment action  
20 pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as amended  
21 by P.L. , c. (C. ) (pending before the Legislature as this bill),  
22 or through **'[builder's remedy]** **exclusionary zoning**<sup>1</sup> litigation. If the  
23 municipality meets this January 31 deadline, then the municipality's  
24 determination of its obligation shall be established by default <sup>1</sup>, and  
25 shall bear a presumption of validity<sup>1</sup> beginning on March 1, 2025, as  
26 the municipality's obligation for the fourth round, unless challenged  
27 by an interested party on or before February 28, 2025. <sup>1</sup>The  
28 municipality's determination of its fair share obligation shall have a  
29 presumption of validity, if established in accordance with sections 6  
30 and 7 of P.L. , c. (C. and C. ) (pending before the  
31 Legislature as this bill), in any challenge initiated through the  
32 program.<sup>1</sup> An interested party may file a challenge with the program,  
33 after adoption of the binding resolution and prior to March 1, 2025,  
34 alleging that the municipality's determination of its present and  
35 prospective obligation does not comply with the requirements of  
36 sections 6 and 7 of P.L. , c. (C. and C. ) (pending before  
37 the Legislature as this bill). For the fifth round, and each subsequent  
38 new round of housing obligations, the deadlines established in this  
39 subparagraph shall be on the last day of January, the last day of  
40 February, and the first day of March, respectively, of the year of the  
41 start of each new round.

42 (c) The Administrative Director of the Courts shall establish  
43 procedures for the program to consider a challenge and resolve a  
44 dispute initiated by an interested party pursuant to subparagraph (b) of  
45 this paragraph. To resolve a challenge, the program shall apply an  
46 objective assessment standard to determine whether or not the  
47 municipality's calculation of its obligation is compliant with the

1 requirements of sections 6 and 7 of P.L. , c. (C. and C. )  
2 (pending before the Legislature as this bill). Any challenge must state  
3 with particularity how the municipal calculation fails to comply with  
4 sections 6 and 7 of P.L. , c. (C. and C. ) (pending before  
5 the Legislature as this bill) and include the challenger's own  
6 calculation of the fair share obligations in compliance with sections 6  
7 and 7 of P.L. , c. (C. and C. ) (pending before the  
8 Legislature as this bill). The program shall establish procedures to  
9 summarily dismiss any objection or challenge that does not meet these  
10 minimum standards. For the purpose of efficiency, the program shall,  
11 in its own discretion, permit multiple challenges to the same municipal  
12 determination to be consolidated. The program's approach to  
13 resolving a dispute may include: (i) a finding that the municipality's  
14 determination of its present and prospective need obligation did not  
15 facially comply with the requirements of sections 6 and 7 of P.L. , c.  
16 (C. and C. ) (pending before the Legislature as this bill) and  
17 thus the municipality's immunity shall be revoked; (ii) an adjustment  
18 of the municipality's determination of its present and prospective need  
19 obligation to comply with the requirements of sections 6 and 7 of P.L.  
20 , c. (C. and C. ) (pending before the Legislature as this bill)  
21 without revoking immunity; or (iii) a rejection of a challenge and  
22 affirm the municipality's determination. The decision shall be  
23 provided to the municipality and all parties that have filed challenges  
24 no later than March 31 of the year when the current round is expiring  
25 and the new round is beginning and concurrently posted on the  
26 program's Internet website. The Administrative Director of the Courts  
27 shall establish procedures for any further appellate review of such  
28 determinations, and may establish an expedited process for  
29 consolidated review of any such challenges by the Supreme Court,  
30 provided that any party seeking appellate review shall not change the  
31 deadlines established for municipal filing of a housing element and fair  
32 share plan, and implementing ordinances.

33 (2) (a) A municipality shall adopt a housing element and fair  
34 share plan as provided for by the "Fair Housing Act," P.L.1985, c.222  
35 (C.52:27D-301 et al.), and propose drafts of the appropriate zoning  
36 and other ordinances and resolutions to implement its present and  
37 prospective obligation established in paragraph (1) of this subsection  
38 on or before June 30, 2025. After adoption of the housing element and  
39 fair share plan, and the proposal of drafts of the appropriate zoning and  
40 other ordinances and resolutions, the municipality shall within 48  
41 hours of adoption or by June 30, 2025, whichever is sooner, file the  
42 same with the program as part of the action initiated pursuant to  
43 subparagraph (b) of paragraph (1) of this subsection through the  
44 program's Internet website. Any municipality that does not do so by  
45 June 30, 2025, shall not retain immunity from **<sup>1</sup>["builder's remedy"]**  
46 exclusionary zoning<sup>1</sup> litigation until such time as the municipality is  
47 determined to have come into compliance with the "Fair Housing  
48 Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel

1 doctrine and shall be subject to review through the declaratory  
2 judgment process as established in paragraph (3) of this subsection.  
3 As part of its housing element and fair share plan, the municipality  
4 shall include an assessment of the degree to which the municipality  
5 has met its fair share obligation from the prior rounds of affordable  
6 housing obligations as established by prior court approval, or approval  
7 by the council, and determine to what extent this obligation is  
8 unfulfilled or whether the municipality has credits in excess of its prior  
9 round obligations. If a prior round obligation remains unfulfilled, or a  
10 municipality never received an approval from court or the council for  
11 any prior round, the municipality shall address such unfulfilled prior  
12 round obligation in its housing element and fair share plan. Units  
13 included as part of the municipality's unfulfilled prior round obligation  
14 shall not count towards the cap on units in the municipality's  
15 prospective need obligation. In addressing prior round obligations, the  
16 municipality shall retain any sites that, in furtherance of the prior  
17 round obligation, are the subject of a contractual agreement with a  
18 developer, or for which the developer has filed a complete application  
19 seeking subdivision or site plan approval prior to the date by which the  
20 housing element and fair share plan are required to be submitted, and  
21 shall demonstrate how any sites that were not built in the prior rounds  
22 continue to present a realistic opportunity, which may include  
23 proposing changes to the zoning on the site to make its development  
24 more likely, and which may also include the dedication of municipal  
25 affordable housing trust fund dollars or other monetary or in-kind  
26 resources. The municipality shall only plan to replace any sites  
27 planned for development as provided by a prior court approval,  
28 settlement agreement, or approval by the council, with alternative  
29 development plans, if it is determined that the previously planned sites  
30 no longer present a realistic opportunity, and the sites in the alternative  
31 development plan provide at least an equivalent number of affordable  
32 units and are otherwise in compliance with the "Fair Housing Act,"  
33 P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine.  
34 If a municipality proposes to replace a site for which a complete  
35 application seeking subdivision or site plan approval has not been filed  
36 prior to date by which the housing element and fair share plan is  
37 required to be submitted, there shall be a rebuttable presumption in any  
38 challenge filed to the municipality's plan that any site for which a  
39 zoning designation was adopted creating a realistic opportunity for the  
40 development of a site prior to July 1, 2020, or July 1 of every 10th  
41 year thereafter, as applicable, may be replaced with one or more  
42 alternative sites that provide a realistic opportunity for at least the  
43 same number of affordable units and is otherwise in compliance with  
44 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the  
45 Mount Laurel doctrine. To the extent a municipality has credits,  
46 including bonus credits, from units created during a prior round that  
47 are otherwise permitted to be allocated toward the municipality's  
48 unfulfilled prior round obligation or present or prospective need

1 obligation in an upcoming round, the municipality shall be entitled to  
2 rely on the rules, including rules for bonus credits, applicable for the  
3 round during which those credits were accumulated. If a municipality  
4 has credits in excess of its prior round obligations, and such excess  
5 credits represent housing that will continue to be deed-restricted and  
6 affordable through the current round, the municipality may include  
7 such housing, and applicable bonus credits, towards addressing the  
8 municipality's new calculation of prospective need. Consistent with  
9 subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311), the  
10 total number of bonus credits shall in no circumstance exceed 25  
11 percent of the municipality's prospective obligation in any round. The  
12 municipality may in its plan lower its prospective need obligation to  
13 the extent necessary to prevent establishing a prospective need  
14 obligation that requires the municipality to provide a realistic  
15 opportunity for more than 1,000 housing units, after the application of  
16 any excess credits, or to prevent a prospective need obligation that  
17 exceeds 20 percent of the total number of households in a municipality  
18 according to the most recent federal decennial census, not including  
19 any prior round obligation. If a municipality is subject to both a 1,000  
20 unit cap or 20 percent cap it may apply whichever cap results in a  
21 lower prospective need obligation. For the fifth round, and for each  
22 subsequent new round of housing obligations, the deadlines in this  
23 paragraph shall be June 30 for the adoption of the housing element and  
24 fair share plan, and the proposal of drafts of the appropriate zoning and  
25 other ordinances and resolutions to implement its present and  
26 prospective obligation, of the year of the start of the new round.

27 (b) Following the filing, in an action, of an adopted housing  
28 element and fair share plan pursuant to subparagraph (a) of this  
29 paragraph, an interested party may file a response on or before August  
30 31, 2025 alleging that the municipality's fair share plan and housing  
31 element are not in compliance with the "Fair Housing Act," P.L.1985,  
32 c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. Such  
33 allegation shall not include a claim that a site on real property  
34 proposed by the interested party is a better site than a site in the plan,  
35 but rather shall be based on whether the housing element and fair share  
36 plan as proposed is compliant with the "Fair Housing Act," P.L.1985,  
37 c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. To resolve  
38 a challenge, the program shall apply an objective assessment standard  
39 to determine whether or not the municipality's housing element and  
40 fair share plan is compliant with the "Fair Housing Act," P.L.1985,  
41 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. Any  
42 interested party that files a challenge shall specify with particularity  
43 which sites or elements of the municipal fair share plan do not comply  
44 with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or  
45 the Mount Laurel doctrine, and the basis for alleging such non-  
46 compliance. The program shall establish procedures to summarily  
47 dismiss any objection or challenge that does not meet these minimum  
48 standards. For the purpose of efficiency, the program shall, in its own

1 discretion, permit multiple challenges to the same municipal housing  
2 element and fair share plan to be consolidated. If a municipality's fair  
3 share plan and housing element is not challenged on or before August  
4 31, 2025, then the program shall 'apply an objective standard to  
5 conduct a limited' review 'of' the fair share plan and housing element  
6 for consistency and to determine whether it 'enables the municipality  
7 to satisfy the fair share obligation, applies compliant mechanisms,  
8 meets the threshold requirements for rental and family units, does not  
9 exceed limits on other unit or category types, and' is compliant with  
10 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the  
11 Mount Laurel doctrine '[ , and ] . The program shall' issue a  
12 compliance certification unless these objective standards are not met.  
13 The program shall facilitate communication between the municipality  
14 and any interested parties for a challenge, and provide the municipality  
15 until December 31, 2025 to commit to revising its fair share plan and  
16 housing element in compliance with the changes requested in the  
17 challenge, or provide an explanation as to why it will not make all of  
18 the requested changes, or both. Upon resolution of a challenge, the  
19 program shall issue compliance certification, conditioned on the  
20 municipality's commitment, as necessary, to revise its fair share plan  
21 and housing element in accordance with the resolution of the  
22 challenge. The program may also terminate immunity if it finds that  
23 the municipality is not determined to come into constitutional  
24 compliance at any point in the process. If by December 31, 2025, the  
25 municipality and any interested party that filed a response have  
26 resolved the issues raised in the response through agreement or  
27 withdrawal of the filing, then the program shall review the fair share  
28 plan and housing element for consistency and to determine whether it  
29 is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-  
30 301 et al.) and the Mount Laurel doctrine, and issue a compliance  
31 certification unless these objective standards are not met. For the fifth  
32 round, and each subsequent new round of housing obligations, the  
33 deadline established in this subparagraph for an interested party to file  
34 a challenge shall be August 31, and for the municipality to revise its  
35 housing element and fair share plan in response, shall be December 31,  
36 of the year of the beginning of the new round.

37 (c) For the fourth round of affordable housing obligations, the  
38 implementing ordinances and resolutions, proposed pursuant to  
39 subparagraph (a) of this paragraph, and incorporating any changes  
40 from the program, shall be adopted on or before March 15, 2026. For  
41 the fifth round, and each subsequent new round of housing obligations,  
42 the deadline established in this subparagraph for the implementing  
43 ordinances and resolutions shall be on March 15 of the year following  
44 the beginning of the new round. After adoption of the implementing  
45 ordinances and resolutions by the municipality, the municipality shall  
46 immediately file the ordinances and resolutions with the program  
47 through the program's Internet website. Failure to meet the March 15



1 deadline shall result in the municipality losing immunity from  
2 <sup>1</sup>**builder's remedy** exclusionary zoning<sup>1</sup> litigation.

3 (d) The program may permit a municipality that still has a  
4 remaining dispute by interested parties to retain immunity from  
5 <sup>1</sup>**builder's remedy** exclusionary zoning<sup>1</sup> litigation into the year  
6 following the year in which a new round begins if the program, or  
7 county level housing judge, determines that the municipality has been  
8 unable to resolve the issues disputed despite being determined to come  
9 into constitutional compliance. The Administrative Director of the  
10 Courts shall develop procedures to enable a county level housing judge  
11 to resolve this dispute over the issuance of compliance certification  
12 through a summary proceeding in Superior Court following the year in  
13 which the new round begins. A judge shall be permitted to serve as a  
14 county level housing judge for more than one county in the same  
15 vicinage. The pendency of such a dispute shall not stay the deadline  
16 for adoption of implementing ordinances and resolutions pursuant to  
17 this paragraph. <sup>1</sup>The implementing ordinances and resolutions  
18 adopted prior to the resolution of the dispute may be subject to  
19 changes to reflect the results of the dispute. As an alternative to  
20 adopting the implementing ordinances and resolutions by the March  
21 15 deadline, a municipality involved in a continuing dispute over the  
22 issuance of compliance certification may adopt a binding resolution by  
23 this date to commit to adopting the implementing ordinances and  
24 resolutions following resolution of the dispute, with necessary  
25 adjustments to reflect the resolution of the dispute.<sup>1</sup>

26 (e) Once a municipality has received a compliance certification or  
27 otherwise has had its fair share obligation and housing element and  
28 fair share plan finally determined via judgment of repose or other  
29 judgment, the municipality shall make the municipality's fair share  
30 plan and housing element, as well as any subsequently adopted  
31 implementing ordinances and resolutions, or amendments thereto,  
32 available to the department and the program for publication on the  
33 department's and program's respective Internet websites.

34 (3) (a) If a municipality fails to <sup>1</sup>materially<sup>1</sup> adhere to any of the  
35 deadlines established in paragraphs (1) or (2) of this subsection due to  
36 circumstances beyond the control of the municipality, including but  
37 not limited to an inability to meet a deadline due to an extreme  
38 weather event, then the program, or the county level housing judge, in  
39 accordance with court rules, may permit a municipality to have a grace  
40 period to come into compliance with the timeline, the length of which,  
41 and effect of which on later deadlines, shall be determined on a case-  
42 by-case basis.

43 (b) A municipality that has not adopted and published a binding  
44 resolution pursuant to paragraph (1) of this subsection or that has not  
45 adopted and filed a housing element and fair share plan pursuant to  
46 paragraph (2) of this subsection may seek compliance certification by  
47 filing an action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-

313), provided that any <sup>1</sup>**["builder's remedy"] exclusionary zoning<sup>1</sup>** litigation filed by a plaintiff against such a municipality prior to such time may proceed notwithstanding such filing. In a municipality that has adopted and published a binding resolution pursuant to paragraph (1) of this subsection and has adopted and filed a housing element and fair share plan pursuant to paragraph (2) of this subsection, a court shall not <sup>1</sup>**["grant a builder's remedy to a plaintiff in"] consider<sup>1</sup>** exclusionary zoning litigation during the timeframe after the timely submission of a binding resolution or fair share plan and housing element of a municipality, or both, and before a challenge is submitted, or during the timeframe of a challenge that is pending resolution with the program pursuant to this subsection. A court may <sup>1</sup>**["grant a builder's remedy to a plaintiff in"] consider<sup>1</sup>** exclusionary zoning litigation after such timeframe upon a finding that the municipality: (i) is determined to be constitutionally noncompliant with its responsibilities pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or is participating in the program in bad faith; (ii) has failed to meet the deadlines established pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill); or (iii) has, after receiving compliance certification, failed to comply with the terms of that certification by not actually allowing for the development of the affordable housing as provided for in its fair share plan and housing element through actions, omissions, or both, of a municipality or its subordinate boards.

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

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

(e) A municipality shall not be deemed out of compliance with the deadlines of P.L. , c. (C. ) (pending before the Legislature as this bill), or lose immunity from <sup>1</sup>**["builder's remedy"] exclusionary zoning<sup>1</sup>** litigation, due to a failure by the program to promptly maintain and update its Internet website, or other operational failure of the program.

<sup>1</sup>g. The program shall be made a party to, and shall be responsible for defending its issuance of compliance certification in, any litigation alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are not in compliance with the Mount Laurel doctrine.<sup>1</sup>

4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to read as follows:

13. a. **[A]** If a municipality [which] has [filed a housing element may, at any time during a two-year period following the filing of the housing element, petition the council for a substantive certification of its element and ordinances or] adopted a housing element and fair share plan pursuant to section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), but has failed to satisfy the June 30 deadline established pursuant to paragraph (2) of subsection f. of section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), for any round of affordable housing obligations, the municipality may request and be provided with a grace period pursuant to paragraph (3) of subsection f. of section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), if authorized by the program or county level housing judge, as determined by the rules of court. If a municipality that has not satisfied this June 30 deadline is not provided with a grace period, the municipality may institute an action for declaratory judgment granting it repose in the Superior Court [ , but in no event shall a grant of substantive certification extend beyond a 10-year period starting on the date the municipality files its housing element with the council] for the 10-year period constituting the current round of fair share obligations. The municipality shall publish notice of its [petition] filing of a declaratory judgment action in a newspaper of general circulation within the municipality and county and shall make available to the public information on the element and ordinances by submitting such information to the program to be published on the Internet website of the program in accordance with [such procedures as the council shall establish. The council shall also establish a procedure for providing public notice of each petition which it receives] section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. **[Notwithstanding the provisions of subsection a. of this section, a municipality which filed a housing element prior to the effective date of P.L.1990, c.121, shall be permitted to petition for substantive certification at any time within two years following that filing, or within one year following the effective date of P.L.1990, c.121, whichever shall result in permitting the municipality the longer period of time within which to petition.]** (Deleted by amendment, P.L. , c. (pending before the Legislature as this bill)

**[The Council shall establish procedures for] c. (1) A municipality or other interested party may file an action through the program seeking a realistic opportunity review [at the midpoint of the certification period and shall provide for notice to the public] at the midpoint of the certification period and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site in the housing element and fair share plan that has not received preliminary site plan approval prior to the midpoint of the 10-year round. If such an action is initiated by a municipality, the municipality <sup>1</sup>[shall] may<sup>1</sup> propose one or more alternative sites with**

1 an accompanying development plan or plans that provide a realistic  
2 opportunity for the same number of affordable units and is otherwise  
3 in compliance with the "Fair Housing Act," P.L.1985, c.222  
4 (C.52:27D-301 et al.) and the Mount Laurel doctrine, provided that if  
5 the facts demonstrate that the municipality or its subordinate boards  
6 have prevented the site from receiving site plan approval, then the  
7 program shall reject the municipality's challenge.

8 (2) Any party may file a request for information from the program  
9 regarding the progress of development at any inclusionary  
10 development site in the housing element and fair share plan of a  
11 municipality, or at any alternative site proposed by the municipality.  
12 The program may respond to a request independently or in  
13 coordination with the department.

14 (cf: P.L.2001, c.435, s.5)

15  
16 5. (New section) a. There is established an Affordable Housing  
17 Dispute Resolution Program that shall have the purpose of efficiently  
18 resolving disputes involving the "Fair Housing Act," P.L.1985, c.222  
19 (C.52:27D-301 et al.), to consist of an odd number of members, of at  
20 least three and no more than seven members who shall lead the  
21 administration of the program. The <sup>1</sup>【Chief Justice of the Supreme  
22 Court】 Administrative Director of the Courts<sup>1</sup> shall update the  
23 assignment of designated Mount Laurel judges to indicate which  
24 current or retired and on recall judges of the Superior Court shall serve  
25 as members, within <sup>1</sup>【40】 60<sup>1</sup> days following the effective date of  
26 P.L. , c. (C. ) (pending before the Legislature as this bill). The  
27 <sup>1</sup>【Chief Justice of the Supreme Court】 Administrative Director of the  
28 Courts<sup>1</sup> may appoint other qualified experts as members if sufficient  
29 current and retired judges are unavailable. The <sup>1</sup>【Chief Justice of the  
30 Supreme Court】 Administrative Director of the Courts<sup>1</sup> shall take into  
31 consideration in making such appointments experience in the  
32 employment of alternative dispute resolution methods and in relevant  
33 subject matter.

34 b. The <sup>1</sup>【Chief Justice of the Supreme Court】 Administrative  
35 Director of the Courts<sup>1</sup> shall designate a member to serve as chair.  
36 The <sup>1</sup>【Chief Justice of the Supreme Court】 Administrative Director of  
37 the Courts<sup>1</sup> shall make new appointments as needs arise for new  
38 appointments.

39 c. The program, in its discretion and in accordance with Rules of  
40 Court, may consult or employ the services of one or more special  
41 masters or staff to assist it in rendering determinations, resolving  
42 disputes, and facilitating communication as required by subparagraph  
43 (b) of paragraph (2) of subsection f. of section 3 of P.L. , c.  
44 (C. ) (pending before the Legislature as this bill). In addition, the  
45 program may incorporate any existing or newly established court  
46 mediation or alternative dispute resolution process to assist the

1 program in resolving disputes and facilitating communication among  
2 municipalities and interested parties.

3 d. The Administrative Director of the Courts shall establish a  
4 filing system via an Internet website in which the public is able to  
5 access, without cost, filings made pursuant to P.L. , c. (C. )  
6 (pending before the Legislature as this bill) and such other related  
7 filings as the Administrative Director of the Courts may include on the  
8 filing system.

9 e. The Administrative Director of the Courts may assign  
10 additional responsibilities to the program for resolving disputes arising  
11 out of or related to the "Fair Housing Act," P.L.1985, c.222  
12 (C.52:27D-301 et al.).

13 f. The Administrative Director of the Courts shall establish  
14 procedures for the purpose of efficiently resolving disputes involving  
15 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), for  
16 circumstances in which the program is unable to address the dispute  
17 within the time limitations established pursuant to section 3 of P.L. ,  
18 c. (C. ) (pending before the Legislature as this bill). As a part of  
19 the procedures established pursuant to this section, in order to facilitate  
20 an appropriate level of localized control of affordable housing  
21 decisions, for each vicinage, the Chief Justice of the Supreme Court  
22 shall designate a Superior Court judge who sits within the vicinage, or  
23 a retired judge who, during the judge's tenure as a judge, served within  
24 the vicinage, to serve as county level housing judge to resolve disputes  
25 over the compliance, of fair share plans and housing elements of  
26 municipalities within their designated county or counties, with the  
27 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as well as  
28 disputes that arise with respect to ongoing compliance or  
29 noncompliance with obligations created by fair share plans, housing  
30 elements, and the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
31 et al.). A judge shall be permitted to serve as a county level housing  
32 judge for more than one county in the same vicinage.

33 g. The Administrative Director of the Courts shall promulgate,  
34 maintain, and apply a Code of Ethics that is modeled upon the Code of  
35 Judicial Conduct of the American Bar Association, as amended and  
36 adopted by the Supreme Court of New Jersey, and may establish  
37 additional, more restrictive ethical standards in order to meet the  
38 specific needs of the program, and of county level housing judges.

39

40 6. (New section) a. Municipal present need for each 10-year  
41 round of affordable housing obligations shall be determined by  
42 estimating the deficient housing units occupied by low- and  
43 moderate-income households in the region, following a  
44 methodology similar to the methodology used to determine third  
45 round municipal present need, through the use of most recent  
46 datasets made available through the federal decennial census and  
47 the American Community Survey.

b. For the purpose of determining regional need for the 10-year round of low- and moderate-income housing obligations, running from July 1, 2025 through June 30, 2035, and each 10-year round thereafter:

(1) The regions of the State shall be comprised as follows:

(a) Region 1 shall consist of the counties of Bergen, Hudson, Passaic, and Sussex;

(b) Region 2 shall consist of the counties of Essex, Morris, Union, and Warren;

(c) Region 3 shall consist of the counties of Hunterdon, Middlesex, and Somerset;

(d) Region 4 shall consist of the counties of Mercer, Monmouth, and Ocean;

(e) Region 5 shall consist of the counties of Burlington, Camden, and Gloucester; and

(f) Region 6 shall consist of the counties of Atlantic, Cape May, Cumberland, and Salem.

(2) Regional prospective need for a 10-year round of low- and moderate-income housing obligations shall be determined through the calculation provided in this subsection. Projected household change for a 10-year round in a region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. This household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region, and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective need shall be zero.

7. (New section) a. The present and prospective fair share obligation for low- and moderate-income housing for each municipality in the State shall be determined as described in this section. In addition, the March 8, 2018 unpublished decision of the Superior Court, Law Division, Mercer County, In re Application of Municipality of Princeton shall be referenced as to datasets and methodologies that are not explicitly addressed by this section. These determinations of municipal present and prospective need shall be based on a determination of the present and prospective regional need for low- and moderate-income housing, established pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill). These calculations of municipal present and prospective need shall use necessary datasets that are updated to the greatest extent practicable.

b. A municipality's present need obligation shall be determined by estimating the existing deficient housing units currently occupied by

1 low- and moderate-income households within the municipality,  
2 following a methodology comparable to the methodology used to  
3 determine third round present need, through the use of datasets made  
4 available through the federal decennial census and the American  
5 Community Survey.

6 c. A municipality's prospective fair share obligation of the  
7 regional prospective need for the upcoming 10-year round shall be  
8 determined in accordance with this subsection:

9 (1) If a municipality is a qualified urban aid municipality, the  
10 municipality shall be exempt from responsibility for any fair share  
11 prospective need obligation for the upcoming 10-year round. For the  
12 purposes of this section, a municipality is a qualified urban aid  
13 municipality if the municipality, as of July 1 of the year prior to the  
14 beginning of a new round, is designated by the department, pursuant to  
15 P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid, and the  
16 municipality meets at least one of the following criteria:

17 (a) The ratio of substandard existing deficient housing units  
18 currently occupied by low- and moderate-income households within  
19 the municipality, compared to all existing housing in the municipality,  
20 is greater than the equivalent ratio in the region;

21 (b) The municipality has a population density greater than 10,000  
22 persons per square mile of land area; or

23 (c) The municipality has a population density of more than 6,000,  
24 but less than 10,000 persons per square mile of land area, and less than  
25 five percent vacant parcels not used as farmland, as measured by the  
26 average of:

27 (i) The number of vacant land parcels in the municipality as a  
28 percentage of the total number of parcels in the municipality; and

29 (ii) The valuation of vacant land in the municipality as a  
30 percentage of total valuations in the municipality.

31 (2) A municipality's equalized nonresidential valuation factor  
32 shall be determined. To determine this factor, the changes in  
33 nonresidential property valuations in the municipality, since the  
34 beginning of the round preceding the round being calculated, shall be  
35 calculated using data published by the Division of Local Government  
36 Services in the department. The change in the municipality's  
37 nonresidential valuations shall be divided by the regional total change  
38 in nonresidential valuations to determine the municipality's share of  
39 the regional change as the equalized nonresidential valuation factor.

40 (3) A municipality's income capacity factor shall be determined.  
41 This factor shall be determined by calculating the average of the  
42 following measures:

43 (a) The municipal share of the regional sum of the differences  
44 between the median municipal household income, according to the  
45 most recent American Community Survey Five-Year Estimates, and  
46 an income floor of \$100 below the lowest median household income in  
47 the region; and

1 (b) The municipal share of the regional sum of the differences  
2 between the median municipal household incomes and an income floor  
3 of \$100 below the lowest median household income in the region,  
4 weighted by the number of the households in the municipality.

5 (4) A municipality's land capacity factor shall be determined.  
6 This factor shall be determined by estimating the area of developable  
7 'land and redevelopable' land in the municipality's boundaries, and  
8 regional boundaries, that may accommodate development through the  
9 use of the "land use / land cover data" most recently published by the  
10 Department of Environmental Protection, and weighing such land  
11 based on the planning area type in which such land is located. After  
12 the weighing factors are applied, the sum of the total developable  
13 'land and redevelopable' land area that may accommodate development  
14 in the municipality, and in the region shall be determined. The  
15 municipality's share of its region's developable 'land and redevelopable'  
16 land shall be its land capacity factor. Developable 'land and  
17 redevelopable' land that may accommodate development shall be  
18 weighted based on the planning area type in which such land is  
19 located, as designated pursuant to P.L.1985, c.398 (C.52:18A-196 et  
20 seq.), P.L.1979, c.111 (C.13:18A-1 et seq.), or P.L.2004, c.120  
21 (C.13:20-1 et seq.), as follows:

22 (a) Planning Area 1 (Metropolitan) shall have a weighting factor  
23 of 1.0;

24 (b) Planning Area 2 (Suburban) shall have a weighting factor of  
25 1.0;

26 (c) Planning Area 3 (Fringe) shall have a weighting factor of 0.5;

27 (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;

28 (e) Planning Area 5 (Environmentally Sensitive) shall have a  
29 weighting factor of 0.0;

30 (f) Centers in Planning Areas 1 and 2 shall have a weighting factor  
31 of 1.0;

32 (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting  
33 factor of 0.5;

34 (h) Pinelands Regional Growth Area shall have a weighting factor  
35 of 0.5;

36 (i) Pinelands Town shall have a weighting factor of 0.5;

37 (j) All other Pinelands shall have a weighting factor of 0.0;

38 (k) Meadowlands shall have a weighting factor of 1.0;

39 (l) Meadowlands Center shall have a weighting factor of 1.0;

40 (m) Highlands Preservation Area shall have a weighting factor of  
41 0.0;

42 (n) Highlands Planning Area Existing Community Zone, opted in  
43 municipality by May 1, 2022 shall have a weighting factor of 1.0;

44 (o) Highlands Planning Area, State-designated sewer service area,  
45 municipality not opted in by May 1, 2022, shall have a weighting  
46 factor of 1.0; and



1 (p) All other Highlands Planning Areas shall have a weighting  
2 factor of 0.0.

3 (5) The equalized nonresidential valuation factor, income capacity  
4 factor, and land capacity factor, determined in paragraphs (2), (3), and  
5 (4) of this subsection, shall be averaged to yield the municipality's  
6 average allocation factor for distributing gross regional prospective  
7 need to the municipality. The regional prospective need shall then be  
8 multiplied by the municipality's average allocation factor to determine  
9 the municipality's gross prospective need for the 10-year round.

10 (6) Secondary sources of supply and demand shall be adjusted for  
11 by first calculating demolitions of low- and moderate-income housing,  
12 and housing creation through low- and moderate-income residential  
13 conversions. A municipality's share of low- and moderate-income  
14 conversions shall then be subtracted from the sum of each  
15 municipality's allocated share of gross prospective need and  
16 demolitions of low- and moderate-income housing.

17  
18 8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read  
19 as follows:

20 4. a. Upon failure to perform any obligation of a residential  
21 mortgage by the residential mortgage debtor and before any  
22 residential mortgage lender may accelerate the maturity of any  
23 residential mortgage obligation and commence any foreclosure or  
24 other legal action to take possession of the residential property  
25 which is the subject of the mortgage, the residential mortgage  
26 lender shall give a notice of intention, which shall include a notice  
27 of the right to cure the default as provided in section 5 of P.L.1995,  
28 c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in  
29 advance of such action as provided in this section, to the residential  
30 mortgage debtor, and, if the mortgage is secured by a residence for  
31 which a restriction on affordability was recorded in the county in  
32 which the property is located, the clerk of the municipality in which  
33 the subject property is located, the municipal housing liaison, if one  
34 has been appointed by the municipality **【**pursuant to the regulations  
35 of the Council on Affordable Housing, and the Commissioner of  
36 Community Affairs**】**. For the purposes of this section, "restriction  
37 on affordability" means any conditions recorded with a mortgage or  
38 a deed which would limit the sale of such property to income  
39 qualified households pursuant to the rules adopted to effectuate the  
40 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

41 b. Notice of intention to take action as specified in subsection  
42 a. of this section shall be in writing, provided to the Department of  
43 Community Affairs in accordance with subsection a. of section 2 of  
44 P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or  
45 certified mail, return receipt requested, at the debtor's last known  
46 address, and, if different, to the address of the property which is the  
47 subject of the residential mortgage. The notice is deemed to have

1    been effectuated on the date the notice is delivered in person or  
2    mailed to the party.

3       c. The written notice shall clearly and conspicuously state in a  
4    manner calculated to make the debtor aware of the situation:

5       (1) the particular obligation or real estate security interest;

6       (2) the nature of the default claimed;

7       (3) the right of the debtor to cure the default as provided in  
8    section 5 of P.L.1995, c.244 (C.2A:50-57);

9       (4) what performance, including what sum of money, if any, and  
10   interest, shall be tendered to cure the default as of the date specified  
11   under paragraph (5) of this subsection c.;

12       (5) the date by which the debtor shall cure the default to avoid  
13   initiation of foreclosure proceedings, which date shall not be less  
14   than 30 days after the date the notice is effective, and the name and  
15   address and phone number of a person to whom the payment or  
16   tender shall be made;

17       (6) that if the debtor does not cure the default by the date  
18   specified under paragraph (5) of this subsection c., the lender may  
19   take steps to terminate the debtor's ownership in the property by  
20   commencing a foreclosure suit in a court of competent jurisdiction;

21       (7) that if the lender takes the steps indicated pursuant to  
22   paragraph (6) of this subsection c., a debtor shall still have the right  
23   to cure the default pursuant to section 5 of P.L.1995, c.244  
24   (C.2A:50-57), but that the debtor shall be responsible for the  
25   lender's court costs and attorneys' fees in an amount not to exceed  
26   that amount permitted pursuant to the Rules Governing the Courts  
27   of the State of New Jersey;

28       (8) the right, if any, of the debtor to transfer the real estate to  
29   another person subject to the security interest and that the transferee  
30   may have the right to cure the default as provided in P.L.1995,  
31   c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;

32       (9) that the debtor is advised to seek counsel from an attorney of  
33   the debtor's own choosing concerning the debtor's residential  
34   mortgage default situation, and that, if the debtor is unable to obtain  
35   an attorney, the debtor may communicate with the New Jersey Bar  
36   Association or Lawyer Referral Service in the county in which the  
37   residential property securing the mortgage loan is located; and that,  
38   if the debtor is unable to afford an attorney, the debtor may  
39   communicate with the Legal Services Office in the county in which  
40   the property is located;

41       (10) the possible availability of financial assistance for curing a  
42   default from programs operated by the State or federal government  
43   or nonprofit organizations, if any, as identified by the  
44   Commissioner of Banking and Insurance and, if the property is  
45   subject to restrictions on affordability, the address and phone  
46   number of the municipal affordable housing liaison and of the New  
47   Jersey Housing and Mortgage Finance Agency. This requirement

1 shall be satisfied by attaching a list of such programs promulgated  
2 by the commissioner;

3 (11) the name and address of the lender and the telephone  
4 number of a representative of the lender whom the debtor may  
5 contact if the debtor disagrees with the lender's assertion that a  
6 default has occurred or the correctness of the mortgage lender's  
7 calculation of the amount required to cure the default;

8 (12) that if the lender takes the steps indicated pursuant to  
9 paragraph (6) of this subsection, the debtor has the option to  
10 participate in the Foreclosure Mediation Program following the  
11 filing of a mortgage foreclosure complaint by initiating mediation  
12 pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019,  
13 c.64 (C.2A:50-77). Notice of the option to participate in the  
14 Foreclosure Mediation Program shall adhere to the requirements of  
15 section 3 of P.L.2019, c.64 (C.2A:50-76) and any court rules,  
16 procedures, or guidelines adopted by the Supreme Court;

17 (13) that the debtor is entitled to housing counseling, at no cost  
18 to the debtor, through the Foreclosure Mediation Program  
19 established by the New Jersey Judiciary, including information on  
20 how to contact the program;

21 (14) that if the property which is the subject of the mortgage has  
22 more than one dwelling unit but less than five, one of which is  
23 occupied by the debtor or a member of the debtor's immediate  
24 family as the debtor's or member's residence at the time the loan is  
25 originated, and is not properly maintained and meets the necessary  
26 conditions for receivership eligibility, established pursuant to  
27 section 4 of the "Multifamily Housing Preservation and  
28 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
29 mortgage lender shall file an order to show cause to appoint a  
30 receiver; and

31 (15) that the lender is either licensed in accordance with the  
32 "New Jersey Residential Mortgage Lending Act," sections 1  
33 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89)  
34 or exempt from licensure under the act in accordance with  
35 applicable law.

36 d. The notice of intention to foreclose required to be provided  
37 pursuant to this section shall not be required if the debtor has  
38 voluntarily surrendered the property which is the subject of the  
39 residential mortgage.

40 e. The duty of the lender under this section to serve notice of  
41 intention to foreclose is independent of any other duty to give  
42 notice under the common law, principles of equity, State or federal  
43 statute, or rule of court and of any other right or remedy the debtor  
44 may have as a result of the failure to give such notice.

45 f. Compliance with this section and subsection a. of section 2  
46 of P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the  
47 pleadings of any legal action referred to in this section. If the  
48 plaintiff in any complaint seeking foreclosure of a residential

1 mortgage alleges that the property subject to the residential  
2 mortgage has been abandoned or voluntarily surrendered, the  
3 plaintiff shall plead the specific facts upon which this allegation is  
4 based.

5 g. If more than 180 days have elapsed since the date the notice  
6 required pursuant to this section is sent, and any foreclosure or  
7 other legal action to take possession of the residential property  
8 which is the subject of the mortgage has not yet been commenced,  
9 the lender shall send a new written notice at least 30 days, but not  
10 more than 180 days, in advance of that action.

11 h. If the property which is the subject of the notice of intention  
12 to foreclose has more than one dwelling unit but less than five, one  
13 of which is occupied by the debtor or a member of the debtor's  
14 immediate family as the debtor's or member's residence at the time  
15 the loan is originated, and is not properly maintained and meets the  
16 necessary conditions for receivership eligibility, established  
17 pursuant to section 4 of the "Multifamily Housing Preservation and  
18 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
19 mortgage lender shall file an order to show cause to appoint a  
20 receiver.

21 (cf: P.L.2019, c.134, s.4)

22

23 9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as  
24 follows:

25 2. The New Jersey Council on Physical Fitness and Sports,  
26 established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is  
27 authorized to provide grants to assist low-income families in  
28 purchasing the protective eyewear. As used in this section, a "low-  
29 income family" means a family which qualifies for low-income  
30 housing under the standards promulgated by the **【Council on**  
31 **Affordable Housing】** New Jersey Housing and Mortgage Finance  
32 Agency pursuant to the "Fair Housing Act," P.L.1985, c.222  
33 (C.52:27D-301 et al.).

34 (cf: P.L.2005, c.306, s.2)

35

36 10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to  
37 read as follows:

38 25. a. The **【Council on Affordable Housing** shall take into  
39 consideration the **】** regional master plan **【prior to making any】** shall  
40 be taken into account as part of the determination of obligations  
41 pursuant to the method in section 7 of P.L. , c. (C. )  
42 (pending before the Legislature as this bill) regarding the allocation  
43 of the prospective fair share of the housing need **【in any**  
44 **municipality in the Highlands Region】** under the "Fair Housing  
45 Act," P.L.1985, c.222 (C.52:27D-301 et al.) for **【the】** any fair share  
46 period subsequent to **【1999】** the effective date of

1 P.L. , c. (C. ) (pending before the Legislature as this bill) if  
2 a municipality is in the Highlands Region.

3 b. Nothing in **【this act】** P.L.2004, c.120 (C.13:20-1 et al.) shall  
4 affect protections provided through a grant of substantive  
5 certification or a judgment of repose granted prior to **【the date of**  
6 **enactment of this act】** August 10, 2004.  
7 (cf: P.L.2004, c.120, s.25)  
8

9 11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to  
10 read as follows:

11 5. The requirements of this act shall not apply to:

12 a. Depository institutions; but subsidiaries and service  
13 corporations of these institutions shall not be exempt. A depository  
14 institution may register with the department for the purpose of  
15 sponsoring individuals, licensed as mortgage loan originators  
16 subject to subparagraph (b) of paragraph (1) of subsection c. of  
17 section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such  
18 registered entity obtains and maintains bond coverage for mortgage  
19 loan originators consistent with section 13 of P.L.2009, c.53  
20 (C.17:11C-63). A depository institution registered with the  
21 department in accordance with this subsection a. shall otherwise  
22 remain exempt from the licensing requirements of P.L.2009, c.53  
23 (C.17:11C-51 et seq.).

24 b. A registered mortgage loan originator that is registered  
25 under the federal "Secure and Fair Enforcement for Mortgage  
26 Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101  
27 et seq.).

28 c. A licensed attorney who negotiates the terms of a residential  
29 mortgage loan on behalf of a client as an ancillary matter to the  
30 attorney's representation of the client, unless the attorney is  
31 compensated by a residential mortgage lender, residential mortgage  
32 broker, or mortgage loan originator.

33 d. A person licensed as a real estate broker or salesperson  
34 pursuant to R.S.45:15-1 et seq., and not engaged in the business of a  
35 residential mortgage lender or residential mortgage broker. Any  
36 person holding a license under this act as a residential mortgage  
37 lender or broker shall be exempt from the licensing and other  
38 requirements of R.S.45:15-1 et seq. in the performance of those  
39 functions authorized by this act.

40 e. Any employer, other than a residential mortgage lender, who  
41 provides residential mortgage loans to his employees as a benefit of  
42 employment which are at an interest rate which is not in excess of  
43 the usury rate in existence at the time the loan is made, as  
44 established in accordance with the law of this State, and on which  
45 the borrower has not agreed to pay, directly or indirectly, any  
46 charge, cost, expense or any fee whatsoever, other than that interest.

47 f. The State of New Jersey or a municipality, or any agency or  
48 instrumentality thereof, which, in accordance with a housing

1 element that has previously received substantive certification from  
2 the Council on Affordable Housing, or a judgment of repose or  
3 other court approval, pursuant to the "Fair Housing Act," P.L.1985,  
4 c.222 (C.52:27D-301 et al.), or in fulfillment of a regional  
5 contribution agreement with a municipality that has received a  
6 certification, employs or proposes to employ municipally generated  
7 funds, funds obtained through any State or federal subsidy, or funds  
8 acquired by the municipality under a regional contribution  
9 agreement, to finance the provision of affordable housing by  
10 extending loans or advances, the repayment of which is secured by  
11 a lien, subordinate to any prior lien, upon the property that is to be  
12 rehabilitated.

13 g. Any individual who offers or negotiates terms of a  
14 residential mortgage loan:

15 (1) with or on behalf of an immediate family member; or

16 (2) secured by a dwelling that serves as the individual's  
17 residence.

18 h. Any person who, during a calendar year takes three or fewer  
19 residential mortgage loan applications or offers or negotiates the  
20 terms of three or fewer residential mortgage loans or makes three or  
21 fewer residential mortgage loans related to manufactured housing  
22 structures which are:

23 (1) titled by the New Jersey Motor Vehicle Commission;

24 (2) located in a mobile home park as defined in subsection e. of  
25 section 3 of P.L.1983, c.400 (C.54:4-1.4); and

26 (3) exempt from taxation as real property pursuant to subsection  
27 b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

28 i. A bona fide not for profit entity and any individuals directly  
29 employed by that entity, so long as the entity maintains its tax  
30 exempt status under Section 501(c)(3) of the Internal Revenue Code  
31 of 1986 and otherwise meets the definition of "bona fide not for  
32 profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as  
33 periodically determined by the department in accordance with rules  
34 established by the commissioner.

35 (cf: P.L.2018, c.108, s.3)

36  
37 12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to  
38 read as follows:

39 2. a. A person who violates a requirement of this act shall be  
40 warned of the violation by the enforcing official. The parent or  
41 legal guardian of that person also may be fined a maximum of \$25  
42 for the person's first offense and a maximum of \$100 for a  
43 subsequent offense if it can be shown that the parent or guardian  
44 failed to exercise reasonable supervision or control over the  
45 person's conduct. Penalties provided in this section for a failure to  
46 wear a helmet may be waived if an offender or his parent or legal  
47 guardian presents suitable proof that an approved helmet was

1 owned at the time of the violation or has been purchased since the  
2 violation occurred.

3 b. All money collected as fines under subsection a. of this  
4 section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-  
5 10.6) shall be deposited in a nonlapsing revolving fund to be known  
6 as the "Bicycle and Skating Safety Fund." Interest earned on  
7 money deposited in the fund shall accrue to the fund. Money in the  
8 fund shall be utilized by the director to provide educational  
9 programs devoted to bicycle, roller skating and skateboarding  
10 safety. If the director determines that sufficient money is available  
11 in the fund, he also may use, in a manner prescribed by rule and  
12 regulation, the money to assist **low income** low-income families  
13 in purchasing approved bicycle helmets. For the purposes of this  
14 subsection, **low income family** "low-income family" means a  
15 family which qualifies for **low income** low-income housing under  
16 the standards promulgated by the **Council on Affordable Housing**  
17 New Jersey Housing and Mortgage Finance Agency pursuant to the  
18 provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).  
19 (cf: P.L.1997, c.411, s.11)  
20

21 13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to  
22 read as follows:

23 33. The Legislature finds and declares:

24 a. The collection of development fees from builders of  
25 residential and non-residential properties has been authorized by the  
26 court through the powers **delegated to the Council on Affordable**  
27 **Housing** established pursuant to the "Fair Housing Act," P.L.1985,  
28 c.222 (C.52:27D-301 et al.). Due to the Legislature's determination  
29 that the role of the Council on Affordable Housing has not  
30 developed in practice as intended, the Legislature further  
31 determines that authority relating to rulemaking on the collection of  
32 residential and non-residential development fees is appropriately  
33 delegated to the Department of Community Affairs, given the  
34 department's existing roles related to local government finance and  
35 the funding and financing of affordable housing throughout the  
36 State.

37 b. New Jersey's land resources are becoming more scarce, while  
38 its redevelopment needs are increasing. In order to balance the  
39 needs of developing and redeveloping communities, a reasonable  
40 method of providing for the housing needs of **low and moderate**  
41 **income** low-, moderate-, and middle income middle-income  
42 households, without mandating the inclusion of housing in every  
43 non-residential project, must be established.

44 c. A Statewide non-residential development fee program, which  
45 permits municipalities **under the council's jurisdiction** that have  
46 obtained or are in the process of seeking compliance certification to  
47 retain these fees for use in the municipality will provide a fair and

1 balanced funding method to address the State's affordable housing  
2 needs, while providing an incentive to all municipalities to **【seek**  
3 **substantive】** obtain compliance certification **【from the council】**.

4 d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),  
5 organizations are directed to invest in the Casino Reinvestment  
6 Development Authority to ensure that the development of housing  
7 for families of **【low and moderate income】** low- and moderate-  
8 income shall be provided. The Casino Reinvestment Development  
9 Authority **【, in consultation with the council,】** shall work to  
10 effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301  
11 et al.).

12 e. **【The "Statewide Non-Residential Development Fee Act,"**  
13 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through  
14 C.40:55D-8.7), prohibits municipalities from imposing their own  
15 fees to fund affordable housing on non-residential development, and  
16 P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this  
17 underlying policy.**】** Deleted by amendment P.L. , c. (pending  
18 before the Legislature as this bill)

19 f. The negative impact of a State policy that over-relies on a  
20 municipal fee structure and of State programs that require a  
21 municipality to impose fees and charges on developers must be  
22 balanced against any public good expected from such regulation. It  
23 is undisputable that the charging of fees at high levels dissuades  
24 commerce from locating within a State or municipality or locality  
25 and halts non-residential and residential development, and these ill  
26 effects directly increase the overall costs of housing, and could  
27 impede the constitutional obligation to provide for a realistic  
28 opportunity for housing for families at all income levels.  
29 (cf: P.L.2009, c.90, s.36)

30  
31 14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to  
32 read as follows:

33 34. As used in sections 32 through 38 of P.L.2008, c.46  
34 (C.40:55D-8.1 through C.40:55D-8.7):

35 "Construction" means new construction and additions, but does  
36 not include alterations, reconstruction, renovations, and repairs as  
37 those terms are defined under the State Uniform Construction Code  
38 promulgated pursuant to the "State Uniform Construction Code  
39 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

40 "Commissioner" means the Commissioner of Community  
41 Affairs.

42 **【"Council" means the Council on Affordable Housing,**  
43 **established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).】**

44 "Department" means the Department of Community Affairs.

45 "Developer" means the legal or beneficial owner or owners of a  
46 lot or of any land proposed to be included in a proposed  
47 development, including the holder of an option or contract to



1 purchase, or other person having an enforceable proprietary interest  
2 in such land.

3 "Equalized assessed value" means the assessed value of a  
4 property divided by the current average ratio of assessed to true  
5 value for the municipality in which the property is situated, as  
6 determined in accordance with sections 1, 5, and 6 of P.L.1973,  
7 c.123 (C.54:1-35a through C.54:1-35c).

8 "Mixed use development" means any development which  
9 includes both a non-residential development component and a  
10 residential development component, and shall include developments  
11 for which (1) there is a common developer for both the residential  
12 development component and the non-residential development  
13 component, provided that for purposes of this definition, multiple  
14 persons and entities may be considered a common developer if there  
15 is a contractual relationship among them obligating each entity to  
16 develop at least a portion of the residential or non-residential  
17 development, or both, or otherwise to contribute resources to the  
18 development; and (2) the residential and non-residential  
19 developments are located on the same lot or adjoining lots,  
20 including but not limited to lots separated by a street, a river, or  
21 another geographical feature.

22 "Non-residential development" means: (1) any building or  
23 structure, or portion thereof, including but not limited to any  
24 appurtenant improvements, which is designated to a use group other  
25 than a residential use group according to the State Uniform  
26 Construction Code promulgated to effectuate the "State Uniform  
27 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),  
28 including any subsequent amendments or revisions thereto; (2)  
29 hotels, motels, vacation timeshares, and child-care facilities; and (3)  
30 the entirety of all continuing care facilities within a continuing care  
31 retirement community which is subject to the "Continuing Care  
32 Retirement Community Regulation and Financial Disclosure Act,"  
33 P.L.1986, c.103 (C.52:27D-330 et seq.).

34 "Non-residential development fee" means the fee authorized to  
35 be imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
36 (C.40:55D-8.1 through C.40:55D-8.7).

37 "Relating to the provision of housing" shall be liberally  
38 construed to include the construction, maintenance, or operation of  
39 housing, including but not limited to the provision of services to  
40 such housing and the funding of any of the above.

41 "Spending plan" means a method of allocating funds collected  
42 and to be collected pursuant to an approved municipal development  
43 fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)  
44 for the purpose of meeting the housing needs of low and moderate  
45 income individuals.

46 "Treasurer" means the Treasurer of the State of New Jersey.  
47 (cf: P.L.2008, c.46, s.34)

1       15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to  
2 read as follows:

3       35. a. Beginning on the effective date of P.L.2008, c.46  
4 (C.52:27D-329.1 et al.), a fee is imposed on all construction  
5 resulting in non-residential development, as follows:

6       (1) A fee equal to two and one-half percent of the equalized  
7 assessed value of the land and improvements, for all new non-  
8 residential construction on an unimproved lot or lots; or

9       (2) A fee equal to two and one-half percent of the increase in  
10 equalized assessed value, of the additions to existing structures to  
11 be used for non-residential purposes.

12       b. All non-residential construction of buildings or structures on  
13 property used by churches, synagogues, mosques, and other houses  
14 of worship, and property used for educational purposes, which is  
15 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the  
16 imposition of a non-residential development fee pursuant to this  
17 section, provided that the property continues to maintain its tax  
18 exempt status under that statute for a period of at least three years  
19 from the date of issuance of the certificate of occupancy. In  
20 addition, the following shall be exempt from the imposition of a  
21 non-residential development fee:

22       (1) parking lots and parking structures, regardless of whether the  
23 parking lot or parking structure is constructed in conjunction with a  
24 non-residential development, such as an office building, or whether  
25 the parking lot is developed as an independent non-residential  
26 development;

27       (2) any non-residential development which is an amenity to be  
28 made available to the public, including, but not limited to,  
29 recreational facilities, community centers, and senior centers, which  
30 are developed in conjunction with or funded by a non-residential  
31 developer;

32       (3) non-residential construction resulting from a relocation of or  
33 an on-site improvement to a nonprofit hospital or a nursing home  
34 facility;

35       (4) projects that are located within a specifically delineated  
36 urban transit hub, as defined pursuant to section 2 of P.L.2007,  
37 c.346 (C.34:1B-208);

38       (5) projects that are located within an eligible municipality, as  
39 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a  
40 majority of the project is located within a one-half mile radius of  
41 the midpoint of a platform area for a light rail system; and

42       (6) projects determined by the New Jersey Transit Corporation  
43 to be consistent with a transit village plan developed by a transit  
44 village designated by the Department of Transportation.

45       A developer of a non-residential development exempted from the  
46 non-residential development fee pursuant to this section shall be  
47 subject to it at such time the basis for the exemption set forth in this  
48 subsection no longer applies, and shall make the payment of the

1 non-residential development fee, in that event, within three years  
2 after that event or after the issuance of the final certificate of  
3 occupancy of the non-residential development whichever is later.

4 For purposes of this subsection, "recreational facilities and  
5 community center" means any indoor or outdoor buildings, spaces,  
6 structures, or improvements intended for active or passive  
7 recreation, including but not limited to ball fields, meeting halls,  
8 and classrooms, accommodating either organized or informal  
9 activity; and "senior center" means any recreational facility or  
10 community center with activities and services oriented towards  
11 serving senior citizens.

12 If a property which was exempted from the collection of a non-  
13 residential development fee thereafter ceases to be exempt from  
14 property taxation, the owner of the property shall remit the fees  
15 required pursuant to this section within 45 days of the termination  
16 of the property tax exemption. Unpaid non-residential development  
17 fees under these circumstances may be enforceable by the  
18 municipality as a lien against the real property of the owner.

19 c. (1) Unless authorized to pay directly to the municipality in  
20 which the non-residential construction is occurring in accordance  
21 with paragraph (2) of this subsection, developers shall pay non-  
22 residential development fees imposed pursuant to P.L.2008, c.46  
23 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with  
24 subsection g. of this section in a manner and on such forms as  
25 required by the Treasurer, provided that a certified proof concerning  
26 the payment shall be furnished by the Treasurer, to the  
27 municipality.

28 (2) The **【council】** department shall maintain on its Internet  
29 website a list of each municipality that is authorized to use the  
30 development fees collected pursuant to this section and that has a  
31 confirmed status of compliance with the "Fair Housing Act,"  
32 P.L.1985, c.222 (C.52:27D-301 et al.) , or is in the process of  
33 seeking compliance certification, which compliance shall include a  
34 spending plan **【authorized by the council】** pursuant to section 8 of  
35 P.L.2008, c.46 (C.52:27D-329.2) for all development fees collected.

36 (3) No later than 90 days following the enactment of P.L. , c.  
37 (C. ) (pending before the Legislature as this bill), any  
38 municipality that is or has been authorized to retain and expend  
39 non-residential development fees shall provide the department with  
40 a detailed accounting of all such fees that have been collected and  
41 expended since the inception of the municipal authorization to  
42 collect and retain said fees.

43 (4) Beginning with the year after the enactment of P.L. , c.  
44 (C. ) (pending before the Legislature as this bill), by January  
45 15, every municipality that is or has been authorized to retain and  
46 expend non-residential development fees shall provide the  
47 department with a detailed accounting of all such fees that have  
48 been collected and expended previous year.

1       d. The payment of non-residential development fees required  
2 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
3 through C.40:55D-8.7) shall be made prior to the issuance of a  
4 certificate of occupancy for such development. A final certificate  
5 of occupancy shall not be issued for any non-residential  
6 development until such time as the fee imposed pursuant to this  
7 section has been paid by the developer. A non-residential developer  
8 may deposit with the appropriate entity the development fees as  
9 calculated by the municipality under protest, and the local code  
10 enforcement official shall thereafter issue the certificate of  
11 occupancy provided that the construction is otherwise eligible for a  
12 certificate of occupancy.

13       e. The construction official responsible for the issuance of a  
14 building permit shall notify the local tax assessor of the issuance of  
15 the first building permit for a development which may be subject to  
16 a non-residential development fee. Within 90 days of receipt of that  
17 notice, the municipal tax assessor, based on the plans filed, shall  
18 provide an estimate of the equalized assessed value of the non-  
19 residential development. The construction official responsible for  
20 the issuance of a final certificate of occupancy shall notify the local  
21 assessor of any and all requests for the scheduling of a final  
22 inspection on property which may be subject to a non-residential  
23 development fee. Within 10 business days of a request for the  
24 scheduling of a final inspection, the municipal assessor shall  
25 confirm or modify the previously estimated equalized assessed  
26 value of the improvements of the non-residential development in  
27 accordance with the regulations adopted by the Treasurer pursuant  
28 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential  
29 development fee pursuant to sections 32 through 38 of P.L.2008,  
30 c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the  
31 developer of the amount of the non-residential development fee.  
32 Should the municipality fail to determine or notify the developer of  
33 the amount of the non-residential development fee within 10  
34 business days of the request for final inspection, the developer may  
35 estimate the amount due and pay that estimated amount consistent  
36 with the dispute process set forth in subsection b. of section 37 of  
37 P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-  
38 residential development fee, provided the developer is in full  
39 compliance with all other applicable laws, the municipality shall  
40 issue a final certificate of occupancy for the subject property.  
41 Failure of the municipality to comply with the timeframes or  
42 procedures set forth in this subsection may subject it to penalties to  
43 be imposed by the commissioner; any penalties so imposed shall be  
44 deposited into the "New Jersey Affordable Housing Trust Fund"  
45 established pursuant to section 20 of P.L.1985, c.222 as amended  
46 by section 17 of P.L.2008, c.46 (C.52:27D-320).

47       A developer of a mixed use development shall be required to pay  
48 the Statewide non-residential development fee relating to the non-

1 residential development component of a mixed use development  
2 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

3 Non-residential construction which is connected with the  
4 relocation of the facilities of a for-profit hospital shall be subject to  
5 the fee authorized to be imposed under this section to the extent of  
6 the increase in equalized assessed valuation in accordance with  
7 regulations to be promulgated by the Director of the Division of  
8 Taxation, Department of the Treasury.

9 f. Any municipality that is not in compliance with the  
10 requirements established pursuant to sections 32 through 38 of  
11 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or  
12 regulations of the **【council】** commissioner adopted thereto, may be  
13 subject to forfeiture of any or all funds remaining within its  
14 municipal development trust fund. Any funds so forfeited shall be  
15 deposited into the New Jersey Affordable Housing Trust Fund  
16 established pursuant to section 20 of P.L.1985, c.222 as amended  
17 by section 17 of P.L.2008, c.46 (C.52:27D-320).

18 g. The Treasurer shall credit to the "Urban Housing Assistance  
19 Fund," established pursuant to section 13 of P.L.2008, c.46  
20 (C.52:27D-329.7) annually from the receipts of the fees authorized  
21 to be imposed pursuant to this section an amount equal to \$20  
22 million; all receipts in excess of this amount shall be deposited into  
23 the "New Jersey Affordable Housing Trust Fund," established  
24 pursuant to section 20 of P.L.1985, c.222 as amended by section 17  
25 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of  
26 that fund.

27 The Treasurer shall adopt such regulations as necessary to  
28 effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
29 through C.40:55D-8.7), in accordance with the "Administrative  
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).  
31 (cf: P.L.2008, c.46, s.35)

32

33 16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to  
34 read as follows:

35 36. a. The commissioner **【**, in consultation with the council,**】**  
36 shall promulgate, in accordance with the provisions of the  
37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
38 seq.), such regulations as are necessary for the prompt and effective  
39 implementation of the provisions and purposes of **【**P.L.2008, c.46  
40 (C.52:27D-329.1 et al.)**】** section 8 of P.L.2008, c.46 (C.52:27D-  
41 329.2), including, but not limited to, provisions for the payment of  
42 any necessary administrative costs related to the assessment of  
43 properties and collection of any development fees by a  
44 municipality.

45 b. **【**Notwithstanding the authority granted to the commissioner  
46 herein, the council**】** The commissioner shall adopt and promulgate,  
47 in accordance with the provisions of the "Administrative Procedure

1 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are  
2 necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et  
3 al.), including but not limited to, regulations necessary for the  
4 establishment, implementation, review, monitoring, and  
5 enforcement of a municipal affordable housing trust fund and  
6 spending plan.  
7 (cf: P.L.2008, c.46, s.36)  
8

9 17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to  
10 read as follows:

11 38. a. Except as expressly provided in P.L.2008, c.46  
12 (C.52:27D-329.1 et al.), including subsection b. of this section, any  
13 provision of a local ordinance which imposes a fee for the  
14 development of affordable housing upon a developer of non-  
15 residential property, including any and all development fee  
16 ordinances adopted in accordance with any regulations of the  
17 **【Council on Affordable Housing】** department, or any provision of  
18 an ordinance which imposes an obligation relating to the provision  
19 of housing affordable to **【low and moderate income】** low- and  
20 moderate-income households, or payment in-lieu of building as a  
21 condition of non-residential development, shall be void and of no  
22 effect. A provision of an ordinance which imposes a development  
23 fee which is not prohibited by any provision of P.L.2008, c.46  
24 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

25 b. No affordable housing obligation shall be imposed  
26 concerning a mixed use development that would result in an  
27 affordable housing obligation greater than that which would have  
28 been imposed if the residential portion of the mixed use  
29 development had been developed independently of the non-  
30 residential portion of the mixed use development.

31 c. Whenever the developer of a non-residential development  
32 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or  
33 committed itself to make a financial or other contribution relating to  
34 the provision of housing affordable to low and moderate income  
35 households, the non-residential development fee authorized  
36 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied  
37 through the investment obligations made pursuant to P.L.1977,  
38 c.110 (C.5:12-1 et seq.).  
39 (cf: P.L.2008, c.46, s.38)  
40

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

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

47 a. A developer of a property that received preliminary site plan  
48 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),

1 or final approval, pursuant to section 38 of P.L.1975, c.291  
2 (C.40:55D-50) prior to July 17, 2008 and that was subject to the  
3 payment of a nonresidential development fee prior to the enactment  
4 of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a  
5 return of any moneys paid that represent the difference between  
6 moneys committed prior to July 17, 2008 and monies paid on or  
7 after that date.

8 b. A developer of a non-residential project that, prior to July  
9 17, 2008, has been referred to a planning board by the State, a  
10 governing body, or other public agency for review pursuant to  
11 section 22 of P.L.1975, c.291 (C.40:55D-31) and that was subject to  
12 the payment of a nonresidential development fee prior to the  
13 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be  
14 entitled to a return of any moneys paid that represent the difference  
15 between moneys committed prior to July 17, 2008 and moneys paid  
16 on or after that date.

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

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

32 e. **【Notwithstanding the provisions of subsections a., b., c., and**  
33 **d. of this section, if, on the effective date of P.L.2009, c.90**  
34 **(C.52:27D-489a et al.), a municipality that has returned all or a**  
35 **portion of non-residential fees in accordance with subsection a. or**  
36 **b. of this section shall be reimbursed from the funds available**  
37 **through the appropriation made into the "New Jersey Affordable**  
38 **Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90**  
39 **(C.52:27D-320.1) within 30 days of the municipality providing**  
40 **written notice to the Council on Affordable Housing.】** (Deleted by  
41 amendment, P.L. , c. ) (pending before the Legislature as this  
42 bill)

43 f. A developer of a non-residential project that paid a fee  
44 imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
45 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010  
46 but prior to the effective date of P.L.2011, c.122, shall be entitled to  
47 the return of those monies paid, provided that said monies have not  
48 already been expended by the municipality on affordable housing

1 projects, and provided that the provisions of section 37 of P.L.2008,  
2 c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit  
3 the imposition of a fee upon the developer of that non-residential  
4 property. If moneys are eligible to be returned under this  
5 subsection, a claim shall be submitted, in writing, to the same entity  
6 to which the moneys were paid, within 120 days of the effective  
7 date of P.L.2011, c.122. The entity to whom the funds were paid  
8 shall promptly review all requests for returns, to ensure  
9 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6) and the  
10 fees paid shall be returned to the claimant within 30 days of receipt  
11 of the claim for return.

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

13

14 19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to  
15 read as follows:

16 3. a. There is established in, but not of, the department a Site  
17 Improvement Advisory Board, to devise statewide site improvement  
18 standards pursuant to section 4 of **【this act】** P.L.1993, c.32  
19 (C.40:55D-40.4). The board shall consist of the commissioner or  
20 **【his】** the commissioner's designee, who shall be a non-voting  
21 member of the board, the Director of the Division of **【Housing】**  
22 Codes and Standards in the Department of Community Affairs, who  
23 shall be a voting member of the board, the Executive Director of the  
24 New Jersey Housing and Mortgage Finance Agency, or the  
25 executive director's designee, who shall be a voting member of the  
26 board, and 【10】 nine other voting members, to be appointed by the  
27 commissioner. The other members shall include two professional  
28 planners, one of whom serves as a planner for a governmental entity  
29 or whose professional experience is predominantly in the public  
30 sector and who has worked in the public sector for at least the  
31 previous five years and the other of whom serves as a planner in  
32 private practice and has particular expertise in private residential  
33 development and has been involved in private sector planning for at  
34 least the previous five years, and one representative each from:

- 35 (1) The New Jersey Society of Professional Engineers;  
36 (2) The New Jersey Society of Municipal Engineers;  
37 (3) The New Jersey Association of County Engineers;  
38 (4) The New Jersey Federation of Planning Officials;  
39 (5) **【The Council on Affordable Housing】** (Deleted by  
40 amendment, P.L. , c. (pending before the Legislature as this  
41 bill);  
42 (6) The New Jersey Builders' Association;  
43 (7) The New Jersey Institute of Technology;  
44 (8) The New Jersey State League of Municipalities.

45 b. Among the members to be appointed by the commissioner  
46 who are first appointed, four shall be appointed for terms of two  
47 years each, four shall be appointed for terms of three years each,



1 and two shall be appointed for terms of four years each. Thereafter,  
2 each appointee shall serve for a term of four years. Vacancies in  
3 the membership shall be filled in the same manner as original  
4 appointments are made, for the unexpired term. The **commission**  
5 board shall select a chair from among its members **a chairman**.  
6 Members may be removed by the commissioner for cause.

7 c. Board members shall serve without compensation, but may  
8 be entitled to reimbursement, from moneys appropriated or  
9 otherwise made available for the purposes of this act, for expenses  
10 incurred in the performance of their duties.

11 (cf: P.L.1993, c.32, s.3)

12  
13 20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to  
14 read as follows:

15 3. As used in **this act** P.L.1992, c.79 (C.40A:12A-1 et seq.):

16 "Bonds" means any bonds, notes, interim certificates, debentures  
17 or other obligations issued by a municipality, county,  
18 redevelopment entity, or housing authority pursuant to P.L.1992,  
19 c.79 (C.40A:12A-1 et al.).

20 "Comparable, affordable replacement housing" means newly-  
21 constructed or substantially rehabilitated housing to be offered to a  
22 household being displaced as a result of a redevelopment project,  
23 that is affordable to that household based on its income under the  
24 guidelines established by the **Council on Affordable Housing** in  
25 the Department of Community Affairs New Jersey Housing and  
26 Mortgage Finance Agency for maximum affordable sales prices or  
27 maximum fair market rents, and that is comparable to the  
28 household's dwelling in the redevelopment area with respect to the  
29 size and amenities of the dwelling unit, the quality of the  
30 neighborhood, and the level of public services and facilities offered  
31 by the municipality in which the redevelopment area is located.

32 "Development" means the division of a parcel of land into two or  
33 more parcels, the construction, reconstruction, conversion,  
34 structural alteration, relocation, or enlargement of any building or  
35 other structure, or of any mining, excavation or landfill, and any use  
36 or change in the use of any building or other structure, or land or  
37 extension of use of land, for which permission may be required  
38 pursuant to the "Municipal Land Use Law," P.L.1975, c.291  
39 (C.40:55D-1 et seq.).

40 "Electric vehicle charging station" means an electric component  
41 assembly or cluster of component assemblies designed specifically  
42 to charge batteries within electric vehicles by permitting the transfer  
43 of electric energy to a battery or other storage device in an electric  
44 vehicle.

45 "Governing body" means the body exercising general legislative  
46 powers in a county or municipality according to the terms and

1 procedural requirements set forth in the form of government  
2 adopted by the county or municipality.

3 "Housing authority" means a housing authority created or  
4 continued pursuant to this act.

5 "Housing project" means a project, or distinct portion of a  
6 project, which is designed and intended to provide decent, safe and  
7 sanitary dwellings, apartments or other living accommodations for  
8 persons of **low and moderate income** low- and moderate-income;  
9 such work or undertaking may include buildings, land, equipment,  
10 facilities and other real or personal property for necessary,  
11 convenient or desirable appurtenances, streets, sewers, water  
12 service, parks, site preparation, gardening, administrative,  
13 community, health, recreational, educational, welfare or other  
14 purposes. The term "housing project" also may be applied to the  
15 planning of the buildings and improvements, the acquisition of  
16 property, the demolition of existing structures, the construction,  
17 reconstruction, alteration and repair of the improvements and all  
18 other work in connection therewith.

19 "Parking authority" means a public corporation created pursuant  
20 to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et  
21 seq.), and authorized to exercise redevelopment powers within the  
22 municipality.

23 "Persons of **low and moderate income** low- and moderate-  
24 income" means persons or families who are, in the case of State  
25 assisted projects or programs, so defined by the **Council on**  
26 **Affordable Housing in the Department of Community Affairs** New  
27 Jersey Housing and Mortgage Finance Agency, or in the case of  
28 federally assisted projects or programs, defined as of **"low and**  
29 **very low income"** "low- and very low-income" by the United  
30 States Department of Housing and Urban Development.

31 "Public body" means the State or any county, municipality,  
32 school district, authority or other political subdivision of the State.

33 "Public electric vehicle charging station" means an electric  
34 vehicle charging station located at a publicly available parking  
35 space.

36 "Public housing" means any housing for persons of **low and**  
37 **moderate income** low- and moderate-income owned by a  
38 municipality, county, the State or the federal government, or any  
39 agency or instrumentality thereof.

40 "Public hydrogen fueling station" means publicly available  
41 equipment to store and dispense hydrogen fuel to vehicles  
42 according to industry codes and standards.

43 "Publicly assisted housing" means privately owned housing  
44 which receives public assistance or subsidy, which may be grants or  
45 loans for construction, reconstruction, conservation, or  
46 rehabilitation of the housing, or receives operational or maintenance

1 subsidies either directly or through rental subsidies to tenants, from  
2 a federal, State or local government agency or instrumentality.

3 "Publicly available parking space" means a parking space that is  
4 available to, and accessible by, the public and may include on-street  
5 parking spaces and parking spaces in surface lots or parking  
6 garages, but shall not include: a parking space that is part of, or  
7 associated with, a private residence; or a parking space that is  
8 reserved for the exclusive use of an individual driver or vehicle or  
9 for a group of drivers or vehicles, such as employees, tenants,  
10 visitors, residents of a common interest development, or residents  
11 of an adjacent building.

12 "Real property" means all lands, including improvements and  
13 fixtures thereon, and property of any nature appurtenant thereto or  
14 used in connection therewith, and every estate, interest and right,  
15 legal or equitable, therein, including terms for years and liens by  
16 way of judgment, mortgage or otherwise, and indebtedness secured  
17 by such liens.

18 "Redeveloper" means any person, firm, corporation or public  
19 body that shall enter into or propose to enter into a contract with a  
20 municipality or other redevelopment entity for the redevelopment or  
21 rehabilitation of an area in need of redevelopment, or an area in  
22 need of rehabilitation, or any part thereof, under the provisions of  
23 this act, or for any construction or other work forming part of a  
24 redevelopment or rehabilitation project.

25 "Redevelopment" means clearance, replanning, development and  
26 redevelopment; the conservation and rehabilitation of any structure  
27 or improvement, the construction and provision for construction of  
28 residential, commercial, industrial, public or other structures and  
29 the grant or dedication of spaces as may be appropriate or necessary  
30 in the interest of the general welfare for streets, parks, playgrounds,  
31 or other public purposes, including recreational and other facilities  
32 incidental or appurtenant thereto, in accordance with a  
33 redevelopment plan.

34 "Redevelopment agency" means a redevelopment agency created  
35 pursuant to subsection a. of section 11 of P.L.1992, c.79  
36 (C.40A:12A-11) or established heretofore pursuant to the  
37 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et  
38 al.), repealed by this act, which has been permitted in accordance  
39 with the provisions of **【this act】** P.L.1992, c.79 (C.40A:12A-1 et  
40 seq.) to continue to exercise its redevelopment functions and  
41 powers.

42 "Redevelopment area" or "area in need of redevelopment" means  
43 an area determined to be in need of redevelopment pursuant to  
44 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6)  
45 or determined heretofore to be a "blighted area" pursuant to  
46 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both  
47 determinations as made pursuant to the authority of Article VIII,  
48 Section III, paragraph 1 of the Constitution. A redevelopment area

1 may include lands, buildings, or improvements which of themselves  
2 are not detrimental to the public health, safety or welfare, but the  
3 inclusion of which is found necessary, with or without change in  
4 their condition, for the effective redevelopment of the area of which  
5 they are a part.

6 "Redevelopment entity" means a municipality or an entity  
7 authorized by the governing body of a municipality pursuant to  
8 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to  
9 implement redevelopment plans and carry out redevelopment  
10 projects in an area in need of redevelopment, or in an area in need  
11 of rehabilitation, or in both.

12 "Redevelopment plan" means a plan adopted by the governing  
13 body of a municipality for the redevelopment or rehabilitation of all  
14 or any part of a redevelopment area, or an area in need of  
15 rehabilitation, which plan shall be sufficiently complete to indicate  
16 its relationship to definite municipal objectives as to appropriate  
17 land uses, public transportation and utilities, recreational and  
18 municipal facilities, and other public improvements; and to indicate  
19 proposed land uses and building requirements in the redevelopment  
20 area or area in need of rehabilitation, or both.

21 "Redevelopment project" means any work or undertaking  
22 pursuant to a redevelopment plan; such undertaking may include  
23 any buildings, land, including demolition, clearance or removal of  
24 buildings from land, equipment, facilities, or other real or personal  
25 properties which are necessary, convenient, or desirable  
26 appurtenances, such as but not limited to streets, sewers, utilities,  
27 parks, site preparation, landscaping, and administrative, community,  
28 health, recreational, educational, and welfare facilities, and zero-  
29 emission vehicle fueling and charging infrastructure.

30 "Rehabilitation" means an undertaking, by means of extensive  
31 repair, reconstruction or renovation of existing structures, with or  
32 without the introduction of new construction or the enlargement of  
33 existing structures, in any area that has been determined to be in  
34 need of rehabilitation or redevelopment, to eliminate substandard  
35 structural or housing conditions and arrest the deterioration of that  
36 area.

37 "Rehabilitation area" or "area in need of rehabilitation" means  
38 any area determined to be in need of rehabilitation pursuant to  
39 section 14 of P.L.1992, c.79 (C.40A:12A-14).

40 "Zero-emission vehicle" means a vehicle certified as a zero  
41 emission vehicle pursuant to the California Air Resources Board  
42 zero emission vehicle standards for the applicable model year,  
43 including but not limited to, battery electric-powered vehicles and  
44 hydrogen fuel cell vehicles.

45 "Zero-emission vehicle fueling and charging infrastructure"  
46 means infrastructure to charge or fuel zero-emission vehicles,  
47 including but not limited to, public electric vehicle charging

1 stations and public hydrogen fueling stations.  
2 (cf: P.L.2021, c.168, s.1)

3  
4 21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to  
5 read as follows:

6 16. a. In order to carry out the housing purposes of this act, a  
7 municipality, county, or housing authority may exercise the  
8 following powers, in addition to those set forth in section 22 of  
9 P.L.1992, c.79 (C.40A:12A-22):

10 (1) Plan, construct, own, and operate housing projects; maintain,  
11 reconstruct, improve, alter, or repair any housing project or any part  
12 thereof; and for these purposes, receive and accept from the State or  
13 federal government, or any other source, funds or other financial  
14 assistance;

15 (2) Lease or rent any dwelling house, accommodations, lands,  
16 buildings, structures or facilities embraced in any housing project;  
17 and pursuant to the provisions of this act, establish and revise the  
18 rents and charges therefor;

19 (3) Acquire property pursuant to subsection i. of section 22 of  
20 P.L.1992, c.79 (C.40A:12A-22);

21 (4) Acquire, by condemnation, any land or building which is  
22 necessary for the housing project, pursuant to the provisions of the  
23 "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

24 (5) Issue bonds in accordance with the provisions of section 29  
25 of P.L.1992, c.79 (C.40A:12A-29);

26 (6) Cooperate with any other municipality, private, county, State  
27 or federal entity to provide funds to the municipality or other  
28 governmental entity and to homeowners, tenant associations,  
29 nonprofit or private developers to acquire, construct, rehabilitate or  
30 operate publicly assisted housing, and to provide rent subsidies for  
31 persons of **low and moderate income** low- and moderate-income,  
32 including the elderly, pursuant to applicable State or federal  
33 programs;

34 (7) Encourage the use of demand side subsidy programs such as  
35 certificates and vouchers for low-income families and promote the  
36 use of project based certificates which provide subsidies for units in  
37 newly constructed and substantially rehabilitated structures, and of  
38 tenant based certificates which subsidize rent in existing units;

39 (8) Cooperate with any State or federal entity to secure  
40 mortgage assistance for any person of **low or moderate income**  
41 low- or moderate-income;

42 (9) Provide technical assistance and support to nonprofit  
43 organizations and private developers interested in constructing **low**  
44 **and moderate income** low- and moderate-income housing;

45 (10) If it owns and operates public housing units, provide to the  
46 tenants public safety services, including protection against  
47 substance use disorder, and social services, including counseling  
48 and financial management, in cooperation with other agencies;

1 (11) Provide emergency shelters, transitional housing and  
2 supporting services to homeless families and individuals.

3 b. All housing projects, programs and actions undertaken  
4 pursuant to this act shall accord with the housing element of the  
5 master plan of the municipality within which undertaken, and with  
6 any fair share housing plan **【filed by】** of the municipality **【with the**  
7 **Council on Affordable Housing, based upon the council's criteria**  
8 **and guidelines】**, adopted pursuant to the "Fair Housing Act,"  
9 P.L.1985, c.222 (C.52:27D-301 et al.) **【**, whether or not the  
10 municipality has petitioned for substantive certification of the  
11 plan**】**.

12 (cf: P.L.2017, c.131, s.176)

13  
14 22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to  
15 read as follows:

16 10. A municipality's housing element shall be designed to  
17 achieve the goal of access to affordable housing to meet present and  
18 prospective housing needs, with particular attention to **【low and**  
19 **moderate income】** low- and moderate-income housing, and shall  
20 contain at least:

21 a. An inventory of the municipality's housing stock by age,  
22 condition, purchase or rental value, occupancy characteristics, and  
23 type, including the number of units affordable to **【low and moderate**  
24 **income】** low- and moderate-income households and substandard  
25 housing capable of being rehabilitated, and in conducting this  
26 inventory the municipality shall have access, on a confidential basis  
27 for the sole purpose of conducting the inventory, to all necessary  
28 property tax assessment records and information in the assessor's  
29 office, including but not limited to the property record cards;

30 b. A projection of the municipality's housing stock, including  
31 the probable future construction of **【low and moderate income】**  
32 low- and moderate-income housing, for the next ten years, taking  
33 into account, but not necessarily limited to, construction permits  
34 issued, approvals of applications for development and probable  
35 residential development of lands;

36 c. An analysis of the municipality's demographic  
37 characteristics, including but not necessarily limited to, household  
38 size, income level and age;

39 d. An analysis of the existing and probable future employment  
40 characteristics of the municipality;

41 e. A determination of the municipality's present and prospective  
42 fair share for **【low and moderate income】** low- and moderate-  
43 income housing and its capacity to accommodate its present and  
44 prospective housing needs, including its fair share for **【low and**  
45 **moderate income】** low- and moderate-income housing, as  
46 established pursuant to section 3 of P.L. , c. (C. ) (pending  
47 before the Legislature as this bill);

1 f. A consideration of the lands that are most appropriate for  
2 construction of **low and moderate income** low- and moderate-  
3 income housing and of the existing structures most appropriate for  
4 conversion to, or rehabilitation for, **low and moderate income**  
5 low- and moderate-income housing, including a consideration of  
6 lands of developers who have expressed a commitment to provide  
7 **low and moderate income** low- and moderate-income housing;  
8 and

9 g. An analysis of the extent to which municipal ordinances and  
10 other local factors advance or detract from the goal of preserving  
11 multigenerational family continuity as expressed in the  
12 recommendations of the Multigenerational Family Housing  
13 Continuity Commission, adopted pursuant to paragraph (1) of  
14 subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20).  
15 (cf: P.L.2021, c.273, s.2)

16  
17 23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended  
18 to read as follows:

19 1. Any municipality that receives an adjustment of its  
20 prospective need obligations for the fourth round or subsequent  
21 rounds based on a lack of vacant land shall as part of the process of  
22 adopting and implementing its housing element and fair share plan  
23 identify sufficient parcels likely to redevelop during the current  
24 round of obligations to address at least 25 percent of the prospective  
25 need obligation that has been adjusted, and adopt realistic zoning  
26 that allows for such adjusted obligation, or demonstrate why the  
27 municipality is unable to do so. When computing a municipal  
28 adjustment regarding available land resources as part of the  
29 determination of a municipality's fair share of affordable housing,  
30 the **【Council on Affordable Housing】** municipality, in filing a  
31 housing element and fair share plan pursuant to subsection f. of  
32 section 3 of P.L. , c. (C. and C. ) (pending before the  
33 Legislature as this bill), shall exclude from designating , and the  
34 process set forth pursuant to sections 3 and 4 of P.L. , c. (C.  
35 and C. ) (pending before the Legislature as this bill) shall  
36 confirm was correctly excluded, as vacant land:

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

43 (b) any land listed on a master plan of a municipality as being  
44 dedicated, by easement or otherwise, for purposes of conservation,  
45 park lands or open space and which is owned, leased, licensed, or in  
46 any manner operated by a county, municipality or tax-exempt,  
47 nonprofit organization including a local board of education, or by  
48 more than one municipality by joint agreement pursuant to

1 P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity  
2 maintains such ownership, lease, license, or operational control of  
3 such land;

4 (c) any vacant contiguous parcels of land in private ownership  
5 of a size which would accommodate fewer than five housing units  
6 **【if current standards of the council were applied】** based on  
7 appropriate standards pertaining to housing density;

8 (d) historic and architecturally important sites listed on the State  
9 Register of Historic Places or National Register of Historic Places  
10 prior to the **【submission of the petition of substantive certification】**  
11 date of filing a housing element and fair share plan pursuant to  
12 section 3, or initiation of an action pursuant to section 4 of P.L. ,  
13 c. (C. or C. ) (pending before the Legislature as this  
14 bill);

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

17 (f) sites designated for active recreation that are designated for  
18 recreational purposes in the municipal master plan; and

19 (g) environmentally sensitive lands where development is  
20 prohibited by any State or federal agency.

21 No municipality shall be required to utilize for affordable  
22 housing purposes land that is excluded from being designated as  
23 vacant land. (cf: P.L.2008, c.46, s.39)

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

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

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



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

3 (3) Determination of measures that the municipality will take to  
4 assure that **low and moderate income** low- and moderate-income  
5 units remain affordable to **low and moderate income** low- and  
6 moderate-income households for an appropriate period of not less than  
7 **six years** the period required by the regulations adopted by the  
8 Department of Community Affairs pursuant to section 21 of P.L.1985,  
9 c.222 (C.52:27D-321);

10 (4) A plan for infrastructure expansion and rehabilitation and  
11 conversion or redevelopment of unused or underutilized real property,  
12 including existing structures, if necessary to assure the achievement of  
13 the municipality's fair share of **low and moderate income** low- and  
14 moderate-income housing;

15 (5) Donation or use of municipally owned land or land condemned  
16 by the municipality for purposes of providing **low and moderate**  
17 **income** low- and moderate-income housing;

18 (6) Tax abatements for purposes of providing **low and moderate**  
19 **income** low- and moderate-income housing;

20 (7) Utilization of funds obtained from any State or federal subsidy  
21 toward the construction of **low and moderate income** low- and  
22 moderate-income housing;

23 (8) Utilization of municipally generated funds toward the  
24 construction of **low and moderate income** low- and moderate-  
25 income housing; and

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

33 b. The municipality may provide for a phasing schedule for the  
34 achievement of its fair share of **low and moderate income** low- and  
35 moderate-income housing.

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

37 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall require  
38 a municipality to raise or expend municipal revenues in order to  
39 provide **low and moderate income** low- and moderate-income  
40 housing.

41 e. When a municipality's housing element includes the provision  
42 of rental housing units in a community residence for the  
43 developmentally disabled , for the mentally ill, or for persons with  
44 head injuries, as those terms are defined in section 2 of P.L.1977,  
45 c.448 (C.30:11B-2), or in transitional housing, which will be  
46 affordable to persons of **low and moderate income** low- and  
47 moderate-income, and for which adequate measures to retain such

1 affordability pursuant to paragraph (3) of subsection a. of this section  
2 are included in the housing element, those housing units shall be fully  
3 credited **【as permitted under the rules of the council】** towards the  
4 fulfillment of the municipality's fair share of **【low and moderate**  
5 **income】** low- and moderate-income housing. A municipality shall not  
6 credit transitional housing units towards more than 10 percent of the  
7 municipality's fair share obligation.

8 f. It having been determined by the Legislature that the provision  
9 of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is a public  
10 purpose, a municipality or municipalities may utilize public monies to  
11 make donations, grants or loans of public funds for the rehabilitation  
12 of deficient housing units and the provision of new or substantially  
13 rehabilitated housing for **【low and moderate income】** low- and  
14 moderate-income persons, providing that any private advantage is  
15 incidental.

16 g. A municipality **【which】** that has received **【substantive**  
17 **certification from the council】** approval of its housing element and fair  
18 share plan for the current round, and **【which】** that has actually effected  
19 the construction of the affordable housing units it is obligated to  
20 provide, may amend its affordable housing element or zoning  
21 ordinances without **【the approval of the council】** losing immunity  
22 from <sup>1</sup>**【builder's remedy】** exclusionary zoning<sup>1</sup> litigation.

23 h. Whenever affordable housing units are proposed to be provided  
24 through an inclusionary development, a municipality shall provide,  
25 through its zoning powers, incentives to the developer, which shall  
26 include increased densities and reduced costs **【**, in accordance with the  
27 regulations of the council and this subsection**】**.

28 i. **【The council, upon the application of a】** A municipality and a  
29 developer **【,** may **【approve】** request a modification of a compliance  
30 certification involving reduced affordable housing set-asides or  
31 increased densities to ensure the economic feasibility of an  
32 inclusionary development , if any such application demonstrates how  
33 any shortfall in meeting the municipal fair share obligation will then  
34 be addressed. Such a request may be granted only if the municipality  
35 and developer have demonstrated that the project has been impacted  
36 by market conditions beyond their reasonable control.

37 j. A municipality may enter into an agreement with a developer  
38 or residential development owner to provide a preference for  
39 affordable housing to **【low and moderate income】** low- and moderate-  
40 income veterans who served in time of war or other emergency, as  
41 defined in section 1 of P.L.1963, c.171 (C.54:4-8.10), of up to 50  
42 percent of the affordable units in that particular project. This  
43 preference shall be established in the applicant selection process for  
44 available affordable units so that applicants who are veterans who  
45 served in time of war or other emergency, as referenced in this  
46 subsection, and who apply within 90 days of the initial marketing  
47 period shall receive preference for the rental of the agreed-upon

1 percentage of affordable units. After the first 90 days of the initial  
2 120-day marketing period, if any of those units subject to the  
3 preference remain available, then applicants from the general public  
4 shall be considered for occupancy. Following the initial 120-day  
5 marketing period, previously qualified applicants and future qualified  
6 applicants who are veterans who served in time of war or other  
7 emergency, as referenced in this subsection, shall be placed on a  
8 special waiting list as well as the general waiting list. The veterans on  
9 the special waiting list shall be given preference for affordable units,  
10 as the units become available, whenever the percentage of preference-  
11 occupied units falls below the agreed upon percentage. Any  
12 agreement to provide affordable housing preferences for veterans  
13 pursuant to this subsection shall not affect a municipality's ability to  
14 receive credit for the unit **from the council, or its successor**.

15 k. In the fourth round, and in subsequent rounds of affordable  
16 housing obligations, a municipality shall be able to receive one credit  
17 against its affordable housing obligation for each unit of low- or  
18 moderate-income housing, and shall not receive bonus credit for any  
19 particular type of low- or moderate-income housing, unless authority  
20 to obtain bonus credit is expressly provided pursuant to this section, or  
21 other sections of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-  
22 301 et al.). A municipality shall not receive more than one type of  
23 bonus credit for any unit, and a municipality shall not be permitted to  
24 satisfy more than 25 percent of its prospective need obligation in the  
25 fourth round or any subsequent round through the use of bonus credits.  
26 This subsection shall not be construed to limit the ability of a  
27 municipality to receive a unit of credit for a low- or moderate-income  
28 housing unit that is subject to affordability controls that are scheduled  
29 to expire, but are extended **'in accordance with the Uniform Housing**  
30 **Affordability Controls promulgated by the New Jersey Housing and**  
31 **Mortgage Finance Agency** **pursuant to section 21 of P.L.1985, c.222**  
32 **(C.52:27D-321)**<sup>1</sup>, to the extent that this affordability control extension  
33 would otherwise generate this credit. As a part of a fair share plan and  
34 housing element adopted pursuant to subsection f. of section 3 of  
35 P.L. , c. (C. ) (pending before the Legislature as this bill), a  
36 municipality shall:

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

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

44 (3) receive one unit of credit and one-half bonus credit for each  
45 unit of low- or moderate-income housing located within a one-half  
46 mile radius, or one-mile radius for projects located in a Garden State  
47 Growth Zone, as defined in section 2 of P.L.2011, c.149 (C.34:1B-  
48 243), surrounding a New Jersey Transit Corporation, Port Authority

1 Transit Corporation, or Port Authority Trans-Hudson Corporation rail,  
2 bus, or ferry station, including all light rail stations. For the purpose of  
3 this subparagraph, the distance from the bus, rail, or ferry station to a  
4 housing unit shall be measured from the closest point on the outer  
5 perimeter of the station, including any associated park-and-ride lot, to  
6 the closest point of the housing project property;

7 (4) receive one unit of credit and one-half bonus credit for a unit  
8 of age-restricted housing, provided that a bonus credit for age-  
9 restricted housing shall not be applied to more than '15] 10' percent  
10 of the units of age-restricted housing constructed in compliance with  
11 the Uniform Housing Affordability Controls promulgated by the New  
12 Jersey Housing and Mortgage Finance Agency in a municipality that  
13 count towards the municipality's affordable housing obligation for any  
14 single 10-year round of affordable housing obligations;

15 (5) receive one unit of credit and one-half bonus credit for each  
16 unit of low- or moderate-income family housing with at least three  
17 bedrooms above the minimum number required by the bedroom  
18 distribution 'in a given development] . This bonus credit shall be  
19 calculated by taking into account the full municipal fair share plan and  
20 housing element, and the number of units with at least three bedrooms  
21 required for projects satisfying the minimum 50 percent family  
22 housing requirements. A municipality shall receive the bonus credit  
23 pursuant to this paragraph for each unit with at least three bedrooms  
24 that are above the minimum number required for the bedroom  
25 distribution determined pursuant to the Uniform Housing Affordability  
26 Controls promulgated by the New Jersey Housing and Mortgage  
27 Finance Agency<sup>1</sup>;

28 (6) receive one unit of credit and one-half bonus credit for a unit  
29 of low- or moderate-income housing constructed on land that is or was  
30 previously developed and utilized for retail, office, or commercial  
31 space;

32 (7) receive one unit of credit and one-half bonus credit for each  
33 existing low- or moderate-income rental housing unit for which  
34 affordability controls are extended for a new term of affordability, in  
35 compliance with the Uniform Housing Affordability Controls  
36 promulgated by the New Jersey Housing and Mortgage Finance  
37 Agency, and the municipality contributes funding towards the costs  
38 necessary for this preservation;

39 (8) receive one unit of credit and 'one-half] one' bonus credit  
40 for each unit of low- or moderate-income housing in a 100 percent  
41 affordable housing project 'toward] for' which the municipality  
42 'either contributes property without which the project would not be  
43 feasible, or makes contributions from the municipal affordable housing  
44 trust fund that cover no less than 10 percent of the project cost]  
45 contributes toward the costs of the project. This contribution may  
46 consist of: (a) real property donations that enable siting and  
47 construction of the project; or (b) contributions from the municipal

1 affordable housing trust fund in support of the project, if the  
2 contribution consists of no less than three percent of the project cost<sup>1</sup>;

3 '[and]'

4 (9) receive one unit of credit and one-half bonus credit for each  
5 unit of very low-income housing for families above the 13 percent of  
6 units required to be reserved for very low-income housing pursuant to  
7 section 7 of P.L.2008, c.46 (C.52:27D-329.1). <sup>1</sup>In accordance with  
8 section 7 of P.L.2008, c.46 (C.52:27D-329.1), a municipality shall not  
9 be required to provide that a specific percentage of the units in any  
10 specific project be reserved as very low-income housing in order to  
11 obtain this bonus credit, and the 13 percent level, for the purpose of  
12 bonus credits, shall be calculated against the full prospective need  
13 obligation provided pursuant to the fair share plan; and

14 (10) receive one unit of credit and one bonus credit for each unit  
15 of low- or moderate-income housing created by transforming an  
16 existing rental or ownership unit from a market rate unit to an  
17 affordable housing unit. A municipality may only rely on this bonus  
18 credit as part of its fair share plan and housing element if the  
19 municipality demonstrates that a commitment to follow through with  
20 this market to affordable agreement has been made and: (a) this  
21 agreement has been signed by the property owner; or (b) the  
22 municipality has obtained ownership of the property.<sup>1</sup>

23 l. A municipality may not satisfy more than '[25] 30' percent of  
24 the affordable housing units, exclusive of any bonus credits, to address  
25 its prospective need affordable housing obligation through the creation  
26 of age-restricted housing. A municipality shall satisfy a minimum of  
27 50 percent of the actual affordable housing units, exclusive of any  
28 bonus credits, created to address its prospective need affordable  
29 housing obligation through the creation of housing available to  
30 families with children and otherwise in compliance with the  
31 requirements and controls established pursuant to section 21 of  
32 P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy a  
33 minimum of 25 percent of the actual affordable housing units,  
34 exclusive of any bonus credits, to address its prospective need  
35 affordable housing obligation, through rental housing, including at  
36 least half of that number available to families with children. All units  
37 referred to in this section shall otherwise be in compliance with the  
38 requirements and controls established pursuant to section 21 of  
39 P.L.1985, c.222 (C.52:27D-321).

40 m. All parties shall be entitled to rely upon regulations on  
41 municipal credits, adjustments, and compliance mechanisms adopted  
42 by the Council on Affordable Housing unless those regulations are  
43 contradicted by statute, including but not limited to P.L. c.  
44 (C. ) (pending before the Legislature as this bill), or binding court  
45 decisions.

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

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

3       6. **【The council】** A municipality may take such measures as are  
4 necessary to assure compliance with the adaptability requirements  
5 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), including  
6 the inspection of those units which are newly constructed and receive  
7 housing credit as provided under section 1 of P.L.2005, c.350  
8 (C.52:27D-311a) for adaptability, as part of the monitoring which  
9 occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). No housing  
10 unit subject to the provisions of section 5 of P.L.2005, c.350  
11 (C.52:27D-123.15) and to the provisions of the barrier free subcode  
12 adopted by the Commissioner of Community Affairs pursuant to the  
13 "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-  
14 119 et seq.) shall be eligible for inclusion in a municipal fair share plan  
15 unless the unit complies with the requirements set forth thereunder. If  
16 any units for which credit was granted in accordance with the  
17 provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not to  
18 conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et  
19 al.), **【the council may】** any party representing the interests of  
20 households with disabilities may seek a modification to the approval of  
21 the municipal fair share plan to require the municipality to amend its  
22 fair share plan within 90 days of 【receiving notice from the council】  
23 such a finding, to address its fair share obligation pursuant to  
24 P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the  
25 municipality fails to amend its fair share plan within 90 days of  
26 **【receiving such notice, the council may revoke substantive**  
27 **certification】** such a finding, the municipality shall lose immunity to  
28 '【a builder's remedy】 exclusionary zoning litigation'<sup>1</sup> for the portion  
29 of its obligation that is found not to conform to the requirements of  
30 P.L.2005, c.350 (C.52:27D-311a et al.).  
31 (cf: P.L.2005, c.350, s.6)  
32

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

35       20. There is established in the Department of Community  
36 Affairs a separate trust fund, to be used for the exclusive purposes  
37 as provided in this section, and which shall be known as the "New  
38 Jersey Affordable Housing Trust Fund." The fund shall be a non-  
39 lapsing, revolving trust fund, and all monies deposited or received  
40 for purposes of the fund shall be accounted for separately, by source  
41 and amount, and remain in the fund until appropriated for such  
42 purposes. The fund shall be the repository of all State funds  
43 appropriated for affordable housing purposes, including, but not  
44 limited to, the proceeds from the receipts of the additional fee  
45 collected pursuant to paragraph (2) of subsection a. of section 3 of  
46 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the  
47 Statewide non-residential development fees collected pursuant to

1 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or  
2 reverting from municipal development trust funds, or other monies  
3 as may be dedicated, earmarked, or appropriated by the Legislature  
4 for the purposes of the fund. All references in any law, order, rule,  
5 regulation, contract, loan, document, or otherwise, to the  
6 "Neighborhood Preservation Nonlapsing Revolving Fund" shall  
7 mean the "New Jersey Affordable Housing Trust Fund." The  
8 department shall be permitted to utilize annually up to 7.5 percent  
9 of the monies available in the fund for the payment of any  
10 necessary administrative costs related to the administration of the  
11 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any  
12 costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et  
13 al.).

14 a. Except as permitted pursuant to subsection g. of this section,  
15 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the  
16 commissioner shall award grants or loans from this fund for  
17 housing projects and programs in municipalities whose housing  
18 elements have **received substantive certification from the council,**  
19 obtained compliance certification pursuant to section 3 of P.L. , c.  
20 (C. ) (pending before the Legislature as this bill), or in  
21 municipalities receiving State aid pursuant to P.L.1978, c.14  
22 (C.52:27D-178 et seq.) **],** in municipalities subject to a builder's  
23 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328),  
24 or in receiving municipalities in cases where the council has  
25 approved a regional contribution agreement and a project plan  
26 developed by the receiving municipality**].**

27 Of those monies deposited into the "New Jersey Affordable  
28 Housing Trust Fund" that are derived from municipal development  
29 fee trust funds, or from available collections of Statewide non-  
30 residential development fees, a priority for funding shall be  
31 established for projects in municipalities that have **petitioned the**  
32 **council for substantive]** received compliance certification.

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

36 b. The commissioner shall establish rules and regulations  
37 governing the qualifications of applicants, the application  
38 procedures, and the criteria for awarding grants and loans and the  
39 standards for establishing the amount, terms, and conditions of each  
40 grant or loan.

41 c. For any period which the **[council]** commissioner may  
42 approve, the commissioner may assist affordable housing programs  
43 **[which]** that are **[not]** located in municipalities **[whose housing**  
44 **elements have been granted substantive certification or which are**  
45 **not in furtherance of a regional contribution agreement]** that have a  
46 pending request for compliance certification; provided that the  
47 affordable housing program will meet all or part of a municipal

1   **【low and moderate income】** low- and moderate-income housing  
2   obligation.

3       d. Amounts deposited in the "New Jersey Affordable Housing  
4   Trust Fund" shall be targeted to regions based on the region's  
5   percentage of the State's **【low and moderate income】** low- and  
6   moderate-income housing need as determined **【by the council】**  
7   pursuant to the low- and moderate-income household growth over  
8   the prior 10 years, as calculated pursuant to section 6 of P.L.     , c.  
9   (C.     ) (pending before the Legislature as this bill). Amounts in  
10   the fund shall be applied for the following purposes in designated  
11   neighborhoods:

12       (1) Rehabilitation of substandard housing units occupied or to  
13   be occupied by **【low and moderate income】** low- and moderate-  
14   income households;

15       (2) Creation of accessory **【apartments】** dwelling units to be  
16   occupied by **【low and moderate income】** low- and moderate-  
17   income households;

18       (3) Conversion of non-residential space to residential purposes;  
19   provided a substantial percentage of the resulting housing units are  
20   to be occupied by **【low and moderate income】** low- and moderate-  
21   income households;

22       (4) Acquisition of real property, demolition and removal of  
23   buildings, or construction of new housing that will be occupied by  
24   **【low and moderate income】** low- and moderate-income households,  
25   or any combination thereof;

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

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

40       (7) Other housing programs for **【low and moderate income】**  
41   low- and moderate-income housing, including, without limitation,  
42   (a) infrastructure projects directly facilitating the construction of  
43   **【low and moderate income】** low- and moderate-income housing not  
44   to exceed a reasonable percentage of the construction costs of the  
45   **【low and moderate income】** low- and moderate-income housing to  
46   be provided and (b) alteration of dwelling units occupied or to be  
47   occupied by households of **【low or moderate income】** low- or



1 moderate-income and the common areas of the premises in which  
2 they are located in order to make them accessible to persons with  
3 disabilities.

4 e. Any grant or loan agreement entered into pursuant to this  
5 section shall incorporate contractual guarantees and procedures by  
6 which the division **【will】** shall ensure that any unit of housing  
7 provided for **【low and moderate income】** low- and moderate-  
8 income households shall continue to be occupied by **【low and**  
9 **moderate income】** low- and moderate-income households for **【at**  
10 **least 20 years】** a period that conforms to the requirements of  
11 subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321)  
12 following the award of the loan or grant, except that the division  
13 may approve a guarantee for a period of less **【than 20 years】**  
14 duration where necessary to ensure project feasibility.

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

33 g. In addition to other grants or loans awarded pursuant to this  
34 section, and without regard to any limitations on such grants or  
35 loans for any other purposes herein imposed, the commissioner  
36 shall annually allocate such amounts as may be necessary in the  
37 commissioner's discretion, and in accordance with section 3 of  
38 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants  
39 under the program created pursuant to P.L.2004, c.140 (C.52:27D-  
40 287.1 et al.). Such rental assistance grants shall be deemed  
41 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-  
42 301 et al.), in order to meet the housing needs of certain **【low**  
43 **income】** low-income households who may not be eligible to occupy  
44 other housing produced pursuant to P.L.1985, c.222 (C.52:27D-301  
45 et al.).

46 h. The department and the State Treasurer shall submit the  
47 "New Jersey Affordable Housing Trust Fund" for an audit annually

1 by the State Auditor or State Comptroller, at the discretion of the  
2 Treasurer. In addition, the department shall prepare an annual  
3 report for each fiscal year, and submit it by November 30th of each  
4 year to the Governor and the Legislature, and the Joint Committee  
5 on Housing Affordability, or its successor, and post the information  
6 to its **【web site】** Internet website, of all activity of the fund,  
7 including details of the grants and loans by number of units, number  
8 and income ranges of recipients of grants or loans, location of the  
9 housing renovated or constructed using monies from the fund, the  
10 number of units upon which affordability controls were placed, and  
11 the length of those controls. The report also shall include details  
12 pertaining to those monies allocated from the fund for use by the  
13 State rental assistance program pursuant to section 3 of P.L.2004,  
14 c.140 (C.52:27D-287.3) and subsection g. of this section.

15 i. The commissioner may award or grant the amount of any  
16 appropriation deposited in the "New Jersey Affordable Housing  
17 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-  
18 320.1) to municipalities pursuant to the provisions of section 39 of  
19 P.L.2009, c.90 (C.40:55D-8.8).  
20 (cf: P.L.2017, c.131, s.200)

21  
22 27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to  
23 read as follows:

24 21. The agency shall establish affordable housing programs to  
25 assist municipalities in meeting the obligation of developing  
26 communities to provide **【low and moderate income】** low- and  
27 moderate-income housing.

28 a. Of the bond authority allocated to it under section 24 of  
29 P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a  
30 reasonable period of time established by its board, no less than **【25%】**  
31 25 percent to be used in conjunction with housing to be constructed or  
32 rehabilitated with assistance under **【this act】** P.L.1985, c.222  
33 (C.52:27D-301 et al.).

34 b. The agency shall to the extent of available funds, award  
35 assistance to affordable housing programs located in municipalities  
36 whose housing elements have **【received substantive】** obtained  
37 compliance certification **【from the council】** , or which have been  
38 subject to a builder's remedy **【or which are in furtherance of a regional**  
39 **contribution agreement approved by the council】**. During **【the first 12**  
40 **months from the effective date of this act and for】** any **【additional】**  
41 period which the **【council】** agency may approve, the agency may  
42 assist affordable housing programs **【which are not located in**  
43 **municipalities whose housing elements have been granted substantive**  
44 **certification or which are not in furtherance of a regional contribution**  
45 **agreement】** that have a pending request for compliance certification;  
46 provided the affordable housing program will meet all or in part a

1 municipal **low and moderate income** low- and moderate-income  
2 housing obligation.

3 c. Assistance provided pursuant to this section may take the form  
4 of grants or awards to municipalities, prospective home purchasers,  
5 housing sponsors as defined in P.L.1983, c.530 (C.55:14K-1 et seq.),  
6 or as contributions to the issuance of mortgage revenue bonds or  
7 multi-family housing development bonds which have the effect of  
8 achieving the goal of producing affordable housing.

9 d. Affordable housing programs which may be financed or  
10 assisted under this provision may include, but are not limited to:

11 (1) Assistance for home purchase and improvement including  
12 interest rate assistance, down payment and closing cost assistance, and  
13 direct grants for principal reduction;

14 (2) Rental programs including loans or grants for developments  
15 containing **low and moderate income** low- and moderate-income  
16 housing, moderate rehabilitation of existing rental housing, congregate  
17 care and retirement facilities;

18 (3) Financial assistance for the conversion of nonresidential space  
19 to residences;

20 (4) Other housing programs for **low and moderate income** low-  
21 and moderate-income housing, including infrastructure projects  
22 directly facilitating the construction of **low and moderate income**  
23 low- and moderate-income housing; and

24 (5) Grants or loans to municipalities, housing sponsors and  
25 community organizations to encourage development of innovative  
26 approaches to affordable housing, including:

27 (a) Such advisory, consultative, training and educational services  
28 as will assist in the planning, construction, rehabilitation and operation  
29 of housing; and

30 (b) Encouraging research in and demonstration projects to develop  
31 new and better techniques and methods for increasing the supply,  
32 types and financing of housing and housing projects in the State.

33 e. The agency shall establish procedures and guidelines  
34 governing the qualifications of applicants, the application procedures  
35 and the criteria for awarding grants and loans for affordable housing  
36 programs and the standards for establishing the amount, terms and  
37 conditions of each grant or loan.

38 f. **In consultation with the council, the** The agency , in  
39 consultation with the department, shall establish requirements and  
40 controls to **insure** ensure the maintenance of housing assisted under  
41 **this act** P.L.1985, c.222 (C.52:27D-301 et al.) as affordable to **low**  
42 **and moderate income** low- and moderate-income households for a  
43 period of not less than **40** 30 <sup>1</sup> years for newly created <sup>1</sup> rental units  
44 <sup>1</sup> **and** <sup>1</sup> 20 years for for-sale units <sup>1</sup> , except for housing units for  
45 which affordability controls are extended for a new term of  
46 affordability<sup>1</sup>; provided that the agency **may** establish a shorter  
47 period upon a determination that the economic feasibility of the

1 program is jeopardized by the requirement and the public purpose  
2 served by the program outweighs the shorter period】 may update or  
3 amend any controls previously adopted by the agency, in consultation  
4 with the Council on Affordable Housing, prior to the effective date of  
5 P.L. , c. (C. ) (pending before the Legislature as this bill),  
6 provided that the requirements and controls shall, at a minimum, be  
7 consistent with the controls as in effect immediately prior to the  
8 effective date of P.L. , c. (C. ) (pending before the Legislature  
9 as this bill), including, but not limited to, any requirements concerning  
10 bedroom distributions, affordability averages, and affirmative  
11 marketing. <sup>1</sup>For the purpose of housing units for which affordability  
12 controls are extended for a new term of affordability: (1) a 20-year  
13 minimum deed restriction shall be required if the unit was initially  
14 created before October 1, 2001; and (2) a 30-year minimum deed  
15 restriction shall be required if the unit was initially created on or  
16 following October 1, 2001.<sup>1</sup> The controls may include, among others,  
17 requirements for recapture of assistance provided pursuant to 【this  
18 act】 P.L.1985, c.222 (C.52:27D-301 et al.) or restrictions on return on  
19 equity in the event of failure to meet the requirements of the program.  
20 With respect to rental housing financed by the agency pursuant to 【this  
21 act】 P.L.1985, c.222 (C.52:27D-301 et al.) or otherwise which  
22 promotes the provision or maintenance of 【low and moderate income】  
23 low- and moderate-income housing, the agency may waive restrictions  
24 on return on equity required pursuant to P.L.1983, c.530 (C.55:14K-1  
25 et seq.) which is gained through the sale of the property or of any  
26 interest in the property or sale of any interest in the housing sponsor.  
27 The agency shall promulgate updated regulations no later than nine  
28 months following the effective date of P.L. , c. (C. ) (pending  
29 before the Legislature as this bill). All parties may continue to rely on  
30 regulations previously adopted by the agency pursuant to the authority  
31 provided by this section as in effect immediately prior to the effective  
32 date of P.L. , c. (C. ) (pending before the Legislature as this  
33 bill) until new rules and regulations are adopted by the agency.  
34 Notwithstanding the provisions of the "Administrative Procedure Act,"  
35 P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the agency, after  
36 consultation with department, may adopt, immediately, upon filing  
37 with the Office of Administrative Law, said regulations, which shall be  
38 effective for a period not to exceed one year from the date of the filing.  
39 The agency shall thereafter amend, adopt, or readopt the regulations in  
40 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et  
41 seq.).  
42 g. The agency may establish affordable housing programs  
43 through the use or establishment of subsidiary corporations or  
44 development corporations as provided in P.L.1983, c.530 (C.55:14K-1  
45 et seq.). The subsidiary corporations or development corporations  
46 shall be eligible to receive funds provided under 【this act】 P.L.1985,  
47 c.222 (C.52:27D-301 et al.) for any permitted purpose.

1 h. The agency shall provide assistance, through its bonding  
2 powers or in any other manner within its powers, to the grant and loan  
3 program established pursuant to section 20 of P.L.1985, c.222  
4 (C.52:27D-320).

5 i. (1) The department shall promulgate processes and standards  
6 for the certification of administrative agents and municipal housing  
7 liaisons in the State, as well as standards for measuring performance of  
8 and enforcing compliance by administrative agents and municipal  
9 housing liaisons in implementing the affordable housing requirements  
10 and controls established pursuant to subsection f. of this section.

11 (2) Administrative agents shall be responsible for implementing  
12 the requirements and controls set by the regulations promulgated  
13 pursuant to subsection (f) of this section. The department may bring  
14 via summary proceeding any findings of violation of the  
15 responsibilities set forth in this section before a county level housing  
16 judge, to docket the violation and issue corrective orders and levy  
17 fin.

18 (3) Municipal housing liaisons shall be responsible for monitoring  
19 administrative agents within their municipality's jurisdiction to ensure  
20 compliance with the requirements and controls set by regulation under  
21 subsection f. of this section.

22 (4) Municipal housing liaisons, the department, and interested  
23 parties may bring a challenge before a county level housing judge to  
24 determine whether properties subject to the regulations set forth by this  
25 section are out of compliance with the regulations. A finding of  
26 deliberate noncompliance may result in the department removing the  
27 administrative agent's certification.

28 (5) A County level housing judge may issue fines and order  
29 corrective actions for violations and may consider patterns of  
30 violations in determining whether a municipality is meeting its  
31 obligations under the compliance certification established by section 3  
32 of P.L. , c. (C. ) (pending before the Legislature as this bill).

33 (6) Notwithstanding the provisions of the "Administrative  
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,  
35 the department may adopt, immediately, upon filing with the Office of  
36 Administrative Law, regulations to implement the provisions of this  
37 subsection, which shall be effective for a period not to exceed one year  
38 from the date of the filing. The department shall thereafter amend,  
39 adopt, or readopt the regulations in accordance with the requirements  
40 of P.L.1968, c.410 (C.52:14B-1 et seq.).

41 (cf: P.L.2004, c.140, s.5)

42  
43 28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended  
44 to read as follows:

45 19. Notwithstanding any rules of the New Jersey Housing and  
46 Mortgage Finance Agency to the contrary, the allocation of **low**  
47 **income** low-income tax credits shall be made by the agency to the  
48 full extent such credits are permitted to be allocated under federal

1 law, including allocations of **[4]** four percent or **[9]** nine percent  
2 federal **[low income]** low-income tax credits, and including  
3 allocations allowable for partial credits. The affordable portion of  
4 any mixed income or mixed use development that is part of a fair  
5 share housing plan **[approved by the council, or]** that has obtained  
6 compliance certification, including a court-approved judgment of  
7 repose or compliance, including, but not limited to, a development  
8 that has received a density bonus, shall be permitted to receive  
9 allocations of **[low income]** low-income tax credits, provided that  
10 the applicant can conclusively demonstrate that the market rate  
11 residential or commercial units are unable to internally subsidize  
12 the affordable units, and the affordable units are developed  
13 contemporaneously with the commercial or market rate residential  
14 units.

15 (cf: P.L.2008, c.46, s.19)

16  
17 29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to  
18 read as follows:

19 7. **[The council shall coordinate and review the housing**  
20 **elements as filed pursuant to section 11 of P.L.1985, c.222**  
21 **(C.52:27D-311), and the housing activities under section 20 of**  
22 **P.L.1985, c.222 (C.52:27D-320), at least once every three years, to]**  
23 Housing elements and fair share plans adopted pursuant to section 3  
24 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
25 shall ensure that at least 13 percent of the housing units made  
26 available for occupancy by low-income and **[moderate income]**  
27 moderate-income households to address a municipality's  
28 prospective need obligation will be reserved for occupancy by very  
29 low income households, as that term is defined pursuant to section 4  
30 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units  
31 made available for families with children. The 13 percent shall  
32 count towards the minimum 50 percent of the housing units  
33 required to be made available for occupancy by low-income  
34 households to address a municipality's prospective need obligation.  
35 Nothing in this section shall require that a specific percentage of the  
36 units in any specific project be reserved as very **[low income]** low-  
37 income housing; provided, however, that a municipality shall not  
38 receive bonus credits for the provision of housing units reserved for  
39 occupancy by very **[low income]** low-income households unless  
40 the 13 percent target has been exceeded within that municipality **[.**  
41 The council shall coordinate all efforts to meet the goal of this  
42 section in a manner that will result in a balanced number of housing  
43 units being reserved for very low income households throughout all  
44 housing regions. For the purposes of this section, housing activities  
45 under section 20 of P.L.1985, c.222 (C.52:27D-320) shall include  
46 any project-based assistance provided from the "New Jersey  
47 Affordable Housing Trust Fund" pursuant to P.L.2004, c.140

(C.52:27D-287.1 et al.), regardless of whether the housing activity is counted toward the municipal obligation under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.)**】**, and that the agency shall update the regulations adopted pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321) to replace any requirements for very low-income housing inconsistent with the percentages and definitions established pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) with the percentage and definition specified in this section.

(cf: P.L.2008, c.46, s.7)

30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to read as follows:

8. a. **【The council may authorize a】** (1) A municipality that is in the process of seeking compliance certification, has 【petitioned for substantive】 obtained compliance certification, <sup>1</sup>is a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill),<sup>1</sup> or that has been so authorized by a court of competent jurisdiction, and which has adopted a municipal development fee ordinance shall be authorized to impose and collect development fees from developers of residential property, in accordance with rules promulgated by the 【council】 department. Each amount collected shall be deposited and shall be accounted for separately, by payer and date of deposit.

(2) No later than <sup>1</sup>【90】 180<sup>1</sup> days following the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), any municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended since the inception of the municipal authorization to collect the fees.

(3) Beginning with the year after the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), by January 15, every municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended the previous year.

(4) A municipality may not spend or commit to spend any affordable housing development fees, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the 【council's】 approval of the expenditure as part of its compliance certification or by the department. A municipality shall include in its housing element and fair share plan adopted pursuant to section 3 of P.L. , c. (C. )

1 (pending before the Legislature as this bill) a spending plan for current  
2 funds in the municipal affordable housing trust fund and projected  
3 funds through the current round. Review of that spending plan for  
4 consistency with applicable law and the municipality's Housing  
5 Element and Fair Share Plan shall be part of the process specified in  
6 section 3 of P.L. , c. (C. ) (pending before the Legislature as  
7 this bill). The **【council】** department shall promulgate updated  
8 regulations no later than nine months following the effective date of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill)  
10 regarding the establishment, administration, reporting, and  
11 enforcement of the expenditure of affordable housing development  
12 fees by municipalities, which shall include establishing an expedited  
13 process for approving spending plan expenditures for emergent  
14 opportunities to create affordable housing after a municipality has  
15 obtained compliance certification and procedures for monitoring the  
16 collection and expenditure of trust funds. The department shall  
17 develop and publish on the department's Internet website a detailed  
18 summary of the municipal affordable housing trust fund expenditures  
19 for each municipality, and shall update each summary on an annual  
20 basis. As part of the regulations adopted pursuant to this section and  
21 section 10 of P.L.2008, c.46 (C.52:27D-329.4), the department shall  
22 adopt reporting requirements applicable to municipal affordable  
23 housing trust funds to facilitate fulfillment of the department's  
24 obligations pursuant to this section. Municipalities may continue to  
25 rely on regulations on development fees and spending plans previously  
26 adopted by the council until new rules and regulations are adopted by  
27 the department. The **【council】** department shall have **【exclusive】**  
28 jurisdiction regarding the enforcement of these regulations, provided  
29 that any municipality which is not in compliance with the regulations  
30 adopted by the 【council】 department may be subject to forfeiture of  
31 any or all funds remaining within its municipal trust fund. Any funds  
32 so forfeited shall be deposited into the "New Jersey Affordable  
33 Housing Trust Fund" established pursuant to section 20 of P.L.1985,  
34 c.222 (C.52:27D-320).

35 b. A municipality shall deposit all fees collected, whether or not  
36 such collections were derived from fees imposed upon non-residential  
37 or residential construction into a trust fund dedicated to those purposes  
38 as required under this section, and such additional purposes as may be  
39 approved by the **【council】** department.

40 c. (1) A municipality may only spend development fees for an  
41 activity approved by the **【council】** department to address the  
42 municipal fair share obligation, or approved as part of compliance  
43 certification.

44 (2) Municipal development trust funds shall not be expended  
45 unless the municipality has immunity from '【builder's remedy】  
46 exclusionary zoning<sup>1</sup> litigation at the time of the expenditure, and shall  
47 not be expended:



1       (a) to reimburse municipalities for activities which occurred prior  
2 to the authorization of a municipality to collect development fees; or

3       (b) (i) on administrative costs, attorney fees or court costs to  
4 obtain a judgment of repose; (ii) to contest a determination of the  
5 municipality's fair share obligation; or (iii) on costs of any challenger  
6 in connection to a challenge to the municipality's obligation, housing  
7 element, or fair share plan.

8       (3) A municipality shall set aside a portion of its development fee  
9 trust fund for the purpose of providing affordability assistance to **low**  
10 and moderate income **low- and moderate-income** households in  
11 affordable units included in a municipal fair share plan, in accordance  
12 with rules of the **council** department.

13       (a) Affordability assistance programs may include down payment  
14 assistance, security deposit assistance, low interest loans, common  
15 maintenance expenses for units located in condominiums, rental  
16 assistance, and any other program authorized by the **council**  
17 department.

18       (b) Affordability assistance to households earning 30 percent or  
19 less of median income may include buying down the cost of **low**  
20 income **low-income** units in a municipal fair share plan to make them  
21 affordable to households earning 30 percent or less of median income.  
22 The use of development fees in this manner shall not entitle a  
23 municipality to bonus credits except as may **be provided by the rules**  
24 of the council otherwise be allowed by applicable precedent.

25       (4) A municipality may contract with a private or public entity to  
26 administer any part of its housing element and fair share plan,  
27 including the requirement for affordability assistance, or any program  
28 or activity for which the municipality expends development fee  
29 proceeds, in accordance with rules of the **council** department.

30       (5) Not more than 20 percent of the revenues collected from  
31 development fees shall be expended on administration, in accordance  
32 with rules of the **council** department. Such administration may  
33 include expending a portion of its affordable housing trust fund on  
34 actions and efforts reasonably related to the determination of its fair  
35 share obligation and the development of its housing element and fair  
36 share plan pursuant to paragraphs (1) and (2) of subsection f. of  
37 section 3 of P.L. , c. (C. ) (pending before the Legislature as  
38 this bill), and for expenses that are reasonably necessary for  
39 compliance with the processes of the program, including but not  
40 limited to, the costs to the municipality of resolving a challenge under  
41 the program.

42       d. The **council** department shall establish a time by which all  
43 development fees collected within a calendar year shall be expended;  
44 provided, however, that all fees shall be committed for expenditure  
45 within four years from the date of collection. A municipality that fails  
46 to commit to expend the balance required in the development fee trust  
47 fund by the time set forth in this section shall be required by the

1 council to transfer the remaining unspent balance at the end of the  
2 four-year period to the "New Jersey Affordable Housing Trust Fund,"  
3 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320),  
4 as amended by P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in  
5 the housing region of the transferring municipality for the authorized  
6 purposes of that fund.

7 e. Notwithstanding any provision of this section, or regulations of  
8 the **【council】** department, a municipality shall not collect a  
9 development fee from a developer whenever that developer is  
10 providing for the construction of affordable units, either on-site or  
11 elsewhere within the municipality.

12 This section shall not apply to the collection of a Statewide  
13 development fee imposed upon non-residential development pursuant  
14 to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 **【et seq.】**  
15 through C.40:55D-8.7) by the State Treasurer, when such collection is  
16 not authorized to be retained by a municipality.

17 (cf: P.L.2008, c.46, s.8)

18  
19 31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended to  
20 read as follows:

21 10. a. The **【council】** department shall maintain on its Internet  
22 website, and also publish on **【a regular】** an annual basis, an up-to-date  
23 municipal status report **【concerning the petitions for substantive**  
24 **certification of each municipality that has submitted to the council's**  
25 **jurisdiction, and shall collect and publish】** based on its collection and  
26 publication of information concerning the number affordable of  
27 housing units actually constructed, construction starts, certificates of  
28 occupancy granted, **【rental units maintained, and the number of**  
29 **housing units transferred or sold within the previous 12-month period】**  
30 the start and expiration dates of deed restrictions, and residential and  
31 non-residential development fees collected and expended, including  
32 purposes and amounts of such expenditures, along with the current  
33 balance in the municipality's affordable housing trust funds. With  
34 respect to units actually constructed, the information shall specify the  
35 characteristics of the housing, including housing type, tenure,  
36 affordability level, number of bedrooms, date and expiration of  
37 affordability controls, and whether occupancy is reserved for families,  
38 senior citizens, or other special populations. **【No later than 60 months**  
39 **after the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), the**  
40 **council shall require each municipality, as a condition of substantive**  
41 **certification, to provide, in a standardized electronic media format as**  
42 **determined by the council, the details of the fair share plan as adopted**  
43 **by the municipality and approved by the council. The council shall**  
44 **publish and maintain such approved plans on its website.】**

45 b. (1) No later than <sup>1</sup>**【90】** 180<sup>1</sup> days following the enactment of  
46 P.L. , c. (C. ) (pending before the Legislature as this bill), each

1 municipality shall provide the department with the information  
2 necessary to comply with this section.

3 (2) Beginning with the year after the enactment of P.L. , c.  
4 (C. ) (pending before the Legislature as this bill), by January 15,  
5 each municipality shall provide the department with the information  
6 necessary to comply with this section.

7 c. The department may adopt, pursuant to the "Administrative  
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
9 regulations as may be necessary to effectuate the provisions of this  
10 section, including rules and regulations to ensure that municipalities  
11 and developers report any information as may be necessary for the  
12 department to fulfill its obligations pursuant to this section.  
13 (cf: P.L.2008, c.46, s.10)

14

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

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

36 b. Subject to the provisions of subsection d. of this section, a  
37 developer of a project consisting of newly-constructed residential  
38 units being financed in whole or in part with State funds, including,  
39 but not limited to, transit villages designated by the Department of  
40 Transportation and units constructed on State-owned property, shall  
41 be required to reserve at least 20 percent of the residential units  
42 constructed for occupancy by **【low or moderate income】** low- or  
43 moderate-income households, as those terms are defined in section  
44 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as  
45 required under the rules of the **【council, unless the municipality in**  
46 **which the property is located has received substantive certification**  
47 **from the council and such a reservation is not required under the**

1 approved affordable housing plan, or the municipality has been  
2 given a judgment of repose or a judgment of compliance by the  
3 court, and such a reservation is not required under the approved  
4 affordable housing plan】 agency.

5 c. 【(1) The Legislature recognizes that regional planning  
6 entities are appropriately positioned to take a broader role in the  
7 planning and provision of affordable housing based on regional  
8 planning considerations. In recognition of the value of sound  
9 regional planning, including the desire to foster economic growth,  
10 create a variety and choice of housing near public transportation,  
11 protect critical environmental resources, including farmland and  
12 open space preservation, and maximize the use of existing  
13 infrastructure, there is created a new program to foster regional  
14 planning entities.

15 (2) The regional planning entities identified in subsection a. of  
16 this section shall identify and coordinate regional affordable  
17 housing opportunities in cooperation with municipalities in areas  
18 with convenient access to infrastructure, employment opportunities,  
19 and public transportation. Coordination of affordable housing  
20 opportunities may include methods to regionally provide housing in  
21 line with regional concerns, such as transit needs or opportunities,  
22 environmental concerns, or such other factors as the council may  
23 permit; provided, however, that such provision by such a regional  
24 entity may not result in more than a 50 percent change in the fair  
25 share obligation of any municipality; provided that this limitation  
26 shall not apply to affordable housing units directly attributable to  
27 development by the New Jersey Sports and Exposition Authority  
28 within the New Jersey Meadowlands District.

29 (3) In addition to the entities identified in subsection a. of this  
30 section, the Casino Reinvestment Development Authority, in  
31 conjunction with the Atlantic County Planning Board, shall identify  
32 and coordinate regional affordable housing opportunities directly  
33 attributable to Atlantic City casino development, which may be  
34 provided anywhere within Atlantic County, subject to the  
35 restrictions of paragraph (4) of this subsection.

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

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

(cf: P.L.2011, c.89, s.5)

33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to read as follows:

3. As used in this act:

"Affordable Home Ownership Opportunities Bonds" means any bonds of the New Jersey Housing and Mortgage Finance Agency that provide funds to facilitate the provisions of this act.

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Annual income" means total income, from all sources, during the last full calendar year preceding the filing of an application for a loan pursuant to this act.

"Bonds" means bonds, notes or any other form of evidence of indebtedness of the agency, bearing either a fixed rate or a variable rate of interest, issued by the agency.

"Eligible project" means a project for the creation of low or moderate income housing which meets the standards of eligibility for loans under the program created by this act.

"Eligible purchaser" means a purchaser of a dwelling unit in an eligible project to whom a loan may be made under the program pursuant to section 5 of this act.

"Fund" means the Affordable Home Ownership Opportunities Fund established by section 5 of this act.

"Housing region" means a housing region as defined in subsection b. of section 4 of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-304) and determined **by the Council on Affordable Housing pursuant to section 7 of that act, P.L.1985, c.222 (C.52:27D-307)** pursuant to subsection b. of section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).

1 "Local enforcement authority" means any officer or agency of  
2 local government responsible for the implementation or  
3 enforcement of land-use and building regulations established by or  
4 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
5 c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law,"  
6 P.L.1975, c.291 (C.40:55D-1 et seq.).

7 "Low income" means a gross annual household income equal to  
8 50% or less of the median gross annual household income for  
9 households of the same size within the relevant housing region.

10 "Moderate income" means a gross annual household income  
11 equal to not more than 80%, but more than 50% of the median gross  
12 annual household income for households of the same size within the  
13 relevant housing region.

14 "Program" means the Affordable Home Ownership Opportunities  
15 Program created by this act.

16 "Qualified nonprofit organization" means any corporation or  
17 association of persons organized under Title 15A of the New Jersey  
18 Statutes, having for its principal purpose, or as a purpose ancillary  
19 to its principal purpose, the improvement of realistic opportunities  
20 for low income and moderate income housing, as defined pursuant  
21 to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.),  
22 being within the description of section 501(c)(3) of the United  
23 States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been  
24 determined by the agency to be a bona fide organization not under  
25 the effective control of any for-profit organization or governmental  
26 entity, and appearing capable, by virtue of past activities,  
27 qualifications of staff or board, or other features, of furthering the  
28 purposes of this act.

29 "Substantial rehabilitation" means repair, reconstruction or  
30 renovation which (1) costs in excess of 60% of the fair market value  
31 of a rehabilitated dwelling after such repair, reconstruction or  
32 renovation, or (2) renders a previously vacant and uninhabitable  
33 dwelling safe, sanitary and decent for residential purposes, or (3)  
34 converts to safe, sanitary and decent residential use a structure  
35 previously in non-residential use.

36 (cf: P.L.1995, c.343, s.3)

37  
38 34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to  
39 read as follows:

40 7. A project of new construction or substantial rehabilitation by  
41 a nonprofit organization shall be eligible for a loan under this act if  
42 (1) the homes to be constructed or substantially rehabilitated under  
43 the project are located within an identifiable neighborhood in which  
44 median family income does not exceed the current standard of  
45 "moderate income" pursuant to the contemporaneous standards **【of**  
46 **the Council on Affordable Housing】** established pursuant to the  
47 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the  
48 homes to be constructed or substantially rehabilitated under the

1 project are sufficient in number and located on the same or  
2 contiguous parcels of land or within such proximity to each other as  
3 to render the cost per unit of housing practicable for acquisition by  
4 lower-income purchasers; and (3) each home constructed or  
5 substantially rehabilitated within the project will conform to all  
6 requirements of the State Uniform Construction Code, except as to  
7 the waiver of any fee or other requirement pursuant to subsection b.  
8 of section 9 of this act.

9 (cf: P.L.1995, c.343, s.7)

10  
11 35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to  
12 read as follows:

13 3. As used in this act:

14 "Agency" means the New Jersey Housing and Mortgage Finance  
15 Agency.

16 "Annual income" means total income, from all sources, during  
17 the last full calendar year preceding the filing of an application for a  
18 loan pursuant to this act.

19 "Bonds" means bonds, notes or any other form of evidence of  
20 indebtedness of the agency, bearing either a fixed rate or a variable  
21 rate of interest, issued by the agency.

22 "Eligible project" means a project undertaken by a qualified  
23 housing sponsor to create housing for shared occupancy by seniors  
24 or persons with disability of low or moderate income, whether for  
25 home ownership or rental, which meets the standards of eligibility  
26 for loans under the program created by section 4 of P.L.1998, c.128  
27 (C.55:14K-75).

28 "Eligible purchaser" means a purchaser of a dwelling unit in an  
29 eligible project who fulfills the definition of a senior or person with  
30 disability pursuant to this section, is of low or moderate income and  
31 to whom a loan may be made under the program pursuant to section  
32 4 of P.L.1998, c.128 (C.55:14K-75).

33 "Fund" means the Senior and Disabled Cooperative Housing  
34 Incentive Fund established by section 6 of P.L.1998, c.128  
35 (C.55:14K-77).

36 "Housing region" means a housing region as defined in  
37 subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and  
38 determined **【**by the Council on Affordable Housing pursuant to  
39 section 7 of P.L.1985, c.222 (C.52:27D-307)**】** pursuant to  
40 subsection b. of section 6 of P.L. , c. (C. ) (pending before  
41 the Legislature as this bill).

42 "Low income" means a gross annual household income equal to  
43 50% or less of the median gross annual household income for  
44 households of the same size within the relevant housing region.

45 "Moderate income" means a gross annual household income  
46 equal to not more than 80%, but more than 50% of the median gross  
47 annual household income for households of the same size within the  
48 relevant housing region.

1 "Person with disability" means any person who is 18 years of age  
2 or older and who fulfills the definition of having a "disability"  
3 pursuant to section 3 of the "Americans with Disabilities Act of  
4 1990," 42 U.S.C. s.12102).

5 "Program" means the New Jersey Senior and Disabled  
6 Cooperative Housing Finance Incentive Program created by  
7 P.L.1998, c.128 (C.55:14K-72 et seq.).

8 "Qualified housing sponsor" means any corporation or  
9 association of persons organized under the New Jersey Statutes, or  
10 any other corporation having for one of its purposes the  
11 improvement of realistic opportunities for low income and moderate  
12 income housing, as defined pursuant to the "Fair Housing Act,"  
13 P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by  
14 virtue of past activities, qualifications of staff or board, or other  
15 features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-  
16 72 et seq.).

17 "Retrofitting" means renovating or remodeling an existing  
18 residential or non-residential structure to allow for cooperative  
19 living.

20 "Senior" means an individual who is 55 years of age or older.

21 "Substantial rehabilitation" means repair, reconstruction or  
22 renovation which (1) costs in excess of 60% of the fair market value  
23 of a rehabilitated dwelling after such repair, reconstruction or  
24 renovation, or (2) renders a previously vacant and uninhabitable  
25 dwelling safe, sanitary and decent for residential purposes or (3)  
26 converts to safe, sanitary and decent residential use a structure  
27 previously in non-residential use.

28 (cf: P.L.1998, c.128, s.3)

29  
30 36. (New section) a. (1) Notwithstanding the provisions of the  
31 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)  
32 to the contrary, the Commissioner of Community Affairs shall, in  
33 consultation with the Administrative Director of the Courts and the  
34 Executive Director of the New Jersey Housing and Mortgage Finance  
35 Agency, adopt, immediately upon filing with the Office of  
36 Administrative Law, no later than nine months after the effective date  
37 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
38 such transitional rules and regulations as necessary for the  
39 implementation of P.L. , c. (C. ) (pending before the  
40 Legislature as this bill), including for the identification of any vestigial  
41 duties of the Council on Affordable Housing and for the transfer of  
42 those duties within the Department of Community Affairs to the extent  
43 that those duties are not otherwise assumed, pursuant to P.L. , c.  
44 (C. ) (pending before the Legislature as this bill), by  
45 municipalities or the Affordable Housing Dispute Resolution Program.

46 (2) The department, in consultation with the agency, shall  
47 thereafter amend, adopt, or readopt the regulations in accordance with



1 the requirements of the "Administrative Procedure Act," P.L.1968,  
2 c.410 (C.52:14B-1 et seq.).

3 b. The Executive Director of the New Jersey Housing and  
4 Mortgage Finance Agency shall adopt, pursuant to the "Administrative  
5 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), no later than  
6 nine months after the effective date of P.L. , c. (C. ) (pending  
7 before the Legislature as this bill), rules and regulations to update the  
8 Uniform Housing Affordability Controls as required pursuant to the  
9 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). As part of  
10 updating the Uniform Housing Affordability Controls, the agency shall  
11 set rules establishing that, for the purpose of <sup>1</sup>newly created<sup>1</sup> low- and  
12 moderate-income rental units, a <sup>1</sup>[40-year] 30-year<sup>1</sup> minimum deed  
13 restriction shall be required. For the purpose of for-sale units, a 20-  
14 year minimum deed restriction shall be required. <sup>1</sup>For the purpose of  
15 housing units for which affordability controls are extended for a new  
16 term of affordability: (1) a 20-year minimum deed restriction shall be  
17 required if the unit was initially created before October 1, 2001; and  
18 (2) a 30-year minimum deed restriction shall be required if the unit  
19 was initially created on or following October 1, 2001.<sup>1</sup>  
20

21 37. The following sections are repealed:

22 Section 5 of P.L.1985 c.222 (C.52:27D-305);  
23 Section 6 of P.L.1985, c.222 (C.52:27D-306);  
24 Section 7 of P.L.1985, c.222 (C.52:27D-307);  
25 Section 1 of P.L.1991, c.479 (C.52:27D-307.1);  
26 Section 2 of P.L.1991, c.479 (C.52:27D-307.2);  
27 Section 3 of P.L.1991, c.479 (C.52:27D-307.3);  
28 Section 4 of P.L.1991, c.479 (C.52:27D-307.4);  
29 Section 5 of P.L.1991, c.479 (C.52:27D-307.5);  
30 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);  
31 Section 8 of P.L.1985, c.222 (C.52:27D-308);  
32 Section 9 of P.L.1985, c.222 (C.52:27D-309);  
33 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);  
34 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);  
35 Section 14 of P.L.1985, c.222 (C.52:27D-314);  
36 Section 15 of P.L.1985, c.222 (C.52:27D-315);  
37 Section 16 of P.L.1985, c.222 (C.52:27D-316);  
38 Section 17 of P.L.1985, c.222 (C.52:27D-317);  
39 Section 18 of P.L.1985, c.222 (C.52:27D-318);  
40 Section 19 of P.L.1985 c.222 (C.52:27D-319);  
41 Section 22 of P.L.1985, c.222 (C.52:27D-322);  
42 Section 26 of P.L.1985, c.222 (C.52:27D-326);  
43 Section 28 of P.L.1985, c.222 (C.52:27D-328); and  
44 Section 9 of P.L.2008, c.46 (C.52:27D-329.3).  
45

46 38. a. There is appropriated to the Affordable Housing Dispute  
47 Resolution Program, established pursuant to subsection a. of section  
48 5 of P.L. , c. (C. ) (pending before the Legislature as this

1 bill), from the General Fund \$12,000,000 for the purposes of  
2 carrying out its responsibilities for the fourth round of affordable  
3 housing obligations, as established pursuant to section 5 of  
4 P.L. , c. (C. ) (pending before the Legislature as this bill).  
5 b. There is appropriated to the Department of Community  
6 Affairs, from the General Fund, \$4,000,000 for the purposes of  
7 carrying out responsibilities allocated to it pursuant to P.L. , c.  
8 (C. ) (pending before the Legislature as this bill).  
9  
10 39. This act shall take effect immediately, and shall apply to  
11 each new round of affordable housing obligations that begins  
12 following enactment.

[Second Reprint]

**ASSEMBLY, No. 4**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED JANUARY 9, 2024

**Sponsored by:**

**Assemblywoman YVONNE LOPEZ**  
**District 19 (Middlesex)**  
**Assemblyman CRAIG J. COUGHLIN**  
**District 19 (Middlesex)**  
**Assemblyman BENJIE E. WIMBERLY**  
**District 35 (Bergen and Passaic)**  
**Assemblywoman VERLINA REYNOLDS-JACKSON**  
**District 15 (Hunterdon and Mercer)**  
**Senator TROY SINGLETON**  
**District 7 (Burlington)**  
**Senator NICHOLAS P. SCUTARI**  
**District 22 (Somerset and Union)**  
**Senator M. TERESA RUIZ**  
**District 29 (Essex and Hudson)**

**Co-Sponsored by:**

**Assemblymen Moen, Stanley, Assemblywomen Quijano, Speight,**  
**Assemblyman Sampson, Assemblywomen McCann Stamato, Haider, Hall,**  
**Assemblyman Verrelli, Senators Beach, Burgess, Timberlake, McKnight**  
**and Pou**

**SYNOPSIS**

Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on March 11, 2024, with amendments.

**(Sponsorship Updated As Of: 3/18/2024)**

1 AN ACT concerning affordable housing, including administration  
2 and municipal obligations, amending, supplementing, and  
3 repealing various parts of the statutory law, and making an  
4 appropriation.

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

8  
9 1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to  
10 read as follows:

11 2. The Legislature finds that:

12 a. The New Jersey Supreme Court, through its rulings in **【South】**  
13 Southern Burlington County NAACP v. Mount Laurel, 67 N.J. 151  
14 (1975) and **【South】** Southern Burlington County NAACP v. Mount  
15 Laurel, 92 N.J. 158 (1983), has determined that every municipality in a  
16 growth area has a constitutional obligation to provide through its land  
17 use regulations a realistic opportunity for a fair share of its region's  
18 present and prospective needs for housing for **【low and moderate**  
19 **income】** low- and moderate-income families.

20 b. In the second Mount Laurel ruling, the Supreme Court stated  
21 that the determination of the methods for satisfying this constitutional  
22 obligation "is better left to the Legislature," that the court has "always  
23 preferred legislative to judicial action in their field," and that the  
24 judicial role in upholding the Mount Laurel doctrine "could decrease  
25 as a result of legislative and executive action."

26 c. The interest of all citizens, including **【low and moderate**  
27 **income】** low- and moderate-income families in need of affordable  
28 housing, and the needs of the workforce, would be best served by a  
29 comprehensive planning and implementation response to this  
30 constitutional obligation.

31 d. There are a number of essential ingredients to a comprehensive  
32 planning and implementation response, including the establishment of  
33 reasonable fair share housing guidelines and standards, the initial  
34 determination of fair share by officials at the municipal level and the  
35 preparation of a municipal housing element, State review of the local  
36 fair share study and housing element, and continuous State funding for  
37 **【low and moderate income】** low- and moderate-income housing to  
38 replace the federal housing subsidy programs which have been almost  
39 completely eliminated.

40 e. The State can maximize the number of **【low and moderate**  
41 **income】** low- and moderate-income units provided in New Jersey by  
42 allowing its municipalities to adopt appropriate phasing schedules for  
43 meeting their fair share, so long as the municipalities permit a timely

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:

<sup>1</sup>Assembly AAP committee amendments adopted February 8, 2024.

<sup>2</sup>Senate SBA committee amendments adopted March 11, 2024.

1 achievement of an appropriate fair share of the regional need for **low**  
2 and moderate income **low- and moderate-income** housing as required  
3 by the Mt. Laurel I and II opinions and other relevant court decisions.

4 f. The State can also maximize the number of **low and moderate**  
5 income **low- and moderate-income** units by creating new affordable  
6 housing and by rehabilitating existing, but substandard, housing in the  
7 State. Because the Legislature has determined, pursuant to P.L.2008,  
8 c.46 (C.52:27D-329.1 et al.), that it is no longer appropriate or in  
9 harmony with the Mount Laurel doctrine to permit the transfer of the  
10 fair share obligations among municipalities within a housing region, it  
11 is necessary and appropriate to create a new program to create new  
12 affordable housing and to foster the rehabilitation of existing, but  
13 substandard, housing.

14 g. Since the urban areas are vitally important to the State,  
15 construction, conversion and rehabilitation of housing in our urban  
16 centers should be encouraged. However, the provision of housing in  
17 urban areas must be balanced with the need to provide housing  
18 throughout the State for the free mobility of citizens.

19 h. The Supreme Court of New Jersey in its Mount Laurel  
20 decisions demands that municipal land use regulations affirmatively  
21 afford a **reasonable** realistic opportunity for a variety and choice of  
22 housing including low and moderate cost housing, to meet the needs of  
23 people desiring to live there. While provision for the actual  
24 construction of that housing by municipalities is not required, they are  
25 encouraged but not mandated to expend their own resources to help  
26 provide **low and moderate income** **low- and moderate-income**  
27 housing.

28 i. **Certain amendments to the enabling act of the Council on**  
29 **Affordable Housing are necessary to provide guidance to the council**  
30 **to ensure consistency with the legislative intent, while at the same time**  
31 **clarifying the limitations of the council in its rulemaking. Although**  
32 **the court has remarked in several decisions that the Legislature has**  
33 **granted the council considerable deference in its rulemaking, the**  
34 **Legislature retains its power and obligation to clarify and amend the**  
35 **enabling act from which the council derives its rulemaking power,**  
36 **from time to time, in order to better guide the council.** (Deleted by  
37 amendment, P.L. , c. ) (pending before the Legislature as this bill)

38 j. The Legislature finds that the use of regional contribution  
39 agreements, which permits municipalities to transfer a certain portion  
40 of their fair share housing obligation outside of the municipal borders,  
41 should no longer be utilized as a mechanism for the creation of  
42 affordable housing **by the council**.

43 k. The Legislature finds that the role of the Council on Affordable  
44 Housing, as intended in the original enactment of the "Fair Housing  
45 Act," has not developed in practice as was intended in the legislation.

46 l. The council's inability to function ultimately led the Supreme  
47 Court in 2015 to order the temporary dissolution of the requirement

1 that administrative remedies be exhausted prior to resolving affordable  
2 housing disputes before the court, and allowed the courts to resume  
3 their role as the forum of first resort for evaluating municipal  
4 compliance with Mount Laurel obligations pursuant to guidelines laid  
5 out by the Supreme Court's order.

6 m. The Legislature finds that the council's inability to function led  
7 to a "gap period" that frustrated the intent of the Legislature and  
8 compliance with constitutional and statutory obligations, and that it is  
9 necessary to establish definitive deadlines for municipal action and  
10 any challenges to those actions to avoid such a "gap period" from  
11 being repeated in the future.

12 n. The Legislature finds that although the court-led system that has  
13 developed since 2015 has resulted in a significant number of  
14 settlement agreements and increased production of affordable housing,  
15 the system could operate more expeditiously to produce affordable  
16 housing, and at a lower cost to all parties, if appropriate standards are  
17 established by the Legislature to be applied throughout the State  
18 including more clarity on calculation on fair share affordable housing  
19 obligations using transparent and established data sources to eliminate  
20 the lengthy and costly processes of determining those obligations that  
21 have characterized both the Council on Affordable Housing and court-  
22 led system.

23 o. The Legislature determines that, considering the unique history  
24 of the "Fair Housing Act," the Council on Affordable Housing shall be  
25 abolished, and that, pursuant to the formulas and process established  
26 pursuant to sections 6 and 7 of P.L. , c. (C. and C. )  
27 (pending before the Legislature as this bill), a municipality shall be  
28 authorized to seek approval of its fair share affordable housing  
29 obligation, adopted pursuant to binding resolution and then filed with  
30 the court, with the guidance of calculations published by the  
31 Department of Community Affairs, but that advocates for the low- and  
32 moderate-income households of the State shall be provided with an  
33 opportunity to contest the municipal determination.

34 p. <sup>1</sup>The Legislature declares that the "Fair Housing Act,"  
35 P.L.1985, c.222 (C.52:27D-301 et al.), as amended and supplemented  
36 by P.L. , c. (C. ) (pending before the Legislature as this bill), is  
37 intended to implement the Mount Laurel doctrine, and that  
38 municipalities in compliance with the "Fair Housing Act," P.L.1985,  
39 c.222 (C.52:27D-301 et al.) are also in compliance with the Mount  
40 Laurel doctrine.

41 q. <sup>1</sup> The Legislature finds that the population of persons aged 65  
42 years and older in the State has grown from approximately 13 percent  
43 in 1990, to 17 percent in 2021, and that such growth, in conjunction  
44 with expected future growth, makes it appropriate for the Legislature  
45 to <sup>1</sup>['continue to'] allow up to <sup>1</sup>['25'] 30<sup>1</sup> percent of the units towards a  
46 municipality's prospective affordable housing obligation to be  
47 satisfied through the creation of age-restricted housing.

<sup>2</sup>r. The "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.) were enacted concurrently to address the ruling of the New Jersey Supreme Court in Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983) and associated land use planning concerns.

s. The Legislature, in amending and supplementing the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), intends to facilitate comprehensive planning in alignment with smart growth principles, and the State Development and Redevelopment Plan.

t. The Legislature declares that the changes made to affordable housing methodologies, obligations, and fair share plans, as determined to be a necessity by the Legislature, through the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), are made with the intention of furthering consistency with the State Development and Redevelopment Plan.<sup>2</sup>

(cf: P.L.2008, c.46, s.4)

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

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

a. "Council" means the Council on Affordable Housing established in P.L.1985, c.222 (C.52:27D-301 et al.), **【**which shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State**】** abolished pursuant to section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. "Housing region" means a geographic area **【**of not less than two nor more than four contiguous, whole counties which exhibit significant social, economic and income similarities, and which constitute to the greatest extent practicable the primary metropolitan statistical areas as last defined by the United States Census Bureau prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.)**】** established pursuant to subsection b. of section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).

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

d. **【**"Moderate income" "Moderate-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 **【**%**】** percent but less than 80 percent of the median gross household income for

1 households of the same size within the housing region in which the  
2 housing is located.

3 e. **["Resolution of participation"** means a resolution adopted by a  
4 municipality in which the municipality chooses to prepare a fair share  
5 plan and housing element in accordance with P.L.1985, c.222  
6 (C.52:27D-301 et al.).**】** (Deleted by amendment, P.L. , c. )  
7 (pending before the Legislature as this bill)

8 f. "Inclusionary development" means a residential housing  
9 development in which a substantial percentage of the housing units are  
10 provided for a reasonable income range of **【low and moderate**  
11 **income】** low- and moderate-income households.

12 g. "Conversion" means the conversion of existing commercial,  
13 industrial, or residential structures for **【low and moderate income】**  
14 low- and moderate-income housing purposes where a substantial  
15 percentage of the housing units are provided for a reasonable income  
16 range of **【low and moderate income】** low- and moderate-income  
17 households.

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

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

23 j. "Prospective need" means a projection of housing needs based  
24 on development and growth which is reasonably likely to occur in a  
25 region or a municipality, as the case may be, as a result of actual  
26 determination of public and private entities. **【In determining**  
27 **prospective need, consideration shall be given to approvals of**  
28 **development applications, real property transfers, and economic**  
29 **projections prepared by the State Planning Commission established by**  
30 **sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.)】**  
31 Prospective need shall be determined by the methodology set forth  
32 pursuant to sections 6 and 7 of P.L. , c. (C. and C. )  
33 (pending before the Legislature as this bill) for the fourth round and all  
34 future rounds of housing obligations.

35 k. "Person with a disability" means a person with a physical  
36 disability, infirmity, malformation, or disfigurement which is caused  
37 by bodily injury, birth defect, aging, or illness including epilepsy and  
38 other seizure disorders, and which shall include, but not be limited to,  
39 any degree of paralysis, amputation, lack of physical coordination,  
40 blindness or visual impairment, deafness or hearing impairment, the  
41 inability to speak or a speech impairment, or physical reliance on a  
42 service animal, wheelchair, or other remedial appliance or device.

43 l. "Adaptable" means constructed in compliance with the  
44 technical design standards of the barrier free subcode adopted by the  
45 Commissioner of Community Affairs pursuant to the "State Uniform  
46 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and



1 in accordance with the provisions of section 5 of P.L.2005, c.350  
2 (C.52:27D-123.15).

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

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

20 o. "Builder's remedy" means court imposed site-specific relief for  
21 a litigant who seeks to build affordable housing for which the court  
22 requires a municipality to utilize zoning techniques such as mandatory  
23 set-asides or density bonuses, including techniques which provide for  
24 the economic viability of a residential development by including  
25 housing that is not for low- and moderate-income households.

26 p. "Commissioner" means the Commissioner of Community  
27 Affairs.

28 q. "Compliance certification" means the certification obtained by a  
29 municipality pursuant to section 3 of P.L. , c. (C. ) (pending  
30 before the Legislature as this bill), that protects the municipality from  
31 '[a builder's remedy] exclusionary zoning litigation' during the  
32 current round of present and prospective need and through July 1 of  
33 the year the next round begins, which is also known as a "judgment of  
34 compliance" or "judgment of repose." The term "compliance  
35 certification" shall include a judgment of repose granted in an action  
36 filed pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313).

37 r. "County level housing judge" means a judge appointed pursuant  
38 to section 5 of P.L. , c. (C. ) (pending before the Legislature  
39 as this bill), to resolve disputes over the compliance of municipal fair  
40 share affordable housing obligations and municipal fair share plans  
41 and housing elements, with the "Fair Housing Act," P.L.1985, c.222  
42 (C.52:27D-301 et al.

43 s. "Deficient housing unit" means housing that: (1) is over fifty  
44 years old and overcrowded; (2) lacks complete plumbing; or (3) lacks  
45 complete kitchen facilities.

46 t. "Department" means the Department of Community Affairs.

47 u. 'Exclusionary zoning litigation" means litigation to challenge  
48 the fair share plan, housing element, or ordinances or resolutions

1 implementing the fair share plan or housing element of a municipality  
 2 based on alleged noncompliance with the "Fair Housing Act,"  
 3 P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine,  
 4 which litigation shall include, but shall not be limited to, litigation  
 5 seeking a builder's remedy.

6 v.<sup>1</sup> "Fair share plan" means the plan or proposal that is in a form  
 7 which may readily be adopted, with accompanying ordinances and  
 8 resolutions, pursuant to subsection f. of section 3 of  
 9 P.L. , c. (C. ) (pending before the Legislature as this bill), by  
 10 which a municipality proposes to satisfy its obligation to create a  
 11 realistic opportunity to meet its fair share of low- and moderate-  
 12 income housing needs of its region and which details the affirmative  
 13 measures the municipality proposes to undertake to achieve its fair  
 14 share of low- and moderate-income housing, as provided in the  
 15 municipal housing element, and addresses the development regulations  
 16 necessary to implement the housing element, including, but not limited  
 17 to, inclusionary requirements and development fees, and the  
 18 elimination of unnecessary housing cost-generating features from the  
 19 municipal land use ordinances and regulations.

20 <sup>1</sup>[v.] w.<sup>1</sup> <sup>2</sup>"Highlands-conforming municipality" means a  
 21 municipality that has adopted a land development ordinance  
 22 implementing the municipality's plan conformance petition and which  
 23 land development ordinance has been certified by the Highlands Water  
 24 Protection and Planning Council as consistent with the "Highlands  
 25 Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et  
 26 seq.), the Highlands regional master plan, and the municipality's plan  
 27 conformance approval. The term "land development ordinance" shall  
 28 be inclusive of any amendment to the municipality's land development  
 29 ordinances that is adopted to further the municipality's petition of plan  
 30 conformance.

31 x.<sup>2</sup> "Housing element" means that portion of a municipality's  
 32 master plan consisting of reports, statements, proposals, maps,  
 33 diagrams, and text designed to meet the municipality's fair share of its  
 34 region's present and prospective housing needs, particularly with  
 35 regard to low- and moderate-income housing, and which shall contain  
 36 the municipal present and prospective obligation for affordable  
 37 housing, determined pursuant to subsection f. of section 3 of P.L. , c.  
 38 (C. ) (pending before the Legislature as this bill).

39 <sup>1</sup>[w.] <sup>2</sup>[x.<sup>1</sup>] y.<sup>2</sup> "Program" means the Affordable Housing  
 40 Dispute Resolution Program, established pursuant to section 5 of P.L.  
 41 , c. (C. ) (pending before the Legislature as this bill).

42 <sup>1</sup>[x.] <sup>2</sup>[y.<sup>1</sup>] z. "State Development and Redevelopment Plan" or  
 43 "State Plan" means the plan prepared pursuant to sections 1 through 12  
 44 of the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.),  
 45 designed to represent a balance of development and conservation  
 46 objectives best suited to meet the needs of the State, and for the  
 47 purpose of coordinating planning activities and establishing Statewide

1 planning objectives in the areas of land use, housing, economic  
 2 development, transportation, natural resource conservation, agriculture  
 3 and farmland retention, recreation, urban and suburban redevelopment,  
 4 historic preservation, public facilities and services, and  
 5 intergovernmental coordination pursuant to subsection f. of section 5  
 6 of P.L.1985,c.398 (C.52:18A-200).

7 aa.<sup>2</sup> "Transitional housing" means temporary housing that:

8 (1) includes, but is not limited to, single-room occupancy housing  
 9 or shared living and supportive living arrangements;

10 (2) provides access to on-site or off-site supportive services for  
 11 very low-income households who have recently been homeless or lack  
 12 stable housing;

13 (3) is licensed by the department; and

14 (4) allows households to remain for a minimum of six months.

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

16  
 17 3. (New section) a. The Council on Affordable Housing,  
 18 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
 19 et al.), is abolished. Each municipality shall determine its municipal  
 20 present and prospective obligations in accordance with the formulas  
 21 established in sections 6 and 7 of P.L. , c. (C. and C. )  
 22 (pending before the Legislature as this bill) and may take into  
 23 consideration the calculations in the report published by the  
 24 department in accordance with this section.

25 b. Following the expiration of the third round of affordable  
 26 housing obligations on July 1, 2025, a municipality shall have  
 27 immunity from <sup>1</sup>["a builder's remedy"] exclusionary zoning litigation<sup>1</sup>  
 28 if the municipality complies with the deadlines established in P.L. ,  
 29 c. (C. ) (pending before the Legislature as this bill) for both  
 30 determining present and prospective obligations, and for adopting a  
 31 housing element and fair share plan to meet those obligations.

32 <sup>1</sup>(1) Immunity from exclusionary zoning litigation shall not limit  
 33 the ability of an interested party to challenge a municipality for failure  
 34 to comply with the terms of its compliance certification. However, a  
 35 municipality's actions to comply with the terms of its compliance  
 36 certification shall retain a presumption of validity if challenged for an  
 37 alleged failure described in this paragraph.

38 (2) Immunity from exclusionary zoning litigation shall not limit  
 39 the ability of an interested party to <sup>2</sup>bring a<sup>2</sup> challenge <sup>2</sup>before<sup>2</sup> the  
 40 program alleging that, despite the issuance of compliance certification,  
 41 a municipality's fair share obligation, fair share plan, housing element,  
 42 or ordinances implementing the fair share plan or housing element are  
 43 in violation of the Mount Laurel doctrine. However, the <sup>2</sup>decisions of  
 44 the<sup>2</sup> program <sup>2</sup>["and its actions"]<sup>2</sup> shall retain a presumption of validity  
 45 if challenged for an alleged violation described in this paragraph.<sup>1</sup>

46 c. Prior to the beginning of each new 10-year round of housing  
 47 obligations beginning with the fourth round on July 1, 2025, the

1 Department of Community Affairs shall conduct a calculation of  
2 regional need and municipal present and prospective obligations in  
3 accordance with the formulas established in sections 6 and 7 of  
4 P.L. , c. (C. and C. ) (pending before the Legislature as  
5 this bill).

6 d. For the fourth round of affordable housing obligations, the  
7 department shall prepare and submit a report to the Governor, and,  
8 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the  
9 Legislature providing a report on the calculations of regional need and  
10 municipal obligations for each region of the State <sup>1</sup>on or before  
11 August within the earlier of seven months following the effective  
12 date of P.L. , c. (C. ) (pending before the Legislature as this  
13 bill) or December<sup>1</sup> 1, 2024. <sup>2</sup>To assist in this calculation, the  
14 Highlands Water Protection and Planning Council shall provide a list  
15 of Highlands-conforming municipalities to the department no less than  
16 five business days following the effective date of P.L. , c. (C. )  
17 (pending before the Legislature as this bill).<sup>2</sup> The department shall  
18 provide the report to each municipality in the State at the same time  
19 that it submits the report to the Governor and Legislature and shall also  
20 publish such report on the department's Internet website. For the fifth  
21 round, and each subsequent new round of housing obligations, the  
22 department shall prepare and submit a report to each municipality in  
23 the State, the Governor, and, pursuant to section 2 of P.L.1991, c.164  
24 (C.52:14-19.1), to the Legislature on these calculations on or before  
25 August 1 of the year prior to the start of the new round and shall also  
26 publish such report on the department's Internet website. For each 10-  
27 year round of housing obligations, a municipality may take into  
28 consideration the calculations in the report prepared by the department  
29 pursuant to this subsection in determining its present and prospective  
30 obligations.

31 e. Nothing in the provisions of subsections c., d., or f. of this  
32 section shall be interpreted to render any calculation in a report by the  
33 department published pursuant to this section binding on any  
34 municipality or other entity, nor to render any failure by the  
35 department to timely conduct the calculations or publish a report  
36 required by this section to alter the deadlines or process set forth in  
37 this section. The ultimate determination of a municipality's present  
38 and prospective need shall be through the process as set forth below.

39 f. (1) (a) With consideration of the calculations contained in the  
40 relevant report published by the department pursuant to this section,  
41 for each 10-year round of affordable housing obligations beginning  
42 with the fourth round, a municipality shall determine its present and  
43 prospective fair share obligation for affordable housing in accordance  
44 with the formulas established in sections 6 and 7 of P.L. , c. (C.  
45 and C. ) (pending before the Legislature as this bill) by resolution,  
46 which shall describe the basis for the municipality's determination and  
47 bind the municipality to adopt a housing element and fair share plan  
48 pursuant to paragraph (2) of this subsection based on this

1 determination as may be adjusted by the program as set forth in this  
2 subsection.

3 (b) For the fourth round of affordable housing obligations, this  
4 determination of present and prospective fair share obligation shall be  
5 made by binding resolution no later than January 31, 2025. After  
6 adoption of this binding resolution, the municipality shall file an action  
7 regarding the resolution with the program no later than 48 hours  
8 following adoption. The resolution, along with the date of filing with  
9 the program, shall be published on the program's publicly accessible  
10 Internet website. The municipality shall also publish the resolution on  
11 its publicly accessible Internet website, if the municipality maintains  
12 one. If the municipality does not meet this deadline, it  
13 **'[immediately]'** shall lose immunity from **'[builder's remedy]**  
14 **exclusionary zoning**<sup>1</sup> litigation until such time as the municipality is  
15 determined to have come into compliance with the "Fair Housing  
16 Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel  
17 doctrine. A determination of the municipality's present and  
18 prospective obligation may be established before a county level  
19 housing judge as part of any resulting declaratory judgment action  
20 pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as amended  
21 by P.L. , c. (C. ) (pending before the Legislature as this bill),  
22 or through **'[builder's remedy]** **exclusionary zoning**<sup>1</sup> litigation. If the  
23 municipality meets this January 31 deadline, then the municipality's  
24 determination of its obligation shall be established by default <sup>1</sup>, and  
25 shall bear a presumption of validity<sup>1</sup> beginning on March 1, 2025, as  
26 the municipality's obligation for the fourth round, unless challenged  
27 by an interested party on or before February 28, 2025. <sup>1</sup>The  
28 municipality's determination of its fair share obligation shall have a  
29 presumption of validity, if established in accordance with sections 6  
30 and 7 of P.L. , c. (C. and C. ) (pending before the  
31 Legislature as this bill), in any challenge initiated through the  
32 program.<sup>1</sup> An interested party may file a challenge with the program,  
33 after adoption of the binding resolution and prior to March 1, 2025,  
34 alleging that the municipality's determination of its present and  
35 prospective obligation does not comply with the requirements of  
36 sections 6 and 7 of P.L. , c. (C. and C. ) (pending before  
37 the Legislature as this bill). For the fifth round, and each subsequent  
38 new round of housing obligations, the deadlines established in this  
39 subparagraph shall be on the last day of January, the last day of  
40 February, and the first day of March, respectively, of the year of the  
41 start of each new round.

42 (c) The Administrative Director of the Courts shall establish  
43 procedures for the program to consider a challenge and resolve a  
44 dispute initiated by an interested party pursuant to subparagraph (b) of  
45 this paragraph. To resolve a challenge, the program shall apply an  
46 objective assessment standard to determine whether or not the  
47 municipality's calculation of its obligation is compliant with the

1 requirements of sections 6 and 7 of P.L. , c. (C. and C. )  
2 (pending before the Legislature as this bill). Any challenge must state  
3 with particularity how the municipal calculation fails to comply with  
4 sections 6 and 7 of P.L. , c. (C. and C. ) (pending before  
5 the Legislature as this bill) and include the challenger's own  
6 calculation of the fair share obligations in compliance with sections 6  
7 and 7 of P.L. , c. (C. and C. ) (pending before the  
8 Legislature as this bill). The program shall establish procedures to  
9 summarily dismiss any objection or challenge that does not meet these  
10 minimum standards. For the purpose of efficiency, the program shall,  
11 in its own discretion, permit multiple challenges to the same municipal  
12 determination to be consolidated. The program's approach to  
13 resolving a dispute may include: (i) a finding that the municipality's  
14 determination of its present and prospective need obligation did not  
15 facially comply with the requirements of sections 6 and 7 of P.L. , c.  
16 (C. and C. ) (pending before the Legislature as this bill) and  
17 thus the municipality's immunity shall be revoked; (ii) an adjustment  
18 of the municipality's determination of its present and prospective need  
19 obligation to comply with the requirements of sections 6 and 7 of  
20 P.L. , c. (C. and C. ) (pending before the Legislature as  
21 this bill) without revoking immunity; or (iii) a rejection of a challenge  
22 and affirm the municipality's determination. The decision shall be  
23 provided to the municipality and all parties that have filed challenges  
24 no later than March 31 of the year when the current round is expiring  
25 and the new round is beginning and concurrently posted on the  
26 program's Internet website. The Administrative Director of the Courts  
27 shall establish procedures for any further appellate review of such  
28 determinations, and may establish an expedited process for  
29 consolidated review of any such challenges by the Supreme Court,  
30 provided that any party seeking appellate review shall not change the  
31 deadlines established for municipal filing of a housing element and fair  
32 share plan, and implementing ordinances.

33 (2) (a) A municipality shall adopt a housing element and fair  
34 share plan as provided for by the "Fair Housing Act," P.L.1985, c.222  
35 (C.52:27D-301 et al.), and propose drafts of the appropriate zoning  
36 and other ordinances and resolutions to implement its present and  
37 prospective obligation established in paragraph (1) of this subsection  
38 on or before June 30, 2025. After adoption of the housing element and  
39 fair share plan, and the proposal of drafts of the appropriate zoning and  
40 other ordinances and resolutions, the municipality shall within 48  
41 hours of adoption or by June 30, 2025, whichever is sooner, file the  
42 same with the program as part of the action initiated pursuant to  
43 subparagraph (b) of paragraph (1) of this subsection through the  
44 program's Internet website. Any municipality that does not do so by  
45 June 30, 2025, shall not retain immunity from **<sup>1</sup>["builder's remedy"]**  
46 exclusionary zoning<sup>1</sup> litigation until such time as the municipality is  
47 determined to have come into compliance with the "Fair Housing  
48 Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel

1 doctrine and shall be subject to review through the declaratory  
2 judgment process as established in paragraph (3) of this subsection.  
3 As part of its housing element and fair share plan, the municipality  
4 shall include an assessment of the degree to which the municipality  
5 has met its fair share obligation from the prior rounds of affordable  
6 housing obligations as established by prior court approval, or approval  
7 by the council, and determine to what extent this obligation is  
8 unfulfilled or whether the municipality has credits in excess of its prior  
9 round obligations. If a prior round obligation remains unfulfilled, or a  
10 municipality never received an approval from court or the council for  
11 any prior round, the municipality shall address such unfulfilled prior  
12 round obligation in its housing element and fair share plan. Units  
13 included as part of the municipality's unfulfilled prior round obligation  
14 shall not count towards the cap on units in the municipality's  
15 prospective need obligation. In addressing prior round obligations, the  
16 municipality shall retain any sites that, in furtherance of the prior  
17 round obligation, are the subject of a contractual agreement with a  
18 developer, or for which the developer has filed a complete application  
19 seeking subdivision or site plan approval prior to the date by which the  
20 housing element and fair share plan are required to be submitted, and  
21 shall demonstrate how any sites that were not built in the prior rounds  
22 continue to present a realistic opportunity, which may include  
23 proposing changes to the zoning on the site to make its development  
24 more likely, and which may also include the dedication of municipal  
25 affordable housing trust fund dollars or other monetary or in-kind  
26 resources. The municipality shall only plan to replace any sites  
27 planned for development as provided by a prior court approval,  
28 settlement agreement, or approval by the council, with alternative  
29 development plans, if it is determined that the previously planned sites  
30 no longer present a realistic opportunity, and the sites in the alternative  
31 development plan provide at least an equivalent number of affordable  
32 units and are otherwise in compliance with the "Fair Housing Act,"  
33 P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine.  
34 If a municipality proposes to replace a site for which a complete  
35 application seeking subdivision or site plan approval has not been filed  
36 prior to date by which the housing element and fair share plan is  
37 required to be submitted, there shall be a rebuttable presumption in any  
38 challenge filed to the municipality's plan that any site for which a  
39 zoning designation was adopted creating a realistic opportunity for the  
40 development of a site prior to July 1, 2020, or July 1 of every 10th  
41 year thereafter, as applicable, may be replaced with one or more  
42 alternative sites that provide a realistic opportunity for at least the  
43 same number of affordable units and is otherwise in compliance with  
44 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the  
45 Mount Laurel doctrine. To the extent a municipality has credits,  
46 including bonus credits, from units created during a prior round that  
47 are otherwise permitted to be allocated toward the municipality's  
48 unfulfilled prior round obligation or present or prospective need

1 obligation in an upcoming round, the municipality shall be entitled to  
2 rely on the rules, including rules for bonus credits, applicable for the  
3 round during which those credits were accumulated. If a municipality  
4 has credits in excess of its prior round obligations, and such excess  
5 credits represent housing that will continue to be deed-restricted and  
6 affordable through the current round, the municipality may include  
7 such housing, and applicable bonus credits, towards addressing the  
8 municipality's new calculation of prospective need. Consistent with  
9 subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311), the  
10 total number of bonus credits shall in no circumstance exceed 25  
11 percent of the municipality's prospective obligation in any round. The  
12 municipality may in its plan lower its prospective need obligation to  
13 the extent necessary to prevent establishing a prospective need  
14 obligation that requires the municipality to provide a realistic  
15 opportunity for more than 1,000 housing units, after the application of  
16 any excess credits, or to prevent a prospective need obligation that  
17 exceeds 20 percent of the total number of households in a municipality  
18 according to the most recent federal decennial census, not including  
19 any prior round obligation. If a municipality is subject to both a 1,000  
20 unit cap or 20 percent cap it may apply whichever cap results in a  
21 lower prospective need obligation. For the fifth round, and for each  
22 subsequent new round of housing obligations, the deadlines in this  
23 paragraph shall be June 30 for the adoption of the housing element and  
24 fair share plan, and the proposal of drafts of the appropriate zoning and  
25 other ordinances and resolutions to implement its present and  
26 prospective obligation, of the year of the start of the new round.

27 (b) Following the filing, in an action, of an adopted housing  
28 element and fair share plan pursuant to subparagraph (a) of this  
29 paragraph, an interested party may file a response on or before August  
30 31, 2025 alleging that the municipality's fair share plan and housing  
31 element are not in compliance with the "Fair Housing Act," P.L.1985,  
32 c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. Such  
33 allegation shall not include a claim that a site on real property  
34 proposed by the interested party is a better site than a site in the plan,  
35 but rather shall be based on whether the housing element and fair share  
36 plan as proposed is compliant with the "Fair Housing Act," P.L.1985,  
37 c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine. To resolve  
38 a challenge, the program shall apply an objective assessment standard  
39 to determine whether or not the municipality's housing element and  
40 fair share plan is compliant with the "Fair Housing Act," P.L.1985,  
41 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. Any  
42 interested party that files a challenge shall specify with particularity  
43 which sites or elements of the municipal fair share plan do not comply  
44 with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or  
45 the Mount Laurel doctrine, and the basis for alleging such non-  
46 compliance. The program shall establish procedures to summarily  
47 dismiss any objection or challenge that does not meet these minimum  
48 standards. For the purpose of efficiency, the program shall, in its own



1 discretion, permit multiple challenges to the same municipal housing  
2 element and fair share plan to be consolidated. If a municipality's fair  
3 share plan and housing element is not challenged on or before August  
4 31, 2025, then the program shall 'apply an objective standard to  
5 conduct a limited' review 'of' the fair share plan and housing element  
6 for consistency and to determine whether it 'enables the municipality  
7 to satisfy the fair share obligation, applies compliant mechanisms,  
8 meets the threshold requirements for rental and family units, does not  
9 exceed limits on other unit or category types, and' is compliant with  
10 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the  
11 Mount Laurel doctrine '[, and]' . The program shall' issue a  
12 compliance certification unless these objective standards are not met.  
13 The program shall facilitate communication between the municipality  
14 and any interested parties for a challenge, and provide the municipality  
15 until December 31, 2025 to commit to revising its fair share plan and  
16 housing element in compliance with the changes requested in the  
17 challenge, or provide an explanation as to why it will not make all of  
18 the requested changes, or both. Upon resolution of a challenge, the  
19 program shall issue compliance certification, conditioned on the  
20 municipality's commitment, as necessary, to revise its fair share plan  
21 and housing element in accordance with the resolution of the  
22 challenge. The program may also terminate immunity if it finds that  
23 the municipality is not determined to come into constitutional  
24 compliance at any point in the process. If by December 31, 2025, the  
25 municipality and any interested party that filed a response have  
26 resolved the issues raised in the response through agreement or  
27 withdrawal of the filing, then the program shall review the fair share  
28 plan and housing element for consistency and to determine whether it  
29 is compliant with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-  
30 301 et al.) and the Mount Laurel doctrine, and issue a compliance  
31 certification unless these objective standards are not met. For the fifth  
32 round, and each subsequent new round of housing obligations, the  
33 deadline established in this subparagraph for an interested party to file  
34 a challenge shall be August 31, and for the municipality to revise its  
35 housing element and fair share plan in response, shall be December 31,  
36 of the year of the beginning of the new round.

37 (c) For the fourth round of affordable housing obligations, the  
38 implementing ordinances and resolutions, proposed pursuant to  
39 subparagraph (a) of this paragraph, and incorporating any changes  
40 from the program, shall be adopted on or before March 15, 2026. For  
41 the fifth round, and each subsequent new round of housing obligations,  
42 the deadline established in this subparagraph for the implementing  
43 ordinances and resolutions shall be on March 15 of the year following  
44 the beginning of the new round. After adoption of the implementing  
45 ordinances and resolutions by the municipality, the municipality shall  
46 immediately file the ordinances and resolutions with the program  
47 through the program's Internet website. Failure to meet the March 15

1 deadline shall result in the municipality losing immunity from  
2 <sup>1</sup>~~builder's remedy~~ exclusionary zoning<sup>1</sup> litigation.

3 (d) The program may permit a municipality that still has a  
4 remaining dispute by interested parties to retain immunity from  
5 <sup>1</sup>~~builder's remedy~~ exclusionary zoning<sup>1</sup> litigation into the year  
6 following the year in which a new round begins if the program, or  
7 county level housing judge, determines that the municipality has been  
8 unable to resolve the issues disputed despite being determined to come  
9 into constitutional compliance. The Administrative Director of the  
10 Courts shall develop procedures to enable a county level housing judge  
11 to resolve this dispute over the issuance of compliance certification  
12 through a summary proceeding in Superior Court following the year in  
13 which the new round begins. A judge shall be permitted to serve as a  
14 county level housing judge for more than one county in the same  
15 vicinage. The pendency of such a dispute shall not stay the deadline  
16 for adoption of implementing ordinances and resolutions pursuant to  
17 this paragraph. <sup>1</sup>The implementing ordinances and resolutions  
18 adopted prior to the resolution of the dispute may be subject to  
19 changes to reflect the results of the dispute. As an alternative to  
20 adopting <sup>2</sup>~~the~~ all necessary<sup>2</sup> implementing ordinances and  
21 resolutions by the March 15 deadline, a municipality involved in a  
22 continuing dispute over the issuance of compliance certification may  
23 adopt a binding resolution by this date to commit to adopting the  
24 implementing ordinances and resolutions following resolution of the  
25 dispute, with necessary adjustments to reflect the resolution of the  
26 dispute.<sup>1</sup>

27 (e) Once a municipality has received a compliance certification or  
28 otherwise has had its fair share obligation and housing element and  
29 fair share plan finally determined via judgment of repose or other  
30 judgment, the municipality shall make the municipality's fair share  
31 plan and housing element, as well as any subsequently adopted  
32 implementing ordinances and resolutions, or amendments thereto,  
33 available to the department and the program for publication on the  
34 department's and program's respective Internet websites.

35 (3) (a) If a municipality fails to <sup>1</sup>materially<sup>1</sup> adhere to any of the  
36 deadlines established in paragraphs (1) or (2) of this subsection due to  
37 circumstances beyond the control of the municipality, including but  
38 not limited to an inability to meet a deadline due to an extreme  
39 weather event, then the program, or the county level housing judge, in  
40 accordance with court rules, may permit a municipality to have a grace  
41 period to come into compliance with the timeline, the length of which,  
42 and effect of which on later deadlines, shall be determined on a case-  
43 by-case basis.

44 (b) A municipality that has not adopted and published a binding  
45 resolution pursuant to paragraph (1) of this subsection or that has not  
46 adopted and filed a housing element and fair share plan pursuant to  
47 paragraph (2) of this subsection may seek compliance certification by

filing an action pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), provided that any <sup>1</sup>**["builder's remedy"] exclusionary zoning**<sup>1</sup> litigation filed by a plaintiff against such a municipality prior to such time may proceed notwithstanding such filing. In a municipality that has adopted and published a binding resolution pursuant to paragraph (1) of this subsection and has adopted and filed a housing element and fair share plan pursuant to paragraph (2) of this subsection, a court shall not <sup>1</sup>**["grant a builder's remedy to a plaintiff in"] consider**<sup>1</sup> exclusionary zoning litigation during the timeframe after the timely submission of a binding resolution or fair share plan and housing element of a municipality, or both, and before a challenge is submitted, or during the timeframe of a challenge that is pending resolution with the program pursuant to this subsection. A court may <sup>1</sup>**["grant a builder's remedy to a plaintiff in"] consider**<sup>1</sup> exclusionary zoning litigation after such timeframe upon a finding that the municipality: (i) is determined to be constitutionally noncompliant with its responsibilities pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or is participating in the program in bad faith; (ii) has failed to meet the deadlines established pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill); or (iii) has, after receiving compliance certification, failed to comply with the terms of that certification by not actually allowing for the development of the affordable housing as provided for in its fair share plan and housing element through actions, omissions, or both, of a municipality or its subordinate boards.

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

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

(e) A municipality shall not be deemed out of compliance with the deadlines of P.L. , c. (C. ) (pending before the Legislature as this bill), or lose immunity from <sup>1</sup>**["builder's remedy"] exclusionary zoning**<sup>1</sup> litigation, due to a failure by the program to promptly maintain and update its Internet website, or other operational failure of the program.

<sup>1</sup>g. <sup>2</sup>["The program shall be made a party to, and shall be responsible for defending its issuance of compliance certification in, any litigation alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are not in compliance with the Mount Laurel doctrine."] <sup>1</sup>A compliance certification, issued pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), shall be

1 accompanied by a written report that shall set forth the basis of the  
2 issuance of the certification, and shall be in a format to be developed  
3 and approved by the Administrative Director of the Courts.<sup>2</sup>

4  
5 4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to  
6 read as follows:

7 13. a. **【A】** If a municipality 【which】 has 【filed a housing element  
8 may, at any time during a two-year period following the filing of the  
9 housing element, petition the council for a substantive certification of  
10 its element and ordinances or】 adopted a housing element and fair  
11 share plan pursuant to section 3 of P.L. , c. (C. ) (pending  
12 before the Legislature as this bill), but has failed to satisfy the June 30  
13 deadline established pursuant to paragraph (2) of subsection f. of  
14 section 3 of P.L. , c. (C. ) (pending before the Legislature as  
15 this bill), for any round of affordable housing obligations, the  
16 municipality may request and be provided with a grace period pursuant  
17 to paragraph (3) of subsection f. of section 3 of P.L. , c. (C. )  
18 (pending before the Legislature as this bill), if authorized by the  
19 program or county level housing judge, as determined by the rules of  
20 court. If a municipality that has not satisfied this June 30 deadline is  
21 not provided with a grace period, the municipality may institute an  
22 action for declaratory judgment granting it repose in the Superior  
23 Court 【, but in no event shall a grant of substantive certification extend  
24 beyond a 10-year period starting on the date the municipality files its  
25 housing element with the council】 for the 10-year period constituting  
26 the current round of fair share obligations. The municipality shall  
27 publish notice of its 【petition】 filing of a declaratory judgment action  
28 in a newspaper of general circulation within the municipality and  
29 county and shall make available to the public information on the  
30 element and ordinances by submitting such information to the program  
31 to be published on the Internet website of the program in accordance  
32 with 【such procedures as the council shall establish. The council shall  
33 also establish a procedure for providing public notice of each petition  
34 which it receives】 section 3 of P.L. , c. (C. ) (pending before  
35 the Legislature as this bill).

36 b. **【**Notwithstanding the provisions of subsection a. of this section,  
37 a municipality which filed a housing element prior to the effective date  
38 of P.L.1990, c.121, shall be permitted to petition for substantive  
39 certification at any time within two years following that filing, or  
40 within one year following the effective date of P.L.1990, c.121,  
41 whichever shall result in permitting the municipality the longer period  
42 of time within which to petition.**】** (Deleted by amendment, P.L. , c.  
43 (pending before the Legislature as this bill))

44 **【**The Council shall establish procedures for**】** c. (1) A  
45 municipality or other interested party may file an action through the  
46 program seeking a realistic opportunity review 【at the midpoint of the  
47 certification period and shall provide for notice to the public】 at the

1 midpoint of the certification period and shall provide for notice to the  
2 public, including a realistic opportunity review of any inclusionary  
3 development site in the housing element and fair share plan that has  
4 not received preliminary site plan approval prior to the midpoint of the  
5 10-year round. If such an action is initiated by a municipality, the  
6 municipality <sup>1</sup>~~shall~~ may<sup>1</sup> propose one or more alternative sites with  
7 an accompanying development plan or plans that provide a realistic  
8 opportunity for the same number of affordable units and is otherwise  
9 in compliance with the "Fair Housing Act," P.L.1985, c.222  
10 (C.52:27D-301 et al.) and the Mount Laurel doctrine, provided that if  
11 the facts demonstrate that the municipality or its subordinate boards  
12 have prevented the site from receiving site plan approval, then the  
13 program shall reject the municipality's challenge.

14 (2) Any party may file a request for information from the program  
15 regarding the progress of development at any inclusionary  
16 development site in the housing element and fair share plan of a  
17 municipality, or at any alternative site proposed by the municipality.  
18 The program may respond to a request independently or in  
19 coordination with the department.

20 (cf: P.L.2001, c.435, s.5)

21  
22 5. (New section) a. There is established an Affordable Housing  
23 Dispute Resolution Program that shall have the purpose of efficiently  
24 resolving disputes involving the "Fair Housing Act," P.L.1985, c.222  
25 (C.52:27D-301 et al.), to consist of an odd number of members, of at  
26 least three and no more than seven members who shall lead the  
27 administration of the program. The <sup>1</sup>~~Chief Justice of the Supreme~~  
28 ~~Court~~ Administrative Director of the Courts<sup>1</sup> shall update the  
29 assignment of designated Mount Laurel judges to indicate which  
30 current or retired and on recall judges of the Superior Court shall serve  
31 as members, within <sup>1</sup>~~40~~ 60<sup>1</sup> days following the effective date of  
32 P.L. , c. (C. ) (pending before the Legislature as this bill). The  
33 <sup>1</sup>~~Chief Justice of the Supreme Court~~ Administrative Director of the  
34 Courts<sup>1</sup> may appoint other qualified experts as members if sufficient  
35 current and retired judges are unavailable. The <sup>1</sup>~~Chief Justice of the~~  
36 ~~Supreme Court~~ Administrative Director of the Courts<sup>1</sup> shall take into  
37 consideration in making such appointments experience in the  
38 employment of alternative dispute resolution methods and in relevant  
39 subject matter.

40 b. The <sup>1</sup>~~Chief Justice of the Supreme Court~~ Administrative  
41 Director of the Courts<sup>1</sup> shall designate a member to serve as chair.  
42 The <sup>1</sup>~~Chief Justice of the Supreme Court~~ Administrative Director of  
43 the Courts<sup>1</sup> shall make new appointments as needs arise for new  
44 appointments.

45 c. The program, in its discretion and in accordance with Rules of  
46 Court, may consult or employ the services of one or more special  
47 masters or staff to assist it in rendering determinations, resolving

1 disputes, and facilitating communication as required by subparagraph  
2 (b) of paragraph (2) of subsection f. of section 3 of P.L. , c.  
3 (C. ) (pending before the Legislature as this bill). In addition, the  
4 program may incorporate any existing or newly established court  
5 mediation or alternative dispute resolution process to assist the  
6 program in resolving disputes and facilitating communication among  
7 municipalities and interested parties.

8 d. The Administrative Director of the Courts shall establish a  
9 filing system via an Internet website in which the public is able to  
10 access, without cost, filings made pursuant to P.L. , c. (C. )  
11 (pending before the Legislature as this bill) and such other related  
12 filings as the Administrative Director of the Courts may include on the  
13 filing system.

14 e. The Administrative Director of the Courts may assign  
15 additional responsibilities to the program for resolving disputes arising  
16 out of or related to the "Fair Housing Act," P.L.1985, c.222  
17 (C.52:27D-301 et al.).

18 f. The Administrative Director of the Courts shall establish  
19 procedures for the purpose of efficiently resolving disputes involving  
20 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), for  
21 circumstances in which the program is unable to address the dispute  
22 within the time limitations established pursuant to section 3 of P.L. ,  
23 c. (C. ) (pending before the Legislature as this bill). As a part of  
24 the procedures established pursuant to this section, in order to facilitate  
25 an appropriate level of localized control of affordable housing  
26 decisions, for each vicinage, the Chief Justice of the Supreme Court  
27 shall designate a Superior Court judge who sits within the vicinage, or  
28 a retired judge who, during the judge's tenure as a judge, served within  
29 the vicinage, to serve as county level housing judge to resolve disputes  
30 over the compliance, of fair share plans and housing elements of  
31 municipalities within their designated county or counties, with the  
32 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), as well as  
33 disputes that arise with respect to ongoing compliance or  
34 noncompliance with obligations created by fair share plans, housing  
35 elements, and the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
36 et al.). A judge shall be permitted to serve as a county level housing  
37 judge for more than one county in the same vicinage.

38 g. The Administrative Director of the Courts shall promulgate,  
39 maintain, and apply a Code of Ethics that is modeled upon the Code of  
40 Judicial Conduct of the American Bar Association, as amended and  
41 adopted by the Supreme Court of New Jersey, and may establish  
42 additional, more restrictive ethical standards in order to meet the  
43 specific needs of the program, and of county level housing judges.

44  
45 6. (New section) a. Municipal present need for each 10-year  
46 round of affordable housing obligations shall be determined by  
47 estimating the deficient housing units occupied by low- and moderate-  
48 income households in the region, following a methodology similar to

1 the methodology used to determine third round municipal present  
2 need, through the use of most recent datasets made available through  
3 the federal decennial census and the American Community Survey <sup>2</sup>,  
4 including the Comprehensive Housing Affordability Strategy dataset  
5 thereof<sup>2</sup>.

6 b. For the purpose of determining regional need for the 10-year  
7 round of low- and moderate-income housing obligations, running from  
8 July 1, 2025 through June 30, 2035, and each 10-year round thereafter:

9 (1) The regions of the State shall be comprised as follows:

10 (a) Region 1 shall consist of the counties of Bergen, Hudson,  
11 Passaic, and Sussex;

12 (b) Region 2 shall consist of the counties of Essex, Morris, Union,  
13 and Warren;

14 (c) Region 3 shall consist of the counties of Hunterdon,  
15 Middlesex, and Somerset;

16 (d) Region 4 shall consist of the counties of Mercer, Monmouth,  
17 and Ocean;

18 (e) Region 5 shall consist of the counties of Burlington, Camden,  
19 and Gloucester; and

20 (f) Region 6 shall consist of the counties of Atlantic, Cape May,  
21 Cumberland, and Salem.

22 (2) Regional prospective need for a 10-year round of low- and  
23 moderate-income housing obligations shall be determined through the  
24 calculation provided in this subsection. Projected household change  
25 for a 10-year round in a region shall be estimated by establishing the  
26 household change experienced in the region between the most recent  
27 federal decennial census, and the second-most recent federal decennial  
28 census. This household change, if positive, shall be divided by 2.5 to  
29 estimate the number of low- and moderate-income homes needed to  
30 address low- and moderate-income household change in the region,  
31 and to determine the regional prospective need for a 10-year round of  
32 low- and moderate-income housing obligations. If household change  
33 is zero or negative, the number of low- and moderate-income homes  
34 needed to address low- and moderate-income household change in the  
35 region and the regional prospective need shall be zero.

36  
37 7. (New section) a. The present and prospective fair share  
38 obligation for low- and moderate-income housing for each  
39 municipality in the State shall be determined as described in this  
40 section. In addition, the March 8, 2018 unpublished decision of the  
41 Superior Court, Law Division, Mercer County, In re Application of  
42 Municipality of Princeton shall be referenced as to datasets and  
43 methodologies that are not explicitly addressed by this section. These  
44 determinations of municipal present and prospective need shall be  
45 based on a determination of the present and prospective regional need  
46 for low- and moderate-income housing, established pursuant to section  
47 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).

1 These calculations of municipal present and prospective need shall use  
2 necessary datasets that are updated to the greatest extent practicable.

3 b. A municipality's present need obligation shall be determined by  
4 estimating the existing deficient housing units currently occupied by  
5 low- and moderate-income households within the municipality,  
6 following a methodology comparable to the methodology used to  
7 determine third round present need, through the use of datasets made  
8 available through the federal decennial census and the American  
9 Community Survey <sup>2</sup>, including the Comprehensive Housing  
10 Affordability Strategy dataset thereof<sup>2</sup>.

11 c. A municipality's prospective fair share obligation of the  
12 regional prospective need for the upcoming 10-year round shall be  
13 determined in accordance with this subsection:

14 (1) If a municipality is a qualified urban aid municipality, the  
15 municipality shall be exempt from responsibility for any fair share  
16 prospective need obligation for the upcoming 10-year round. For the  
17 purposes of this section, a municipality is a qualified urban aid  
18 municipality if the municipality, as of July 1 of the year prior to the  
19 beginning of a new round, is designated by the department, pursuant to  
20 P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid, and the  
21 municipality meets at least one of the following criteria:

22 (a) The ratio of substandard existing deficient housing units  
23 currently occupied by low- and moderate-income households within  
24 the municipality, compared to all existing housing in the municipality,  
25 is greater than the equivalent ratio in the region;

26 (b) The municipality has a population density greater than 10,000  
27 persons per square mile of land area; or

28 (c) The municipality has a population density of more than 6,000,  
29 but less than 10,000 persons per square mile of land area, and less than  
30 five percent vacant parcels not used as farmland, as measured by the  
31 average of:

32 (i) The number of vacant land parcels in the municipality as a  
33 percentage of the total number of parcels in the municipality; and

34 (ii) The valuation of vacant land in the municipality as a  
35 percentage of total valuations in the municipality.

36 (2) A municipality's equalized nonresidential valuation factor  
37 shall be determined. To determine this factor, the changes in  
38 nonresidential property valuations in the municipality, since the  
39 beginning of the round preceding the round being calculated, shall be  
40 calculated using data published by the Division of Local Government  
41 Services in the department. <sup>2</sup>For the purposes of this paragraph, the  
42 beginning of the round of affordable housing obligations preceding the  
43 fourth round shall be the beginning of the gap period in 1999.<sup>2</sup> The  
44 change in the municipality's nonresidential valuations shall be divided  
45 by the regional total change in nonresidential valuations to determine  
46 the municipality's share of the regional change as the equalized  
47 nonresidential valuation factor.



- 1       (3) A municipality's income capacity factor shall be determined.  
2       This factor shall be determined by calculating the average of the  
3       following measures:
- 4       (a) The municipal share of the regional sum of the differences  
5       between the median municipal household income, according to the  
6       most recent American Community Survey Five-Year Estimates, and  
7       an income floor of \$100 below the lowest median household income in  
8       the region; and
- 9       (b) The municipal share of the regional sum of the differences  
10      between the median municipal household incomes and an income floor  
11      of \$100 below the lowest median household income in the region,  
12      weighted by the number of the households in the municipality.
- 13      (4) A municipality's land capacity factor shall be determined.  
14      This factor shall be determined by estimating the area of developable  
15      <sup>1</sup>["and redevelopable"] land in the municipality's boundaries, and  
16      regional boundaries, that may accommodate development through the  
17      use of the "land use / land cover data" most recently published by the  
18      Department of Environmental Protection, <sup>2</sup>data from the American  
19      Community Survey and Comprehensive Housing Affordability  
20      Strategy dataset thereof, MOD-IV Property Tax List data from the  
21      Division of Taxation in the Department of the Treasury, and  
22      construction permit data from the Department of Community Affairs,<sup>2</sup>  
23      and weighing such land based on the planning area type in which such  
24      land is located. After the weighing factors are applied, the sum of the  
25      total developable <sup>1</sup>["and redevelopable"] land area that may  
26      accommodate development in the municipality, and in the region shall  
27      be determined. The municipality's share of its region's developable  
28      <sup>1</sup>["and redevelopable"] land shall be its land capacity factor.  
29      Developable <sup>1</sup>["and redevelopable"] land that may accommodate  
30      development shall be weighted based on the planning area type in  
31      which such land is located, as designated pursuant to P.L.1985, c.398  
32      (C.52:18A-196 et seq.), P.L.1979, c.111 (C.13:18A-1 et seq.), or  
33      P.L.2004, c.120 (C.13:20-1 et seq.), as follows:
- 34      (a) Planning Area 1 (Metropolitan) shall have a weighting factor  
35      of 1.0;
- 36      (b) Planning Area 2 (Suburban) shall have a weighting factor of  
37      1.0;
- 38      (c) Planning Area 3 (Fringe) shall have a weighting factor of 0.5;
- 39      (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;
- 40      (e) Planning Area 5 (Environmentally Sensitive) shall have a  
41      weighting factor of 0.0;
- 42      (f) Centers in Planning Areas 1 and 2 shall have a weighting factor  
43      of 1.0;
- 44      (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting  
45      factor of 0.5;
- 46      (h) Pinelands Regional Growth Area shall have a weighting factor  
47      of 0.5;

- 1 (i) Pinelands Town shall have a weighting factor of 0.5;
- 2 (j) All other Pinelands shall have a weighting factor of 0.0;
- 3 (k) Meadowlands shall have a weighting factor of 1.0;
- 4 (l) Meadowlands Center shall have a weighting factor of 1.0;
- 5 (m) Highlands Preservation Area shall have a weighting factor of
- 6 0.0;
- 7 (n) Highlands Planning Area Existing Community Zone <sup>2</sup>[, opted
- 8 in municipality by May 1, 2022] and Highlands Designated Center in
- 9 a Highlands-conforming municipality, as determined by the Highlands
- 10 Water Protection and Planning Council pursuant to the list provided to
- 11 the department pursuant to subsection d. of section 3 of P.L. , c.
- 12 (C. ) (pending before the Legislature as this bill),<sup>2</sup> shall have a
- 13 weighting factor of 1.0;
- 14 (o) Highlands Planning Area, State-designated sewer service area,
- 15 <sup>2</sup>[municipality not opted in by May 1, 2022] Highlands municipality
- 16 that is not a Highlands-conforming municipality as determined by the
- 17 Highlands Water Protection and Planning Council pursuant to the list
- 18 provided to the department pursuant to subsection d. of section 3 of
- 19 P.L. , c. (C. ) (pending before the Legislature as this bill)<sup>2</sup>,
- 20 shall have a weighting factor of 1.0; and
- 21 (p) All other Highlands Planning Areas shall have a weighting
- 22 factor of 0.0.
- 23 (5) The equalized nonresidential valuation factor, income capacity
- 24 factor, and land capacity factor, determined in paragraphs (2), (3), and
- 25 (4) of this subsection, shall be averaged to yield the municipality's
- 26 average allocation factor for distributing gross regional prospective
- 27 need to the municipality. The regional prospective need shall then be
- 28 multiplied by the municipality's average allocation factor to determine
- 29 the municipality's gross prospective need for the 10-year round.
- 30 <sup>2</sup>[(6) Secondary sources of supply and demand shall be adjusted
- 31 for by first calculating demolitions of low- and moderate-income
- 32 housing, and housing creation through low- and moderate-income
- 33 residential conversions. A municipality's share of low- and moderate-
- 34 income conversions shall then be subtracted from the sum of each
- 35 municipality's allocated share of gross prospective need and
- 36 demolitions of low- and moderate-income housing.]<sup>2</sup>
- 37
- 38 8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read
- 39 as follows:
- 40 4. a. Upon failure to perform any obligation of a residential
- 41 mortgage by the residential mortgage debtor and before any
- 42 residential mortgage lender may accelerate the maturity of any
- 43 residential mortgage obligation and commence any foreclosure or
- 44 other legal action to take possession of the residential property
- 45 which is the subject of the mortgage, the residential mortgage
- 46 lender shall give a notice of intention, which shall include a notice
- 47 of the right to cure the default as provided in section 5 of P.L.1995,

1 c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in  
2 advance of such action as provided in this section, to the residential  
3 mortgage debtor, and, if the mortgage is secured by a residence for  
4 which a restriction on affordability was recorded in the county in  
5 which the property is located, the clerk of the municipality in which  
6 the subject property is located, the municipal housing liaison, if one  
7 has been appointed by the municipality [pursuant to the regulations  
8 of the Council on Affordable Housing, and the Commissioner of  
9 Community Affairs]. For the purposes of this section, "restriction  
10 on affordability" means any conditions recorded with a mortgage or  
11 a deed which would limit the sale of such property to income  
12 qualified households pursuant to the rules adopted to effectuate the  
13 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

14 b. Notice of intention to take action as specified in subsection  
15 a. of this section shall be in writing, provided to the Department of  
16 Community Affairs in accordance with subsection a. of section 2 of  
17 P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or  
18 certified mail, return receipt requested, at the debtor's last known  
19 address, and, if different, to the address of the property which is the  
20 subject of the residential mortgage. The notice is deemed to have  
21 been effectuated on the date the notice is delivered in person or  
22 mailed to the party.

23 c. The written notice shall clearly and conspicuously state in a  
24 manner calculated to make the debtor aware of the situation:

- 25 (1) the particular obligation or real estate security interest;
- 26 (2) the nature of the default claimed;
- 27 (3) the right of the debtor to cure the default as provided in  
28 section 5 of P.L.1995, c.244 (C.2A:50-57);
- 29 (4) what performance, including what sum of money, if any, and  
30 interest, shall be tendered to cure the default as of the date specified  
31 under paragraph (5) of this subsection c.;
- 32 (5) the date by which the debtor shall cure the default to avoid  
33 initiation of foreclosure proceedings, which date shall not be less  
34 than 30 days after the date the notice is effective, and the name and  
35 address and phone number of a person to whom the payment or  
36 tender shall be made;
- 37 (6) that if the debtor does not cure the default by the date  
38 specified under paragraph (5) of this subsection c., the lender may  
39 take steps to terminate the debtor's ownership in the property by  
40 commencing a foreclosure suit in a court of competent jurisdiction;
- 41 (7) that if the lender takes the steps indicated pursuant to  
42 paragraph (6) of this subsection c., a debtor shall still have the right  
43 to cure the default pursuant to section 5 of P.L.1995, c.244  
44 (C.2A:50-57), but that the debtor shall be responsible for the  
45 lender's court costs and attorneys' fees in an amount not to exceed  
46 that amount permitted pursuant to the Rules Governing the Courts  
47 of the State of New Jersey;

1 (8) the right, if any, of the debtor to transfer the real estate to  
2 another person subject to the security interest and that the transferee  
3 may have the right to cure the default as provided in P.L.1995,  
4 c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;

5 (9) that the debtor is advised to seek counsel from an attorney of  
6 the debtor's own choosing concerning the debtor's residential  
7 mortgage default situation, and that, if the debtor is unable to obtain  
8 an attorney, the debtor may communicate with the New Jersey Bar  
9 Association or Lawyer Referral Service in the county in which the  
10 residential property securing the mortgage loan is located; and that,  
11 if the debtor is unable to afford an attorney, the debtor may  
12 communicate with the Legal Services Office in the county in which  
13 the property is located;

14 (10) the possible availability of financial assistance for curing a  
15 default from programs operated by the State or federal government  
16 or nonprofit organizations, if any, as identified by the  
17 Commissioner of Banking and Insurance and, if the property is  
18 subject to restrictions on affordability, the address and phone  
19 number of the municipal affordable housing liaison and of the New  
20 Jersey Housing and Mortgage Finance Agency. This requirement  
21 shall be satisfied by attaching a list of such programs promulgated  
22 by the commissioner;

23 (11) the name and address of the lender and the telephone  
24 number of a representative of the lender whom the debtor may  
25 contact if the debtor disagrees with the lender's assertion that a  
26 default has occurred or the correctness of the mortgage lender's  
27 calculation of the amount required to cure the default;

28 (12) that if the lender takes the steps indicated pursuant to  
29 paragraph (6) of this subsection, the debtor has the option to  
30 participate in the Foreclosure Mediation Program following the  
31 filing of a mortgage foreclosure complaint by initiating mediation  
32 pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019,  
33 c.64 (C.2A:50-77). Notice of the option to participate in the  
34 Foreclosure Mediation Program shall adhere to the requirements of  
35 section 3 of P.L.2019, c.64 (C.2A:50-76) and any court rules,  
36 procedures, or guidelines adopted by the Supreme Court;

37 (13) that the debtor is entitled to housing counseling, at no cost  
38 to the debtor, through the Foreclosure Mediation Program  
39 established by the New Jersey Judiciary, including information on  
40 how to contact the program;

41 (14) that if the property which is the subject of the mortgage has  
42 more than one dwelling unit but less than five, one of which is  
43 occupied by the debtor or a member of the debtor's immediate  
44 family as the debtor's or member's residence at the time the loan is  
45 originated, and is not properly maintained and meets the necessary  
46 conditions for receivership eligibility, established pursuant to  
47 section 4 of the "Multifamily Housing Preservation and  
48 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential

1 mortgage lender shall file an order to show cause to appoint a  
2 receiver; and

3 (15) that the lender is either licensed in accordance with the  
4 "New Jersey Residential Mortgage Lending Act," sections 1  
5 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89)  
6 or exempt from licensure under the act in accordance with  
7 applicable law.

8 d. The notice of intention to foreclose required to be provided  
9 pursuant to this section shall not be required if the debtor has  
10 voluntarily surrendered the property which is the subject of the  
11 residential mortgage.

12 e. The duty of the lender under this section to serve notice of  
13 intention to foreclose is independent of any other duty to give  
14 notice under the common law, principles of equity, State or federal  
15 statute, or rule of court and of any other right or remedy the debtor  
16 may have as a result of the failure to give such notice.

17 f. Compliance with this section and subsection a. of section 2  
18 of P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the  
19 pleadings of any legal action referred to in this section. If the  
20 plaintiff in any complaint seeking foreclosure of a residential  
21 mortgage alleges that the property subject to the residential  
22 mortgage has been abandoned or voluntarily surrendered, the  
23 plaintiff shall plead the specific facts upon which this allegation is  
24 based.

25 g. If more than 180 days have elapsed since the date the notice  
26 required pursuant to this section is sent, and any foreclosure or  
27 other legal action to take possession of the residential property  
28 which is the subject of the mortgage has not yet been commenced,  
29 the lender shall send a new written notice at least 30 days, but not  
30 more than 180 days, in advance of that action.

31 h. If the property which is the subject of the notice of intention  
32 to foreclose has more than one dwelling unit but less than five, one  
33 of which is occupied by the debtor or a member of the debtor's  
34 immediate family as the debtor's or member's residence at the time  
35 the loan is originated, and is not properly maintained and meets the  
36 necessary conditions for receivership eligibility, established  
37 pursuant to section 4 of the "Multifamily Housing Preservation and  
38 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
39 mortgage lender shall file an order to show cause to appoint a  
40 receiver.

41 (cf: P.L.2019, c.134, s.4)

42

43 9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as  
44 follows:

45 2. The New Jersey Council on Physical Fitness and Sports,  
46 established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is  
47 authorized to provide grants to assist low-income families in  
48 purchasing the protective eyewear. As used in this section, a "low-

1 income family" means a family which qualifies for low-income  
2 housing under the standards promulgated by the **【Council on**  
3 **Affordable Housing】** New Jersey Housing and Mortgage Finance  
4 Agency pursuant to the "Fair Housing Act," P.L.1985, c.222  
5 (C.52:27D-301 et al.).  
6 (cf: P.L.2005, c.306, s.2)

7  
8 10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to  
9 read as follows:

10 25. a. The **【Council on Affordable Housing** shall take into  
11 consideration the **】** regional master plan **【prior to making any】** shall  
12 be taken into account as part of the determination of obligations  
13 pursuant to the method in section 7 of P.L. , c. (C. )  
14 (pending before the Legislature as this bill) regarding the allocation  
15 of the prospective fair share of the housing need **【in any**  
16 **municipality in the Highlands Region】** under the "Fair Housing  
17 Act," P.L.1985, c.222 (C.52:27D-301 et al.) for **【the】** any fair share  
18 period subsequent to **【1999】** the effective date of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill) if  
20 a municipality is in the Highlands Region.

21 b. Nothing in **【this act】** P.L.2004, c.120 (C.13:20-1 et al.) shall  
22 affect protections provided through a grant of substantive  
23 certification or a judgment of repose granted prior to **【the date of**  
24 **enactment of this act】** August 10, 2004.  
25 (cf: P.L.2004, c.120, s.25)

26  
27 11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to  
28 read as follows:

29 5. The requirements of this act shall not apply to:

30 a. Depository institutions; but subsidiaries and service  
31 corporations of these institutions shall not be exempt. A depository  
32 institution may register with the department for the purpose of  
33 sponsoring individuals, licensed as mortgage loan originators  
34 subject to subparagraph (b) of paragraph (1) of subsection c. of  
35 section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such  
36 registered entity obtains and maintains bond coverage for mortgage  
37 loan originators consistent with section 13 of P.L.2009, c.53  
38 (C.17:11C-63). A depository institution registered with the  
39 department in accordance with this subsection a. shall otherwise  
40 remain exempt from the licensing requirements of P.L.2009, c.53  
41 (C.17:11C-51 et seq.).

42 b. A registered mortgage loan originator that is registered  
43 under the federal "Secure and Fair Enforcement for Mortgage  
44 Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101  
45 et seq.).

46 c. A licensed attorney who negotiates the terms of a residential  
47 mortgage loan on behalf of a client as an ancillary matter to the

1 attorney's representation of the client, unless the attorney is  
2 compensated by a residential mortgage lender, residential mortgage  
3 broker, or mortgage loan originator.

4 d. A person licensed as a real estate broker or salesperson  
5 pursuant to R.S.45:15-1 et seq., and not engaged in the business of a  
6 residential mortgage lender or residential mortgage broker. Any  
7 person holding a license under this act as a residential mortgage  
8 lender or broker shall be exempt from the licensing and other  
9 requirements of R.S.45:15-1 et seq. in the performance of those  
10 functions authorized by this act.

11 e. Any employer, other than a residential mortgage lender, who  
12 provides residential mortgage loans to his employees as a benefit of  
13 employment which are at an interest rate which is not in excess of  
14 the usury rate in existence at the time the loan is made, as  
15 established in accordance with the law of this State, and on which  
16 the borrower has not agreed to pay, directly or indirectly, any  
17 charge, cost, expense or any fee whatsoever, other than that interest.

18 f. The State of New Jersey or a municipality, or any agency or  
19 instrumentality thereof, which, in accordance with a housing  
20 element that has previously received substantive certification from  
21 the Council on Affordable Housing, or a judgment of repose or  
22 other court approval, pursuant to the "Fair Housing Act," P.L.1985,  
23 c.222 (C.52:27D-301 et al.), or in fulfillment of a regional  
24 contribution agreement with a municipality that has received a  
25 certification, employs or proposes to employ municipally generated  
26 funds, funds obtained through any State or federal subsidy, or funds  
27 acquired by the municipality under a regional contribution  
28 agreement, to finance the provision of affordable housing by  
29 extending loans or advances, the repayment of which is secured by  
30 a lien, subordinate to any prior lien, upon the property that is to be  
31 rehabilitated.

32 g. Any individual who offers or negotiates terms of a  
33 residential mortgage loan:

34 (1) with or on behalf of an immediate family member; or

35 (2) secured by a dwelling that serves as the individual's  
36 residence.

37 h. Any person who, during a calendar year takes three or fewer  
38 residential mortgage loan applications or offers or negotiates the  
39 terms of three or fewer residential mortgage loans or makes three or  
40 fewer residential mortgage loans related to manufactured housing  
41 structures which are:

42 (1) titled by the New Jersey Motor Vehicle Commission;

43 (2) located in a mobile home park as defined in subsection e. of  
44 section 3 of P.L.1983, c.400 (C.54:4-1.4); and

45 (3) exempt from taxation as real property pursuant to subsection  
46 b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

47 i. A bona fide not for profit entity and any individuals directly  
48 employed by that entity, so long as the entity maintains its tax

1 exempt status under Section 501(c)(3) of the Internal Revenue Code  
2 of 1986 and otherwise meets the definition of "bona fide not for  
3 profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as  
4 periodically determined by the department in accordance with rules  
5 established by the commissioner.

6 (cf: P.L.2018, c.108, s.3)  
7

8 12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to  
9 read as follows:

10 2. a. A person who violates a requirement of this act shall be  
11 warned of the violation by the enforcing official. The parent or  
12 legal guardian of that person also may be fined a maximum of \$25  
13 for the person's first offense and a maximum of \$100 for a  
14 subsequent offense if it can be shown that the parent or guardian  
15 failed to exercise reasonable supervision or control over the  
16 person's conduct. Penalties provided in this section for a failure to  
17 wear a helmet may be waived if an offender or his parent or legal  
18 guardian presents suitable proof that an approved helmet was  
19 owned at the time of the violation or has been purchased since the  
20 violation occurred.

21 b. All money collected as fines under subsection a. of this  
22 section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-  
23 10.6) shall be deposited in a nonlapsing revolving fund to be known  
24 as the "Bicycle and Skating Safety Fund." Interest earned on  
25 money deposited in the fund shall accrue to the fund. Money in the  
26 fund shall be utilized by the director to provide educational  
27 programs devoted to bicycle, roller skating and skateboarding  
28 safety. If the director determines that sufficient money is available  
29 in the fund, he also may use, in a manner prescribed by rule and  
30 regulation, the money to assist **low income** low-income families  
31 in purchasing approved bicycle helmets. For the purposes of this  
32 subsection, **["low income family"]** "low-income family" means a  
33 family which qualifies for **low income** low-income housing under  
34 the standards promulgated by the **Council on Affordable Housing**  
35 New Jersey Housing and Mortgage Finance Agency pursuant to the  
36 provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).

37 (cf: P.L.1997, c.411, s.11)  
38

39 13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to  
40 read as follows:

41 33. The Legislature finds and declares:

42 a. The collection of development fees from builders of  
43 residential and non-residential properties has been authorized by the  
44 court through the powers **delegated to the Council on Affordable**  
45 **Housing** established pursuant to the "Fair Housing Act," P.L.1985,  
46 c.222 (C.52:27D-301 et al.). Due to the Legislature's determination  
47 that the role of the Council on Affordable Housing has not



1 developed in practice as intended, the Legislature further  
2 determines that authority relating to rulemaking on the collection of  
3 residential and non-residential development fees is appropriately  
4 delegated to the Department of Community Affairs, given the  
5 department's existing roles related to local government finance and  
6 the funding and financing of affordable housing throughout the  
7 State.

8 b. New Jersey's land resources are becoming more scarce, while  
9 its redevelopment needs are increasing. In order to balance the  
10 needs of developing and redeveloping communities, a reasonable  
11 method of providing for the housing needs of **low and moderate**  
12 **income** low-, moderate-, and middle income middle-income  
13 households, without mandating the inclusion of housing in every  
14 non-residential project, must be established.

15 c. A Statewide non-residential development fee program, which  
16 permits municipalities **under the council's jurisdiction** that have  
17 obtained or are in the process of seeking compliance certification to  
18 retain these fees for use in the municipality will provide a fair and  
19 balanced funding method to address the State's affordable housing  
20 needs, while providing an incentive to all municipalities to **seek**  
21 **substantive** obtain compliance certification **from the council**.

22 d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),  
23 organizations are directed to invest in the Casino Reinvestment  
24 Development Authority to ensure that the development of housing  
25 for families of **low and moderate income** low- and moderate-  
26 income shall be provided. The Casino Reinvestment Development  
27 Authority **, in consultation with the council,** shall work to  
28 effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301  
29 et al.).

30 e. **The "Statewide Non-Residential Development Fee Act,"**  
31 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through  
32 C.40:55D-8.7), prohibits municipalities from imposing their own  
33 fees to fund affordable housing on non-residential development, and  
34 P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this  
35 underlying policy. **Deleted by amendment P.L. , c. (pending**  
36 **before the Legislature as this bill)**

37 f. The negative impact of a State policy that over-relies on a  
38 municipal fee structure and of State programs that require a  
39 municipality to impose fees and charges on developers must be  
40 balanced against any public good expected from such regulation. It  
41 is undisputable that the charging of fees at high levels dissuades  
42 commerce from locating within a State or municipality or locality  
43 and halts non-residential and residential development, and these ill  
44 effects directly increase the overall costs of housing, and could  
45 impede the constitutional obligation to provide for a realistic  
46 opportunity for housing for families at all income levels.

47 (cf: P.L.2009, c.90, s.36)

1       14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to  
2 read as follows:

3       34. As used in sections 32 through 38 of P.L.2008, c.46  
4 (C.40:55D-8.1 through C.40:55D-8.7):

5       "Construction" means new construction and additions, but does  
6 not include alterations, reconstruction, renovations, and repairs as  
7 those terms are defined under the State Uniform Construction Code  
8 promulgated pursuant to the "State Uniform Construction Code  
9 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

10       "Commissioner" means the Commissioner of Community  
11 Affairs.

12       **["Council" means the Council on Affordable Housing,**  
13 **established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).]**

14       "Department" means the Department of Community Affairs.

15       "Developer" means the legal or beneficial owner or owners of a  
16 lot or of any land proposed to be included in a proposed  
17 development, including the holder of an option or contract to  
18 purchase, or other person having an enforceable proprietary interest  
19 in such land.

20       "Equalized assessed value" means the assessed value of a  
21 property divided by the current average ratio of assessed to true  
22 value for the municipality in which the property is situated, as  
23 determined in accordance with sections 1, 5, and 6 of P.L.1973,  
24 c.123 (C.54:1-35a through C.54:1-35c).

25       "Mixed use development" means any development which  
26 includes both a non-residential development component and a  
27 residential development component, and shall include developments  
28 for which (1) there is a common developer for both the residential  
29 development component and the non-residential development  
30 component, provided that for purposes of this definition, multiple  
31 persons and entities may be considered a common developer if there  
32 is a contractual relationship among them obligating each entity to  
33 develop at least a portion of the residential or non-residential  
34 development, or both, or otherwise to contribute resources to the  
35 development; and (2) the residential and non-residential  
36 developments are located on the same lot or adjoining lots,  
37 including but not limited to lots separated by a street, a river, or  
38 another geographical feature.

39       "Non-residential development" means: (1) any building or  
40 structure, or portion thereof, including but not limited to any  
41 appurtenant improvements, which is designated to a use group other  
42 than a residential use group according to the State Uniform  
43 Construction Code promulgated to effectuate the "State Uniform  
44 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),  
45 including any subsequent amendments or revisions thereto; (2)  
46 hotels, motels, vacation timeshares, and child-care facilities; and (3)  
47 the entirety of all continuing care facilities within a continuing care  
48 retirement community which is subject to the "Continuing Care

1 Retirement Community Regulation and Financial Disclosure Act,"  
2 P.L.1986, c.103 (C.52:27D-330 et seq.).

3 "Non-residential development fee" means the fee authorized to  
4 be imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
5 (C.40:55D-8.1 through C.40:55D-8.7).

6 "Relating to the provision of housing" shall be liberally  
7 construed to include the construction, maintenance, or operation of  
8 housing, including but not limited to the provision of services to  
9 such housing and the funding of any of the above.

10 "Spending plan" means a method of allocating funds collected  
11 and to be collected pursuant to an approved municipal development  
12 fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)  
13 for the purpose of meeting the housing needs of low and moderate  
14 income individuals.

15 "Treasurer" means the Treasurer of the State of New Jersey.  
16 (cf: P.L.2008, c.46, s.34)

17

18 15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to  
19 read as follows:

20 35. a. Beginning on the effective date of P.L.2008, c.46  
21 (C.52:27D-329.1 et al.), a fee is imposed on all construction resulting  
22 in non-residential development, as follows:

23 (1) A fee equal to two and one-half percent of the equalized  
24 assessed value of the land and improvements, for all new non-  
25 residential construction on an unimproved lot or lots; or

26 (2) A fee equal to two and one-half percent of the increase in  
27 equalized assessed value, of the additions to existing structures to be  
28 used for non-residential purposes.

29 b. All non-residential construction of buildings or structures on  
30 property used by churches, synagogues, mosques, and other houses of  
31 worship, and property used for educational purposes, which is tax-  
32 exempt pursuant to R.S.54:4-3.6, shall be exempt from the imposition  
33 of a non-residential development fee pursuant to this section, provided  
34 that the property continues to maintain its tax exempt status under that  
35 statute for a period of at least three years from the date of issuance of  
36 the certificate of occupancy. In addition, the following shall be  
37 exempt from the imposition of a non-residential development fee:

38 (1) parking lots and parking structures, regardless of whether the  
39 parking lot or parking structure is constructed in conjunction with a  
40 non-residential development, such as an office building, or whether the  
41 parking lot is developed as an independent non-residential  
42 development;

43 (2) any non-residential development which is an amenity to be  
44 made available to the public, including, but not limited to, recreational  
45 facilities, community centers, and senior centers, which are developed  
46 in conjunction with or funded by a non-residential developer;

1 (3) non-residential construction resulting from a relocation of or  
2 an on-site improvement to a nonprofit hospital or a nursing home  
3 facility;

4 (4) projects that are located within a specifically delineated urban  
5 transit hub, as defined pursuant to section 2 of P.L.2007, c.346  
6 (C.34:1B-208);

7 (5) projects that are located within an eligible municipality, as  
8 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a  
9 majority of the project is located within a one-half mile radius of the  
10 midpoint of a platform area for a light rail system; and

11 (6) projects determined by the New Jersey Transit Corporation to  
12 be consistent with a transit village plan developed by a transit village  
13 designated by the Department of Transportation.

14 A developer of a non-residential development exempted from the  
15 non-residential development fee pursuant to this section shall be  
16 subject to it at such time the basis for the exemption set forth in this  
17 subsection no longer applies, and shall make the payment of the non-  
18 residential development fee, in that event, within three years after that  
19 event or after the issuance of the final certificate of occupancy of the  
20 non-residential development whichever is later.

21 For purposes of this subsection, "recreational facilities and  
22 community center" means any indoor or outdoor buildings, spaces,  
23 structures, or improvements intended for active or passive recreation,  
24 including but not limited to ball fields, meeting halls, and classrooms,  
25 accommodating either organized or informal activity; and "senior  
26 center" means any recreational facility or community center with  
27 activities and services oriented towards serving senior citizens.

28 If a property which was exempted from the collection of a non-  
29 residential development fee thereafter ceases to be exempt from  
30 property taxation, the owner of the property shall remit the fees  
31 required pursuant to this section within 45 days of the termination of  
32 the property tax exemption. Unpaid non-residential development fees  
33 under these circumstances may be enforceable by the municipality as a  
34 lien against the real property of the owner.

35 c. (1) Unless authorized to pay directly to the municipality in  
36 which the non-residential construction is occurring in accordance with  
37 paragraph (2) of this subsection, developers shall pay non-residential  
38 development fees imposed pursuant to P.L.2008, c.46 (C.52:27D-  
39 329.1 et al.) to the Treasurer, in accordance with subsection g. of this  
40 section in a manner and on such forms as required by the Treasurer,  
41 provided that a certified proof concerning the payment shall be  
42 furnished by the Treasurer, to the municipality.

43 (2) The **【council】** department shall maintain on its Internet  
44 website a list of each municipality that is authorized to use the  
45 development fees collected pursuant to this section and that has a  
46 confirmed status of compliance with the "Fair Housing Act,"  
47 P.L.1985, c.222 (C.52:27D-301 et al.) , or is in the process of seeking  
48 compliance certification, which compliance shall include a spending

1 plan **【authorized by the council】** pursuant to section 8 of P.L.2008,  
2 c.46 (C.52:27D-329.2) for all development fees collected.

3 (3) No later than 90 days following the enactment of P.L. , c.  
4 (C. ) (pending before the Legislature as this bill), any municipality  
5 that is or has been authorized to retain and expend non-residential  
6 development fees shall provide the department with a detailed  
7 accounting of all such fees that have been collected and expended  
8 since the inception of the municipal authorization to collect and retain  
9 said fees.

10 (4) Beginning with the year after the enactment of P.L. , c.  
11 (C. ) (pending before the Legislature as this bill), by <sup>2</sup>**【January】**  
12 February<sup>2</sup> 15, every municipality that is or has been authorized to  
13 retain and expend non-residential development fees shall provide the  
14 department with a detailed accounting of all such fees that have been  
15 collected and expended previous year.

16 d. The payment of non-residential development fees required  
17 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
18 through C.40:55D-8.7) shall be made prior to the issuance of a  
19 certificate of occupancy for such development. A final certificate of  
20 occupancy shall not be issued for any non-residential development  
21 until such time as the fee imposed pursuant to this section has been  
22 paid by the developer. A non-residential developer may deposit with  
23 the appropriate entity the development fees as calculated by the  
24 municipality under protest, and the local code enforcement official  
25 shall thereafter issue the certificate of occupancy provided that the  
26 construction is otherwise eligible for a certificate of occupancy.

27 e. The construction official responsible for the issuance of a  
28 building permit shall notify the local tax assessor of the issuance of the  
29 first building permit for a development which may be subject to a non-  
30 residential development fee. Within 90 days of receipt of that notice,  
31 the municipal tax assessor, based on the plans filed, shall provide an  
32 estimate of the equalized assessed value of the non-residential  
33 development. The construction official responsible for the issuance of  
34 a final certificate of occupancy shall notify the local assessor of any  
35 and all requests for the scheduling of a final inspection on property  
36 which may be subject to a non-residential development fee. Within 10  
37 business days of a request for the scheduling of a final inspection, the  
38 municipal assessor shall confirm or modify the previously estimated  
39 equalized assessed value of the improvements of the non-residential  
40 development in accordance with the regulations adopted by the  
41 Treasurer pursuant to P.L.1971, c.424 (C.54:1-35.35); calculate the  
42 non-residential development fee pursuant to sections 32 through 38 of  
43 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter  
44 notify the developer of the amount of the non-residential development  
45 fee. Should the municipality fail to determine or notify the developer  
46 of the amount of the non-residential development fee within 10  
47 business days of the request for final inspection, the developer may  
48 estimate the amount due and pay that estimated amount consistent with

1 the dispute process set forth in subsection b. of section 37 of P.L.2008,  
2 c.46 (C.40:55D-8.6). Upon tender of the estimated non-residential  
3 development fee, provided the developer is in full compliance with all  
4 other applicable laws, the municipality shall issue a final certificate of  
5 occupancy for the subject property. Failure of the municipality to  
6 comply with the timeframes or procedures set forth in this subsection  
7 may subject it to penalties to be imposed by the commissioner; any  
8 penalties so imposed shall be deposited into the "New Jersey  
9 Affordable Housing Trust Fund" established pursuant to section 20 of  
10 P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46  
11 (C.52:27D-320).

12 A developer of a mixed use development shall be required to pay  
13 the Statewide non-residential development fee relating to the non-  
14 residential development component of a mixed use development  
15 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

16 Non-residential construction which is connected with the  
17 relocation of the facilities of a for-profit hospital shall be subject to the  
18 fee authorized to be imposed under this section to the extent of the  
19 increase in equalized assessed valuation in accordance with regulations  
20 to be promulgated by the Director of the Division of Taxation,  
21 Department of the Treasury.

22 f. Any municipality that is not in compliance with the  
23 requirements established pursuant to sections 32 through 38 of  
24 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or regulations of  
25 the **【council】** commissioner adopted thereto, may be subject to  
26 forfeiture of any or all funds remaining within its municipal  
27 development trust fund. Any funds so forfeited shall be deposited into  
28 the New Jersey Affordable Housing Trust Fund established pursuant to  
29 section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008,  
30 c.46 (C.52:27D-320).

31 g. The Treasurer shall credit to the "Urban Housing Assistance  
32 Fund," established pursuant to section 13 of P.L.2008, c.46 (C.52:27D-  
33 329.7) annually from the receipts of the fees authorized to be imposed  
34 pursuant to this section an amount equal to \$20 million; all receipts in  
35 excess of this amount shall be deposited into the "New Jersey  
36 Affordable Housing Trust Fund," established pursuant to section 20 of  
37 P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46  
38 (C.52:27D-320), to be used for the purposes of that fund.

39 The Treasurer shall adopt such regulations as necessary to  
40 effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
41 through C.40:55D-8.7), in accordance with the "Administrative  
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).  
43 (cf: P.L.2008, c.46, s.35)

44  
45 16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to  
46 read as follows:

47 36. a. The commissioner **【**, in consultation with the council,**】**  
48 shall promulgate, in accordance with the provisions of the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
2 seq.), such regulations as are necessary for the prompt and effective  
3 implementation of the provisions and purposes of **【P.L.2008, c.46**  
4 **(C.52:27D-329.1 et al.)】** section 8 of P.L.2008, c.46 (C.52:27D-  
5 329.2), including, but not limited to, provisions for the payment of  
6 any necessary administrative costs related to the assessment of  
7 properties and collection of any development fees by a  
8 municipality.

9 b. **【Notwithstanding the authority granted to the commissioner**  
10 **herein, the council】** The commissioner shall adopt and promulgate,  
11 in accordance with the provisions of the "Administrative Procedure  
12 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are  
13 necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et  
14 al.), including but not limited to, regulations necessary for the  
15 establishment, implementation, review, monitoring, and  
16 enforcement of a municipal affordable housing trust fund and  
17 spending plan.

18 (cf: P.L.2008, c.46, s.36)

19  
20 17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to  
21 read as follows:

22 38. a. Except as expressly provided in P.L.2008, c.46  
23 (C.52:27D-329.1 et al.),<sup>2</sup> including subsection b. of this section, any  
24 provision of a local ordinance which imposes a fee for the  
25 development of affordable housing upon a developer of non-  
26 residential property, including any and all development fee  
27 ordinances adopted in accordance with any regulations of the  
28 **【Council on Affordable Housing】** department, or any provision of  
29 an ordinance which imposes an obligation relating to the provision  
30 of housing affordable to **【low and moderate income】** low- and  
31 moderate-income households, or payment in-lieu of building as a  
32 condition of non-residential development, shall be void and of no  
33 effect. A provision of an ordinance which imposes a development  
34 fee which is not prohibited by any provision of P.L.2008, c.46  
35 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

36 b. No affordable housing obligation shall be imposed  
37 concerning a mixed use development that would result in an  
38 affordable housing obligation greater than that which would have  
39 been imposed if the residential portion of the mixed use  
40 development had been developed independently of the non-  
41 residential portion of the mixed use development.

42 c. Whenever the developer of a non-residential development  
43 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or  
44 committed itself to make a financial or other contribution relating to  
45 the provision of housing affordable to low and moderate income  
46 households, the non-residential development fee authorized  
47 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied

1 through the investment obligations made pursuant to P.L.1977,  
2 c.110 (C.5:12-1 et seq.).  
3 (cf: P.L.2008, c.46, s.38)  
4

5 18. 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 to  
24 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  
48 b. of this section shall be reimbursed from the funds available



1 through the appropriation made into the "New Jersey Affordable  
2 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90  
3 (C.52:27D-320.1) within 30 days of the municipality providing  
4 written notice to the Council on Affordable Housing. **】** (Deleted by  
5 amendment, P.L. , c. ) (pending before the Legislature as this  
6 bill)

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

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

25  
26 19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to  
27 read as follows:

28 3. a. There is established in, but not of, the department a Site  
29 Improvement Advisory Board, to devise statewide site improvement  
30 standards pursuant to section 4 of **【this act】** P.L.1993, c.32  
31 (C.40:55D-40.4). The board shall consist of the commissioner or  
32 **【his】** the commissioner's designee, who shall be a non-voting  
33 member of the board, the Director of the Division of **【Housing】**  
34 Codes and Standards in the Department of Community Affairs, who  
35 shall be a voting member of the board, the Executive Director of the  
36 New Jersey Housing and Mortgage Finance Agency, or the  
37 executive director's designee, who shall be a voting member of the  
38 board, and **【10】** nine other voting members, to be appointed by the  
39 commissioner. The other members shall include two professional  
40 planners, one of whom serves as a planner for a governmental entity  
41 or whose professional experience is predominantly in the public  
42 sector and who has worked in the public sector for at least the  
43 previous five years and the other of whom serves as a planner in  
44 private practice and has particular expertise in private residential  
45 development and has been involved in private sector planning for at  
46 least the previous five years, and one representative each from:

47 (1) The New Jersey Society of Professional Engineers;

- 1 (2) The New Jersey Society of Municipal Engineers;  
2 (3) The New Jersey Association of County Engineers;  
3 (4) The New Jersey Federation of Planning Officials;  
4 (5) **【The Council on Affordable Housing】** (Deleted by  
5 amendment, P.L. , c. (pending before the Legislature as this  
6 bill);  
7 (6) The New Jersey Builders' Association;  
8 (7) The New Jersey Institute of Technology;  
9 (8) The New Jersey State League of Municipalities.
- 10 b. Among the members to be appointed by the commissioner  
11 who are first appointed, four shall be appointed for terms of two  
12 years each, four shall be appointed for terms of three years each,  
13 and two shall be appointed for terms of four years each. Thereafter,  
14 each appointee shall serve for a term of four years. Vacancies in  
15 the membership shall be filled in the same manner as original  
16 appointments are made, for the unexpired term. The **【commission】**  
17 board shall select a chair from among its members **【a chairman】**.  
18 Members may be removed by the commissioner for cause.
- 19 c. Board members shall serve without compensation, but may  
20 be entitled to reimbursement, from moneys appropriated or  
21 otherwise made available for the purposes of this act, for expenses  
22 incurred in the performance of their duties.  
23 (cf: P.L.1993, c.32, s.3)  
24
- 25 20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to  
26 read as follows:
- 27 3. As used in **【this act】** P.L.1992, c.79 (C.40A:12A-1 et seq.):  
28 "Bonds" means any bonds, notes, interim certificates, debentures  
29 or other obligations issued by a municipality, county,  
30 redevelopment entity, or housing authority pursuant to P.L.1992,  
31 c.79 (C.40A:12A-1 et al.).  
32 "Comparable, affordable replacement housing" means newly-  
33 constructed or substantially rehabilitated housing to be offered to a  
34 household being displaced as a result of a redevelopment project,  
35 that is affordable to that household based on its income under the  
36 guidelines established by the **【Council on Affordable Housing in**  
37 **the Department of Community Affairs】** New Jersey Housing and  
38 Mortgage Finance Agency for maximum affordable sales prices or  
39 maximum fair market rents, and that is comparable to the  
40 household's dwelling in the redevelopment area with respect to the  
41 size and amenities of the dwelling unit, the quality of the  
42 neighborhood, and the level of public services and facilities offered  
43 by the municipality in which the redevelopment area is located.
- 44 "Development" means the division of a parcel of land into two or  
45 more parcels, the construction, reconstruction, conversion,  
46 structural alteration, relocation, or enlargement of any building or  
47 other structure, or of any mining, excavation or landfill, and any use

1 or change in the use of any building or other structure, or land or  
2 extension of use of land, for which permission may be required  
3 pursuant to the "Municipal Land Use Law," P.L.1975, c.291  
4 (C.40:55D-1 et seq.).

5 "Electric vehicle charging station" means an electric component  
6 assembly or cluster of component assemblies designed specifically  
7 to charge batteries within electric vehicles by permitting the transfer  
8 of electric energy to a battery or other storage device in an electric  
9 vehicle.

10 "Governing body" means the body exercising general legislative  
11 powers in a county or municipality according to the terms and  
12 procedural requirements set forth in the form of government  
13 adopted by the county or municipality.

14 "Housing authority" means a housing authority created or  
15 continued pursuant to this act.

16 "Housing project" means a project, or distinct portion of a  
17 project, which is designed and intended to provide decent, safe and  
18 sanitary dwellings, apartments or other living accommodations for  
19 persons of **low and moderate income** low- and moderate-income;  
20 such work or undertaking may include buildings, land, equipment,  
21 facilities and other real or personal property for necessary,  
22 convenient or desirable appurtenances, streets, sewers, water  
23 service, parks, site preparation, gardening, administrative,  
24 community, health, recreational, educational, welfare or other  
25 purposes. The term "housing project" also may be applied to the  
26 planning of the buildings and improvements, the acquisition of  
27 property, the demolition of existing structures, the construction,  
28 reconstruction, alteration and repair of the improvements and all  
29 other work in connection therewith.

30 "Parking authority" means a public corporation created pursuant  
31 to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et  
32 seq.), and authorized to exercise redevelopment powers within the  
33 municipality.

34 "Persons of **low and moderate income** low- and moderate-  
35 income" means persons or families who are, in the case of State  
36 assisted projects or programs, so defined by the **Council on**  
37 **Affordable Housing in the Department of Community Affairs** New  
38 Jersey Housing and Mortgage Finance Agency, or in the case of  
39 federally assisted projects or programs, defined as of **low and**  
40 **very low income** low- and very low-income by the United  
41 States Department of Housing and Urban Development.

42 "Public body" means the State or any county, municipality,  
43 school district, authority or other political subdivision of the State.

44 "Public electric vehicle charging station" means an electric  
45 vehicle charging station located at a publicly available parking  
46 space.

1 "Public housing" means any housing for persons of **low and**  
2 moderate income **low- and moderate-income** owned by a  
3 municipality, county, the State or the federal government, or any  
4 agency or instrumentality thereof.

5 "Public hydrogen fueling station" means publicly available  
6 equipment to store and dispense hydrogen fuel to vehicles  
7 according to industry codes and standards.

8 "Publicly assisted housing" means privately owned housing  
9 which receives public assistance or subsidy, which may be grants or  
10 loans for construction, reconstruction, conservation, or  
11 rehabilitation of the housing, or receives operational or maintenance  
12 subsidies either directly or through rental subsidies to tenants, from  
13 a federal, State or local government agency or instrumentality.

14 "Publicly available parking space" means a parking space that is  
15 available to, and accessible by, the public and may include on-street  
16 parking spaces and parking spaces in surface lots or parking  
17 garages, but shall not include: a parking space that is part of, or  
18 associated with, a private residence; or a parking space that is  
19 reserved for the exclusive use of an individual driver or vehicle or  
20 for a group of drivers or vehicles, such as employees, tenants,  
21 visitors, residents of a common interest development, or residents  
22 of an adjacent building.

23 "Real property" means all lands, including improvements and  
24 fixtures thereon, and property of any nature appurtenant thereto or  
25 used in connection therewith, and every estate, interest and right,  
26 legal or equitable, therein, including terms for years and liens by  
27 way of judgment, mortgage or otherwise, and indebtedness secured  
28 by such liens.

29 "Redeveloper" means any person, firm, corporation or public  
30 body that shall enter into or propose to enter into a contract with a  
31 municipality or other redevelopment entity for the redevelopment or  
32 rehabilitation of an area in need of redevelopment, or an area in  
33 need of rehabilitation, or any part thereof, under the provisions of  
34 this act, or for any construction or other work forming part of a  
35 redevelopment or rehabilitation project.

36 "Redevelopment" means clearance, replanning, development and  
37 redevelopment; the conservation and rehabilitation of any structure  
38 or improvement, the construction and provision for construction of  
39 residential, commercial, industrial, public or other structures and  
40 the grant or dedication of spaces as may be appropriate or necessary  
41 in the interest of the general welfare for streets, parks, playgrounds,  
42 or other public purposes, including recreational and other facilities  
43 incidental or appurtenant thereto, in accordance with a  
44 redevelopment plan.

45 "Redevelopment agency" means a redevelopment agency created  
46 pursuant to subsection a. of section 11 of P.L.1992, c.79  
47 (C.40A:12A-11) or established heretofore pursuant to the  
48 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et

1 al.), repealed by this act, which has been permitted in accordance  
2 with the provisions of **【this act】** P.L.1992, c.79 (C.40A:12A-1 et  
3 seq.) to continue to exercise its redevelopment functions and  
4 powers.

5 "Redevelopment area" or "area in need of redevelopment" means  
6 an area determined to be in need of redevelopment pursuant to  
7 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6)  
8 or determined heretofore to be a "blighted area" pursuant to  
9 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both  
10 determinations as made pursuant to the authority of Article VIII,  
11 Section III, paragraph 1 of the Constitution. A redevelopment area  
12 may include lands, buildings, or improvements which of themselves  
13 are not detrimental to the public health, safety or welfare, but the  
14 inclusion of which is found necessary, with or without change in  
15 their condition, for the effective redevelopment of the area of which  
16 they are a part.

17 "Redevelopment entity" means a municipality or an entity  
18 authorized by the governing body of a municipality pursuant to  
19 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to  
20 implement redevelopment plans and carry out redevelopment  
21 projects in an area in need of redevelopment, or in an area in need  
22 of rehabilitation, or in both.

23 "Redevelopment plan" means a plan adopted by the governing  
24 body of a municipality for the redevelopment or rehabilitation of all  
25 or any part of a redevelopment area, or an area in need of  
26 rehabilitation, which plan shall be sufficiently complete to indicate  
27 its relationship to definite municipal objectives as to appropriate  
28 land uses, public transportation and utilities, recreational and  
29 municipal facilities, and other public improvements; and to indicate  
30 proposed land uses and building requirements in the redevelopment  
31 area or area in need of rehabilitation, or both.

32 "Redevelopment project" means any work or undertaking  
33 pursuant to a redevelopment plan; such undertaking may include  
34 any buildings, land, including demolition, clearance or removal of  
35 buildings from land, equipment, facilities, or other real or personal  
36 properties which are necessary, convenient, or desirable  
37 appurtenances, such as but not limited to streets, sewers, utilities,  
38 parks, site preparation, landscaping, and administrative, community,  
39 health, recreational, educational, and welfare facilities, and zero-  
40 emission vehicle fueling and charging infrastructure.

41 "Rehabilitation" means an undertaking, by means of extensive  
42 repair, reconstruction or renovation of existing structures, with or  
43 without the introduction of new construction or the enlargement of  
44 existing structures, in any area that has been determined to be in  
45 need of rehabilitation or redevelopment, to eliminate substandard  
46 structural or housing conditions and arrest the deterioration of that  
47 area.

1 "Rehabilitation area" or "area in need of rehabilitation" means  
2 any area determined to be in need of rehabilitation pursuant to  
3 section 14 of P.L.1992, c.79 (C.40A:12A-14).

4 "Zero-emission vehicle" means a vehicle certified as a zero  
5 emission vehicle pursuant to the California Air Resources Board  
6 zero emission vehicle standards for the applicable model year,  
7 including but not limited to, battery electric-powered vehicles and  
8 hydrogen fuel cell vehicles.

9 "Zero-emission vehicle fueling and charging infrastructure"  
10 means infrastructure to charge or fuel zero-emission vehicles,  
11 including but not limited to, public electric vehicle charging  
12 stations and public hydrogen fueling stations.

13 (cf: P.L.2021, c.168, s.1)

14  
15 21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to  
16 read as follows:

17 16. a. In order to carry out the housing purposes of this act, a  
18 municipality, county, or housing authority may exercise the  
19 following powers, in addition to those set forth in section 22 of  
20 P.L.1992, c.79 (C.40A:12A-22):

21 (1) Plan, construct, own, and operate housing projects; maintain,  
22 reconstruct, improve, alter, or repair any housing project or any part  
23 thereof; and for these purposes, receive and accept from the State or  
24 federal government, or any other source, funds or other financial  
25 assistance;

26 (2) Lease or rent any dwelling house, accommodations, lands,  
27 buildings, structures or facilities embraced in any housing project;  
28 and pursuant to the provisions of this act, establish and revise the  
29 rents and charges therefor;

30 (3) Acquire property pursuant to subsection i. of section 22 of  
31 P.L.1992, c.79 (C.40A:12A-22);

32 (4) Acquire, by condemnation, any land or building which is  
33 necessary for the housing project, pursuant to the provisions of the  
34 "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

35 (5) Issue bonds in accordance with the provisions of section 29  
36 of P.L.1992, c.79 (C.40A:12A-29);

37 (6) Cooperate with any other municipality, private, county, State  
38 or federal entity to provide funds to the municipality or other  
39 governmental entity and to homeowners, tenant associations,  
40 nonprofit or private developers to acquire, construct, rehabilitate or  
41 operate publicly assisted housing, and to provide rent subsidies for  
42 persons of **low and moderate income** low- and moderate-income,  
43 including the elderly, pursuant to applicable State or federal  
44 programs;

45 (7) Encourage the use of demand side subsidy programs such as  
46 certificates and vouchers for low-income families and promote the  
47 use of project based certificates which provide subsidies for units in

1 newly constructed and substantially rehabilitated structures, and of  
2 tenant based certificates which subsidize rent in existing units;

3 (8) Cooperate with any State or federal entity to secure  
4 mortgage assistance for any person of **low or moderate income**  
5 low- or moderate-income;

6 (9) Provide technical assistance and support to nonprofit  
7 organizations and private developers interested in constructing **low**  
8 **and moderate income** low- and moderate-income housing;

9 (10) If it owns and operates public housing units, provide to the  
10 tenants public safety services, including protection against  
11 substance use disorder, and social services, including counseling  
12 and financial management, in cooperation with other agencies;

13 (11) Provide emergency shelters, transitional housing and  
14 supporting services to homeless families and individuals.

15 b. All housing projects, programs and actions undertaken  
16 pursuant to this act shall accord with the housing element of the  
17 master plan of the municipality within which undertaken, and with  
18 any fair share housing plan **filed by** of the municipality **with the**  
19 **Council on Affordable Housing, based upon the council's criteria**  
20 **and guidelines**, adopted pursuant to the "Fair Housing Act,"  
21 P.L.1985, c.222 (C.52:27D-301 et al.) **], whether or not the**  
22 **municipality has petitioned for substantive certification of the**  
23 **plan**.

24 (cf: P.L.2017, c.131, s.176)

25  
26 22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to  
27 read as follows:

28 10. A municipality's housing element shall be designed to achieve  
29 the goal of access to affordable housing to meet present and  
30 prospective housing needs, with particular attention to **low and**  
31 **moderate income** low- and moderate-income housing, and shall  
32 contain at least:

33 a. An inventory of the municipality's housing stock by age,  
34 condition, purchase or rental value, occupancy characteristics, and  
35 type, including the number of units affordable to **low and moderate**  
36 **income** low- and moderate-income households and substandard  
37 housing capable of being rehabilitated, and in conducting this  
38 inventory the municipality shall have access, on a confidential basis  
39 for the sole purpose of conducting the inventory, to all necessary  
40 property tax assessment records and information in the assessor's  
41 office, including but not limited to the property record cards;

42 b. A projection of the municipality's housing stock, including the  
43 probable future construction of **low and moderate income** low- and  
44 moderate-income housing, for the next ten years, taking into account,  
45 but not necessarily limited to, construction permits issued, approvals  
46 of applications for development and probable residential development  
47 of lands;

1 c. An analysis of the municipality's demographic characteristics,  
2 including but not necessarily limited to, household size, income level  
3 and age;

4 d. An analysis of the existing and probable future employment  
5 characteristics of the municipality;

6 e. A determination of the municipality's present and prospective  
7 fair share for **[low and moderate income]** low- and moderate-income  
8 housing and its capacity to accommodate its present and prospective  
9 housing needs, including its fair share for **[low and moderate income]**  
10 low- and moderate-income housing, as established pursuant to section  
11 3 of P.L. , c. (C. ) (pending before the Legislature as this bill);

12 f. A consideration of the lands that are most appropriate for  
13 construction of **[low and moderate income]** low- and moderate-  
14 income housing and of the existing structures most appropriate for  
15 conversion to, or rehabilitation for, **[low and moderate income]** low-  
16 and moderate-income housing, including a consideration of lands of  
17 developers who have expressed a commitment to provide **[low and**  
18 **moderate income]** low- and moderate-income housing; <sup>2</sup>**[and]**<sup>2</sup>

19 g. An analysis of the extent to which municipal ordinances and  
20 other local factors advance or detract from the goal of preserving  
21 multigenerational family continuity as expressed in the  
22 recommendations of the Multigenerational Family Housing Continuity  
23 Commission, adopted pursuant to paragraph (1) of subsection f. of  
24 section 1 of P.L.2021, c.273 (C.52:27D-329.20) <sup>2</sup>;

25 h. For a municipality located within the jurisdiction of the  
26 Highlands Water Protection and Planning Council, established  
27 pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of  
28 compliance of the housing element with the Highlands Regional  
29 Master Plan of lands in the Highlands Preservation Area, and lands in  
30 the Highlands Planning Area for Highlands-conforming  
31 municipalities. This analysis shall include consideration of the  
32 municipality's most recent Highlands Municipal Build Out Report,  
33 consideration of opportunities for redevelopment of existing developed  
34 lands into inclusionary or 100 percent affordable housing, or both, and  
35 opportunities for 100 percent affordable housing in both the Highlands  
36 Planning Area and Highlands Preservation Area that are consistent  
37 with the Highlands regional master plan; and

38 i. An analysis of consistency with the State Development and  
39 Redevelopment Plan, including water, wastewater, stormwater, and  
40 multi-modal transportation based on guidance and technical assistance  
41 from the State Planning Commission<sup>2</sup>.

42 (cf: P.L.2021, c.273, s.2)

43  
44 23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended to  
45 read as follows:

46 1. Any municipality that receives an adjustment of its prospective  
47 need obligations for the fourth round or subsequent rounds based on a



1 lack of vacant land shall as part of the process of adopting and  
2 implementing its housing element and fair share plan identify  
3 sufficient parcels likely to redevelop during the current round of  
4 obligations to address at least 25 percent of the prospective need  
5 obligation that has been adjusted, and adopt realistic zoning that  
6 allows for such adjusted obligation, or demonstrate why the  
7 municipality is unable to do so. When computing a municipal  
8 adjustment regarding available land resources as part of the  
9 determination of a municipality's fair share of affordable housing, the  
10 **【Council on Affordable Housing】** municipality, in filing a housing  
11 element and fair share plan pursuant to subsection f. of section 3 of  
12 P.L. , c. (C. and C. ) (pending before the Legislature as  
13 this bill), shall exclude from designating , and the process set forth  
14 pursuant to sections 3 and 4 of P.L. , c. (C. and C. )  
15 (pending before the Legislature as this bill) shall confirm was correctly  
16 excluded, as vacant land:

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

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

31 (c) any vacant contiguous parcels of land in private ownership of a  
32 size which would accommodate fewer than five housing units **【if**  
33 **current standards of the council were applied】** based on appropriate  
34 standards pertaining to housing density;

35 (d) historic and architecturally important sites listed on the State  
36 Register of Historic Places or National Register of Historic Places  
37 prior to the **【submission of the petition of substantive certification】**  
38 date of filing a housing element and fair share plan pursuant to section  
39 3, or initiation of an action pursuant to section 4 of P.L. , c. (C.  
40 or C. ) (pending before the Legislature as this bill);

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

43 (f) sites designated for active recreation that are designated for  
44 recreational purposes in the municipal master plan; and

45 (g) environmentally sensitive lands where development is  
46 prohibited by any State or federal agency <sup>2</sup>, including, but not limited  
47 to, the Highlands Water Protection and Planning Council, established

1 pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), for lands in the  
2 Highlands Preservation Area, and lands in the Highlands Planning  
3 Area for Highlands-conforming municipalities<sup>2</sup>.

4 No municipality shall be required to utilize for affordable housing  
5 purposes land that is excluded from being designated as vacant land.  
6 (cf: P.L.2008, c.46, s.39)  
7

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

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

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

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

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

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

44 (5) Donation or use of municipally owned land or land condemned  
45 by the municipality for purposes of providing **low and moderate**  
46 **income** low- and moderate-income housing;

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

1 share plan for the current round, and ~~【which】 that~~ has actually effected  
2 the construction of the affordable housing units it is obligated to  
3 provide, may amend its affordable housing element or zoning  
4 ordinances without ~~【the approval of the council】~~ losing immunity  
5 from <sup>1</sup>【builder’s remedy】 exclusionary zoning<sup>1</sup> litigation.

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

11 i. ~~【The council, upon the application of a】~~ A municipality and a  
12 developer ~~【,】 may 【approve】~~ request a modification of a compliance  
13 certification involving reduced affordable housing set-asides or  
14 increased densities to ensure the economic feasibility of an  
15 inclusionary development , if any such application demonstrates how  
16 any shortfall in meeting the municipal fair share obligation will then  
17 be addressed. Such a request may be granted only if the municipality  
18 and developer have demonstrated that the project has been impacted  
19 by market conditions beyond their reasonable control.

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

45 k. In the fourth round, and in subsequent rounds of affordable  
46 housing obligations, a municipality shall be able to receive one credit  
47 against its affordable housing obligation for each unit of low- or

moderate-income housing, and shall not receive bonus credit for any particular type of low- or moderate-income housing, unless authority to obtain bonus credit is expressly provided pursuant to this section, or other sections of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A municipality shall not receive more than one type of bonus credit for any unit, and a municipality shall not be permitted to satisfy more than 25 percent of its prospective need obligation in the fourth round or any subsequent round through the use of bonus credits. This subsection shall not be construed to limit the ability of a municipality to receive a unit of credit for a low- or moderate-income housing unit that is subject to affordability controls that are scheduled to expire, but are extended <sup>1</sup>in accordance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321)<sup>1</sup>, to the extent that this affordability control extension would otherwise generate this credit. As a part of a fair share plan and housing element adopted pursuant to subsection f. of section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill), a municipality shall:

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

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

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

(4) receive one unit of credit and one-half bonus credit for a unit of age-restricted housing, provided that a bonus credit for age-restricted housing shall not be applied to more than <sup>1</sup>[15] 10<sup>1</sup> percent of the units of age-restricted housing constructed in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency in a municipality that count towards the municipality's affordable housing obligation for any single 10-year round of affordable housing obligations;

(5) receive one unit of credit and one-half bonus credit for each unit of low- or moderate-income family housing with at least three bedrooms above the minimum number required by the bedroom

1 distribution <sup>1</sup>["in a given development"] . This bonus credit shall be  
2 calculated by taking into account the full municipal fair share plan and  
3 housing element, and the number of units with at least three bedrooms  
4 required for projects satisfying the minimum 50 percent family  
5 housing requirements. A municipality shall receive the bonus credit  
6 pursuant to this paragraph for each unit with at least three bedrooms  
7 that are above the minimum number required for the bedroom  
8 distribution determined pursuant to the Uniform Housing Affordability  
9 Controls promulgated by the New Jersey Housing and Mortgage  
10 Finance Agency<sup>1</sup>:

11 (6) receive one unit of credit and one-half bonus credit for a unit  
12 of low- or moderate-income housing constructed on land that is or was  
13 previously developed and utilized for retail, office, or commercial  
14 space;

15 (7) receive one unit of credit and one-half bonus credit for each  
16 existing low- or moderate-income rental housing unit for which  
17 affordability controls are extended for a new term of affordability, in  
18 compliance with the Uniform Housing Affordability Controls  
19 promulgated by the New Jersey Housing and Mortgage Finance  
20 Agency, and the municipality contributes funding towards the costs  
21 necessary for this preservation;

22 (8) receive one unit of credit and <sup>1</sup>["one-half"] one<sup>1</sup> bonus credit for  
23 each unit of low- or moderate-income housing in a 100 percent  
24 affordable housing project <sup>1</sup>["toward"] for<sup>1</sup> which the municipality  
25 <sup>1</sup>["either contributes property without which the project would not be  
26 feasible, or makes contributions from the municipal affordable housing  
27 trust fund that cover no less than 10 percent of the project cost"]  
28 contributes toward the costs of the project. This contribution may  
29 consist of: (a) real property donations that enable siting and  
30 construction of the project; or (b) contributions from the municipal  
31 affordable housing trust fund in support of the project, if the  
32 contribution consists of no less than three percent of the project cost<sup>1</sup>;  
33 <sup>1</sup>["and"]<sup>1</sup>

34 (9) receive one unit of credit and one-half bonus credit for each  
35 unit of very low-income housing for families above the 13 percent of  
36 units required to be reserved for very low-income housing pursuant to  
37 section 7 of P.L.2008, c.46 (C.52:27D-329.1). <sup>1</sup>In accordance with  
38 section 7 of P.L.2008, c.46 (C.52:27D-329.1), a municipality shall not  
39 be required to provide that a specific percentage of the units in any  
40 specific project be reserved as very low-income housing in order to  
41 obtain this bonus credit, and the 13 percent level, for the purpose of  
42 bonus credits, shall be calculated against the full prospective need  
43 obligation provided pursuant to the fair share plan; and

44 (10) receive one unit of credit and one bonus credit for each unit  
45 of low- or moderate-income housing created by transforming an  
46 existing rental or ownership unit from a market rate unit to an  
47 affordable housing unit. A municipality may only rely on this bonus

1 credit as part of its fair share plan and housing element if the  
2 municipality demonstrates that a commitment to follow through with  
3 this market to affordable agreement has been made and: (a) this  
4 agreement has been signed by the property owner; or (b) the  
5 municipality has obtained ownership of the property.<sup>1</sup>

6 l. A municipality may not satisfy more than ~~'[25]~~ 30<sup>1</sup> percent of  
7 the affordable housing units, exclusive of any bonus credits, to address  
8 its prospective need affordable housing obligation through the creation  
9 of age-restricted housing. A municipality shall satisfy a minimum of  
10 50 percent of the actual affordable housing units, exclusive of any  
11 bonus credits, created to address its prospective need affordable  
12 housing obligation through the creation of housing available to  
13 families with children and otherwise in compliance with the  
14 requirements and controls established pursuant to section 21 of  
15 P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy a  
16 minimum of 25 percent of the actual affordable housing units,  
17 exclusive of any bonus credits, to address its prospective need  
18 affordable housing obligation, through rental housing, including at  
19 least half of that number available to families with children. All units  
20 referred to in this section shall otherwise be in compliance with the  
21 requirements and controls established pursuant to section 21 of  
22 P.L.1985, c.222 (C.52:27D-321).

23 m. All parties shall be entitled to rely upon regulations on  
24 municipal credits, adjustments, and compliance mechanisms adopted  
25 by the Council on Affordable Housing unless those regulations are  
26 contradicted by statute, including but not limited to P.L. , c.  
27 (C. ) (pending before the Legislature as this bill), or binding court  
28 decisions.

29 <sup>2</sup>n. P.L. , c. (C. ) (pending before the Legislature as this  
30 bill) shall not be construed to require a municipality to fund  
31 infrastructure improvements for affordable housing projects beyond  
32 any commitments made in a fair share plan and housing element that  
33 has been provided with compliance certification. A municipality may  
34 fund infrastructure improvements for affordable housing projects,  
35 through the adoption of a development agreement with the applicant,  
36 beyond any commitments made in a fair share plan and housing  
37 element that has been provided with compliance certification.<sup>2</sup>

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

39  
40 25. Section 6 of P.L.2005, c.350 (C.52:27D-311b) is amended to  
41 read as follows:

42 6. **【The council】** A municipality may take such measures as are  
43 necessary to assure compliance with the adaptability requirements  
44 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), including  
45 the inspection of those units which are newly constructed and receive  
46 housing credit as provided under section 1 of P.L.2005, c.350  
47 (C.52:27D-311a) for adaptability, as part of the monitoring which

1 occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). No housing  
2 unit subject to the provisions of section 5 of P.L.2005, c.350  
3 (C.52:27D-123.15) and to the provisions of the barrier free subcode  
4 adopted by the Commissioner of Community Affairs pursuant to the  
5 "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-  
6 119 et seq.) shall be eligible for inclusion in a municipal fair share plan  
7 unless the unit complies with the requirements set forth thereunder. If  
8 any units for which credit was granted in accordance with the  
9 provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not to  
10 conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et  
11 al.), **the council may** any party representing the interests of  
12 households with disabilities may seek a modification to the approval of  
13 the municipal fair share plan to require the municipality to amend its  
14 fair share plan within 90 days of receiving notice from the council  
15 such a finding, to address its fair share obligation pursuant to  
16 P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the  
17 municipality fails to amend its fair share plan within 90 days of  
18 receiving such notice, the council may revoke substantive  
19 certification such a finding, the municipality shall lose immunity to  
20 'a builder's remedy' exclusionary zoning litigation' for the portion  
21 of its obligation that is found not to conform to the requirements of  
22 P.L.2005, c.350 (C.52:27D-311a et al.).  
23 (cf: P.L.2005, c.350, s.6)

24  
25 26. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to  
26 read as follows:

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



1 of the monies available in the fund for the payment of any  
2 necessary administrative costs related to the administration of the  
3 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any  
4 costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et  
5 al.).

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,**  
11 obtained compliance certification pursuant to section 3 of P.L. , c.  
12 (C. ) (pending before the Legislature as this bill), or in  
13 municipalities receiving State aid pursuant to P.L.1978, c.14  
14 (C.52:27D-178 et seq.) **],** in municipalities subject to a builder's  
15 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328),  
16 or in receiving municipalities in cases where the council has  
17 approved a regional contribution agreement and a project plan  
18 developed by the receiving municipality**].**

19 Of those monies deposited into the "New Jersey Affordable  
20 Housing Trust Fund" that are derived from municipal development  
21 fee trust funds, or from available collections of Statewide non-  
22 residential development fees, a priority for funding shall be  
23 established for projects in municipalities that have **petitioned the**  
24 **council for substantive** received compliance certification.

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

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

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

42 d. Amounts deposited in the "New Jersey Affordable Housing  
43 Trust Fund" shall be targeted to regions based on the region's  
44 percentage of the State's **[low and moderate income]** low- and  
45 moderate-income housing need as determined **[by the council]**  
46 pursuant to the low- and moderate-income household growth over  
47 the prior 10 years, as calculated pursuant to section 6 of P.L. , c.

1 (C. \_\_\_\_\_) (pending before the Legislature as this bill). Amounts in  
2 the fund shall be applied for the following purposes in designated  
3 neighborhoods:

4 (1) Rehabilitation of substandard housing units occupied or to  
5 be occupied by **low and moderate income** low- and moderate-  
6 income households;

7 (2) Creation of accessory **apartments** dwelling units to be  
8 occupied by **low and moderate income** low- and moderate-  
9 income households;

10 (3) Conversion of non-residential space to residential purposes;  
11 provided a substantial percentage of the resulting housing units are  
12 to be occupied by **low and moderate income** low- and moderate-  
13 income households;

14 (4) Acquisition of real property, demolition and removal of  
15 buildings, or construction of new housing that will be occupied by  
16 **low and moderate income** low- and moderate-income households,  
17 or any combination thereof;

18 (5) Grants of assistance to eligible municipalities for costs of  
19 necessary studies, surveys, plans, and permits; engineering,  
20 architectural, and other technical services; costs of land acquisition  
21 and any buildings thereon; and costs of site preparation, demolition,  
22 and infrastructure development for projects undertaken pursuant to  
23 an approved regional contribution agreement;

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

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

43 e. Any grant or loan agreement entered into pursuant to this  
44 section shall incorporate contractual guarantees and procedures by  
45 which the division **will** shall ensure that any unit of housing  
46 provided for **low and moderate income** low- and moderate-  
47 income households shall continue to be occupied by **low and**

1 moderate income】 low- and moderate-income households for 【at  
2 least 20 years】 a period that conforms to the requirements of  
3 subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321)  
4 following the award of the loan or grant, except that the division  
5 may approve a guarantee for a period of less 【than 20 years】  
6 duration where necessary to ensure project feasibility.

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

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

38 h. The department and the State Treasurer shall submit the  
39 "New Jersey Affordable Housing Trust Fund" for an audit annually  
40 by the State Auditor or State Comptroller, at the discretion of the  
41 Treasurer. In addition, the department shall prepare an annual  
42 report for each fiscal year, and submit it by November 30th of each  
43 year to the Governor and the Legislature, and the Joint Committee  
44 on Housing Affordability, or its successor, and post the information  
45 to its 【web site】 Internet website, of all activity of the fund,  
46 including details of the grants and loans by number of units, number  
47 and income ranges of recipients of grants or loans, location of the

1 housing renovated or constructed using monies from the fund, the  
2 number of units upon which affordability controls were placed, and  
3 the length of those controls. The report also shall include details  
4 pertaining to those monies allocated from the fund for use by the  
5 State rental assistance program pursuant to section 3 of P.L.2004,  
6 c.140 (C.52:27D-287.3) and subsection g. of this section.

7 i. The commissioner may award or grant the amount of any  
8 appropriation deposited in the "New Jersey Affordable Housing  
9 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-  
10 320.1) to municipalities pursuant to the provisions of section 39 of  
11 P.L.2009, c.90 (C.40:55D-8.8).

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

13  
14 27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to  
15 read as follows:

16 21. The agency shall establish affordable housing programs to  
17 assist municipalities in meeting the obligation of developing  
18 communities to provide **low and moderate income** low- and  
19 moderate-income housing.

20 a. Of the bond authority allocated to it under section 24 of  
21 P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a  
22 reasonable period of time established by its board, no less than **25%**  
23 25 percent to be used in conjunction with housing to be constructed or  
24 rehabilitated with assistance under **this act** P.L.1985, c.222  
25 (C.52:27D-301 et al.).

26 b. The agency shall to the extent of available funds, award  
27 assistance to affordable housing programs located in municipalities  
28 whose housing elements have **received substantive** obtained  
29 compliance certification **from the council** , or which have been  
30 subject to a builder's remedy **or which are in furtherance of a regional**  
31 **contribution agreement approved by the council**. During **the first 12**  
32 **months from the effective date of this act and for** any **additional**  
33 period which the **council** agency may approve, the agency may  
34 assist affordable housing programs **which are not located in**  
35 **municipalities whose housing elements have been granted substantive**  
36 **certification or which are not in furtherance of a regional contribution**  
37 **agreement** that have a pending request for compliance certification;  
38 provided the affordable housing program will meet all or in part a  
39 municipal **low and moderate income** low- and moderate-income  
40 housing obligation.

41 c. Assistance provided pursuant to this section may take the form  
42 of grants or awards to municipalities, prospective home purchasers,  
43 housing sponsors as defined in P.L.1983, c.530 (C.55:14K-1 et seq.),  
44 or as contributions to the issuance of mortgage revenue bonds or  
45 multi-family housing development bonds which have the effect of  
46 achieving the goal of producing affordable housing.

d. Affordable housing programs which may be financed or assisted under this provision may include, but are not limited to:

(1) Assistance for home purchase and improvement including interest rate assistance, down payment and closing cost assistance, and direct grants for principal reduction;

(2) Rental programs including loans or grants for developments containing ~~low and moderate income~~ low- and moderate-income housing, moderate rehabilitation of existing rental housing, congregate care and retirement facilities;

(3) Financial assistance for the conversion of nonresidential space to residences;

(4) Other housing programs for ~~low and moderate income~~ low- and moderate-income housing, including infrastructure projects directly facilitating the construction of ~~low and moderate income~~ low- and moderate-income housing; and

(5) Grants or loans to municipalities, housing sponsors and community organizations to encourage development of innovative approaches to affordable housing, including:

(a) Such advisory, consultative, training and educational services as will assist in the planning, construction, rehabilitation and operation of housing; and

(b) Encouraging research in and demonstration projects to develop new and better techniques and methods for increasing the supply, types and financing of housing and housing projects in the State.

e. The agency shall establish procedures and guidelines governing the qualifications of applicants, the application procedures and the criteria for awarding grants and loans for affordable housing programs and the standards for establishing the amount, terms and conditions of each grant or loan.

f. ~~In consultation with the council, the~~ The agency , in consultation with the department, shall establish requirements and controls to ~~insure~~ ensure the maintenance of housing assisted under ~~this act~~ P.L.1985, c.222 (C.52:27D-301 et al.) as affordable to ~~low and moderate income~~ low- and moderate-income households for a period of not less than <sup>1</sup>~~40~~ <sup>2</sup>~~30~~ <sup>1</sup> 40 years for <sup>1</sup>newly created rental units <sup>1</sup>~~and~~ <sup>1</sup> <sup>2</sup>~~20~~ <sup>2</sup> 30 years for for-sale units <sup>1</sup> <sup>2</sup>~~except for housing units for which affordability controls are extended for a new term of affordability~~ <sup>1</sup>; provided that the agency<sup>2</sup> ~~may establish a shorter period upon a determination that the economic feasibility of the program is jeopardized by the requirement and the public purpose served by the program outweighs the shorter period~~ <sup>2</sup>and 30 years for housing units for which affordability controls are extended for a new term of affordability, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended term, in combination, total at least 60 years. Any 100 percent affordable rental property shall have a right to extinguish a deed restriction regardless of original length, beginning 30 years following

1 the start of the deed restriction, provided a refinancing or  
 2 rehabilitation, or both, for the purpose of preservation is commenced  
 3 and that a new deed restriction of at least 30 years is provided. A  
 4 municipality shall be eligible to receive credits for all preserved units  
 5 pursuant to this subsection, as long as the original and extended term  
 6 total at least 60 years, and this credit may be obtained at the time of  
 7 preservation. All 100 percent affordable projects shall be eligible for  
 8 any affordable housing preservation program administered by the  
 9 State, beginning 30 years following the start of the deed restriction,  
 10 regardless of original length of the deed restriction. Any State  
 11 administered preservation program may allow a refinancing funding  
 12 process to commence prior to the 30th year of the deed restriction  
 13 when such refinancing or rehabilitation funding is needed to preserve  
 14 affordable housing. The agency<sup>2</sup> may update or amend any controls  
 15 previously adopted by the agency, in consultation with the Council on  
 16 Affordable Housing, prior to the effective date of P.L. , c. (C. )  
 17 (pending before the Legislature as this bill), provided that the  
 18 requirements and controls shall, at a minimum, be consistent with the  
 19 controls as in effect immediately prior to the effective date of P.L. ,  
 20 c. (C. ) (pending before the Legislature as this bill), including,  
 21 but not limited to, any requirements concerning bedroom distributions,  
 22 affordability averages, and affirmative marketing. <sup>2</sup>For the purpose  
 23 of housing units for which affordability controls are extended for a  
 24 new term of affordability: (1) a 20-year minimum deed restriction shall  
 25 be required if the unit was initially created before October 1, 2001; and  
 26 (2) a 30-year minimum deed restriction shall be required if the unit  
 27 was initially created on or following October 1, 2001.<sup>1</sup><sup>2</sup> The controls  
 28 may include, among others, requirements for recapture of assistance  
 29 provided pursuant to [this act] P.L.1985, c.222 (C.52:27D-301 et al.)  
 30 or restrictions on return on equity in the event of failure to meet the  
 31 requirements of the program. With respect to rental housing financed  
 32 by the agency pursuant to [this act] P.L.1985, c.222 (C.52:27D-301 et  
 33 al.) or otherwise which promotes the provision or maintenance of [low  
 34 and moderate income] low- and moderate-income housing, the agency  
 35 may waive restrictions on return on equity required pursuant to  
 36 P.L.1983, c.530 (C.55:14K-1 et seq.) which is gained through the sale  
 37 of the property or of any interest in the property or sale of any interest  
 38 in the housing sponsor. The agency shall promulgate updated  
 39 regulations no later than nine months following the effective date of  
 40 P.L. , c. (C. ) (pending before the Legislature as this bill). All  
 41 parties may continue to rely on regulations previously adopted by the  
 42 agency pursuant to the authority provided by this section as in effect  
 43 immediately prior to the effective date of P.L. , c. (C. )  
 44 (pending before the Legislature as this bill) until new rules and  
 45 regulations are adopted by the agency. Notwithstanding the provisions  
 46 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
 47 seq.) to the contrary, the agency, after consultation with department,

1 may adopt, immediately, upon filing with the Office of Administrative  
2 Law, said regulations, which shall be effective for a period not to  
3 exceed one year from the date of the filing. The agency shall  
4 thereafter amend, adopt, or readopt the regulations in accordance with  
5 the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

6 g. The agency may establish affordable housing programs  
7 through the use or establishment of subsidiary corporations or  
8 development corporations as provided in P.L.1983, c.530 (C.55:14K-1  
9 et seq.). The subsidiary corporations or development corporations  
10 shall be eligible to receive funds provided under **【this act】** P.L.1985,  
11 c.222 (C.52:27D-301 et al.) for any permitted purpose.

12 h. The agency shall provide assistance, through its bonding  
13 powers or in any other manner within its powers, to the grant and loan  
14 program established pursuant to section 20 of P.L.1985, c.222  
15 (C.52:27D-320).

16 i. (1) The department shall promulgate processes and standards  
17 for the certification of administrative agents and municipal housing  
18 liaisons in the State, as well as standards for measuring performance of  
19 and enforcing compliance by administrative agents and municipal  
20 housing liaisons in implementing the affordable housing requirements  
21 and controls established pursuant to subsection f. of this section.

22 (2) Administrative agents shall be responsible for implementing  
23 the requirements and controls set by the regulations promulgated  
24 pursuant to subsection <sup>2</sup>**【(f)】** f.<sup>2</sup> of this section. The department may  
25 bring via summary proceeding any findings of violation of the  
26 responsibilities set forth in this section before a county level housing  
27 judge, to docket the violation and issue corrective orders and levy  
28 finer.

29 (3) Municipal housing liaisons shall be responsible for monitoring  
30 administrative agents within their municipality's jurisdiction to ensure  
31 compliance with the requirements and controls set by regulation under  
32 subsection f. of this section.

33 (4) Municipal housing liaisons, the department, and interested  
34 parties may bring a challenge before a county level housing judge to  
35 determine whether properties subject to the regulations set forth by this  
36 section are out of compliance with the regulations. A finding of  
37 deliberate noncompliance may result in the department removing the  
38 administrative agent's certification.

39 (5) A County level housing judge may issue fines and order  
40 corrective actions for violations and may consider patterns of  
41 violations in determining whether a municipality is meeting its  
42 obligations under the compliance certification established by section 3  
43 of P.L. , c. (C. ) (pending before the Legislature as this bill).

44 (6) Notwithstanding the provisions of the "Administrative  
45 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary,  
46 the department may adopt, immediately, upon filing with the Office of  
47 Administrative Law, regulations to implement the provisions of this  
48 subsection, which shall be effective for a period not to exceed one year

1 from the date of the filing. The department shall thereafter amend,  
2 adopt, or readopt the regulations in accordance with the requirements  
3 of P.L.1968, c.410 (C.52:14B-1 et seq.).  
4 (cf: P.L.2004, c.140, s.5)

5  
6 28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended  
7 to read as follows:

8 19. Notwithstanding any rules of the New Jersey Housing and  
9 Mortgage Finance Agency to the contrary, the allocation of **low**  
10 **income** low-income tax credits shall be made by the agency to the  
11 full extent such credits are permitted to be allocated under federal  
12 law, including allocations of **4** four percent or **9** nine percent  
13 federal **low income** low-income tax credits, and including  
14 allocations allowable for partial credits. The affordable portion of  
15 any mixed income or mixed use development that is part of a fair  
16 share housing plan **approved by the council, or** that has obtained  
17 compliance certification, including a court-approved judgment of  
18 repose or compliance, including, but not limited to, a development  
19 that has received a density bonus, shall be permitted to receive  
20 allocations of **low income** low-income tax credits, provided that  
21 the applicant can conclusively demonstrate that the market rate  
22 residential or commercial units are unable to internally subsidize  
23 the affordable units, and the affordable units are developed  
24 contemporaneously with the commercial or market rate residential  
25 units.  
26 (cf: P.L.2008, c.46, s.19)

27  
28 29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to  
29 read as follows:

30 7. **The council shall coordinate and review the housing**  
31 **elements as filed pursuant to section 11 of P.L.1985, c.222**  
32 **(C.52:27D-311), and the housing activities under section 20 of**  
33 **P.L.1985, c.222 (C.52:27D-320), at least once every three years, to**  
34 Housing elements and fair share plans adopted pursuant to section 3  
35 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
36 shall ensure that at least 13 percent of the housing units made  
37 available for occupancy by low-income and **moderate income**  
38 moderate-income households to address a municipality's  
39 prospective need obligation will be reserved for occupancy by very  
40 low income households, as that term is defined pursuant to section 4  
41 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units  
42 made available for families with children. The 13 percent shall  
43 count towards the minimum 50 percent of the housing units  
44 required to be made available for occupancy by low-income  
45 households to address a municipality's prospective need obligation.  
46 Nothing in this section shall require that a specific percentage of the  
47 units in any specific project be reserved as very **low income** low-



1 income housing; provided, however, that a municipality shall not  
 2 receive bonus credits for the provision of housing units reserved for  
 3 occupancy by very **low income** low-income households unless  
 4 the 13 percent target has been exceeded within that municipality **].**  
 5 The council shall coordinate all efforts to meet the goal of this  
 6 section in a manner that will result in a balanced number of housing  
 7 units being reserved for very low income households throughout all  
 8 housing regions. For the purposes of this section, housing activities  
 9 under section 20 of P.L.1985, c.222 (C.52:27D-320) shall include  
 10 any project-based assistance provided from the "New Jersey  
 11 Affordable Housing Trust Fund" pursuant to P.L.2004, c.140  
 12 (C.52:27D-287.1 et al.), regardless of whether the housing activity  
 13 is counted toward the municipal obligation under the "Fair Housing  
 14 Act," P.L.1985, c.222 (C.52:27D-301 et al.) **], and that the agency**  
 15 shall update the regulations adopted pursuant to section 21 of  
 16 P.L.1985, c.222 (C.52:27D-321) to replace any requirements for  
 17 very low-income housing inconsistent with the percentages and  
 18 definitions established pursuant to P.L. , c. (C. ) (pending  
 19 before the Legislature as this bill) with the percentage and  
 20 definition specified in this section.  
 21 (cf: P.L.2008, c.46, s.7)

22  
 23 30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to  
 24 read as follows:

25 8. a. **【The council may authorize a】** (1) A municipality that is in  
 26 the process of seeking compliance certification, has **【petitioned for**  
 27 substantive】 obtained compliance certification, <sup>1</sup>is a qualified urban  
 28 aid municipality, as determined pursuant to paragraph (1) of  
 29 subsection c. of section 7 of P.L. , c. (C. ) (pending before the  
 30 Legislature as this bill),<sup>1</sup> or that has been so authorized by a court of  
 31 competent jurisdiction, and which has adopted a municipal  
 32 development fee ordinance shall be authorized to impose and collect  
 33 development fees from developers of residential property, in  
 34 accordance with rules promulgated by the **【council】 department.** Each  
 35 amount collected shall be deposited and shall be accounted for  
 36 separately, by payer and date of deposit.

37 (2) No later than <sup>1</sup>**【90】 180<sup>1</sup>** days following the enactment of  
 38 P.L. , c. (C. ) (pending before the Legislature as this bill), any  
 39 municipality that is or has been authorized to impose and collect  
 40 development fees from developers of residential property, or payments  
 41 in lieu of constructing affordable housing, shall provide the  
 42 Department of Community Affairs with a detailed accounting of all  
 43 such fees that have been collected and expended since the inception of  
 44 the municipal authorization to collect the fees.

45 (3) Beginning with the year after the enactment of P.L. ,  
 46 c. (C. ) (pending before the Legislature as this bill), by  
 47 <sup>2</sup>**【January】 February<sup>2</sup>** 15, every municipality that is or has been

1 authorized to impose and collect development fees from developers of  
2 residential property, or payments in lieu of constructing affordable  
3 housing, shall provide the Department of Community Affairs with a  
4 detailed accounting of all such fees that have been collected and  
5 expended the previous year.

6 (4) A municipality may not spend or commit to spend any  
7 affordable housing development fees, including Statewide non-  
8 residential fees collected and deposited into the municipal affordable  
9 housing trust fund, without first obtaining the **【council's】** approval of  
10 the expenditure as part of its compliance certification or by the  
11 department. A municipality shall include in its housing element and  
12 fair share plan adopted pursuant to section 3 of P.L. , c. (C. )  
13 (pending before the Legislature as this bill) a spending plan for current  
14 funds in the municipal affordable housing trust fund and projected  
15 funds through the current round. Review of that spending plan for  
16 consistency with applicable law and the municipality's Housing  
17 Element and Fair Share Plan shall be part of the process specified in  
18 section 3 of P.L. , c. (C. ) (pending before the Legislature as  
19 this bill). The **【council】** department shall promulgate updated  
20 regulations no later than nine months following the effective date of  
21 P.L. , c. (C. ) (pending before the Legislature as this bill)  
22 regarding the establishment, administration, reporting, and  
23 enforcement of the expenditure of affordable housing development  
24 fees by municipalities, which shall include establishing an expedited  
25 process for approving spending plan expenditures for emergent  
26 opportunities to create affordable housing after a municipality has  
27 obtained compliance certification and procedures for monitoring the  
28 collection and expenditure of trust funds. The department shall  
29 develop and publish on the department's Internet website a detailed  
30 summary of the municipal affordable housing trust fund expenditures  
31 for each municipality, and shall update each summary on an annual  
32 basis. As part of the regulations adopted pursuant to this section and  
33 section 10 of P.L.2008, c.46 (C.52:27D-329.4), the department shall  
34 adopt reporting requirements applicable to municipal affordable  
35 housing trust funds to facilitate fulfillment of the department's  
36 obligations pursuant to this section. Municipalities may continue to  
37 rely on regulations on development fees and spending plans previously  
38 adopted by the council until new rules and regulations are adopted by  
39 the department. The **【council】** department shall have **【exclusive】**  
40 jurisdiction regarding the enforcement of these regulations, provided  
41 that any municipality which is not in compliance with the regulations  
42 adopted by the **【council】** department may be subject to forfeiture of  
43 any or all funds remaining within its municipal trust fund. Any funds  
44 so forfeited shall be deposited into the "New Jersey Affordable  
45 Housing Trust Fund" established pursuant to section 20 of P.L.1985,  
46 c.222 (C.52:27D-320).

47 b. A municipality shall deposit all fees collected, whether or not  
48 such collections were derived from fees imposed upon non-residential

1 or residential construction into a trust fund dedicated to those purposes  
2 as required under this section, and such additional purposes as may be  
3 approved by the **【council】** department.

4 c. (1) A municipality <sup>2</sup>, other than a qualified urban aid  
5 municipality, as determined pursuant to paragraph (1) of subsection c.  
6 of section 7 of P.L. , c. (C. ) (pending before the Legislature as  
7 this bill).<sup>2</sup> may only spend development fees for an activity approved  
8 by the **【council】** department to address the municipal fair share  
9 obligation, or approved as part of compliance certification.

10 (2) Municipal development trust funds shall not be expended  
11 unless the municipality has immunity from <sup>1</sup>【builder’s remedy】  
12 exclusionary zoning<sup>1</sup> litigation at the time of the expenditure <sup>2</sup>【, and】 ,  
13 or said municipality has previously collected such funds while under  
14 the protection of presumptive validity or immunity from exclusionary  
15 zoning litigation and in accordance with an approved spending plan.  
16 However, municipal development trust funds may be expended by a  
17 municipality if the municipality is a qualified urban aid municipality,  
18 as determined pursuant to paragraph (1) of subsection c. of section 7 of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill), with  
20 a development fee ordinance and spending plan approved by the  
21 department or a court of competent jurisdiction, regardless of whether  
22 this approval occurs prior to or subsequent to the effective date of P.L.  
23 , c. (C. ) (pending before the Legislature as this bill). Municipal  
24 development fee trust funds<sup>2</sup> shall not be expended:

25 (a) to reimburse municipalities for activities which occurred prior  
26 to the authorization of a municipality to collect development fees; or

27 (b) (i) on administrative costs, attorney fees or court costs to  
28 obtain a judgment of repose; (ii) to contest a determination of the  
29 municipality’s fair share obligation; or (iii) on costs of any challenger  
30 in connection to a challenge to the municipality’s obligation, housing  
31 element, or fair share plan.

32 (3) A municipality shall set aside a portion of its development fee  
33 trust fund for the purpose of providing affordability assistance to **【low**  
34 **and moderate income】** low- and moderate-income households in  
35 affordable units included in a municipal fair share plan, in accordance  
36 with rules of the **【council】** department.

37 (a) Affordability assistance programs may include down payment  
38 assistance, security deposit assistance, low interest loans, common  
39 maintenance expenses for units located in condominiums, rental  
40 assistance, and any other program authorized by the **【council】**  
41 department.

42 (b) Affordability assistance to households earning 30 percent or  
43 less of median income may include buying down the cost of **【low**  
44 **income】** low-income units in a municipal fair share plan to make them  
45 affordable to households earning 30 percent or less of median income.  
46 The use of development fees in this manner shall not entitle a

1 municipality to bonus credits except as may **be** provided by the rules  
2 of the council **otherwise be allowed by applicable precedent.**

3 (4) A municipality may contract with a private or public entity to  
4 administer any part of its housing element and fair share plan,  
5 including the requirement for affordability assistance, or any program  
6 or activity for which the municipality expends development fee  
7 proceeds, in accordance with rules of the **council** department.

8 (5) Not more than 20 percent of the revenues collected from  
9 development fees shall be expended on administration, in accordance  
10 with rules of the **council** department. Such administration may  
11 include expending a portion of its affordable housing trust fund on  
12 actions and efforts reasonably related to the determination of its fair  
13 share obligation and the development of its housing element and fair  
14 share plan pursuant to paragraphs (1) and (2) of subsection f. of  
15 section 3 of P.L. , c. (C. ) (pending before the Legislature as  
16 this bill), and for expenses that are reasonably necessary for  
17 compliance with the processes of the program, including but not  
18 limited to, the costs to the municipality of resolving a challenge under  
19 the program.

20 d. The **council** department shall establish a time by which all  
21 development fees collected within a calendar year shall be expended;  
22 provided, however, that all fees shall be committed for expenditure  
23 within four years from the date of collection. A municipality that fails  
24 to commit to expend the balance required in the development fee trust  
25 fund by the time set forth in this section shall be required by the  
26 council to transfer the remaining unspent balance at the end of the  
27 four-year period to the "New Jersey Affordable Housing Trust Fund,"  
28 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320),  
29 as amended by P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in  
30 the housing region of the transferring municipality for the authorized  
31 purposes of that fund.

32 e. Notwithstanding any provision of this section, or regulations of  
33 the **council** department, a municipality shall not collect a  
34 development fee from a developer whenever that developer is  
35 providing for the construction of affordable units, either on-site or  
36 elsewhere within the municipality.

37 This section shall not apply to the collection of a Statewide  
38 development fee imposed upon non-residential development pursuant  
39 to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 **et seq.**  
40 through C.40:55D-8.7) by the State Treasurer, when such collection is  
41 not authorized to be retained by a municipality.

42 (cf: P.L.2008, c.46, s.8)

43

44 31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended to  
45 read as follows:

46 10. a. The **council** department shall maintain on its Internet  
47 website, and also publish on **a regular** an annual basis, an up-to-date

1 municipal status report **【concerning the petitions for substantive**  
 2 **certification of each municipality that has submitted to the council's**  
 3 **jurisdiction, and shall collect and publish】** based on its collection and  
 4 publication of information concerning the number affordable of  
 5 housing units actually constructed, construction starts, certificates of  
 6 occupancy granted, 【rental units maintained, and the number of  
 7 housing units transferred or sold within the previous 12-month period】  
 8 the start and expiration dates of deed restrictions, and residential and  
 9 non-residential development fees collected and expended, including  
 10 purposes and amounts of such expenditures, along with the current  
 11 balance in the municipality's affordable housing trust funds. With  
 12 respect to units actually constructed, the information shall specify the  
 13 characteristics of the housing, including housing type, tenure,  
 14 affordability level, number of bedrooms, date and expiration of  
 15 affordability controls, and whether occupancy is reserved for families,  
 16 senior citizens, or other special populations. **【No later than 60 months**  
 17 **after the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), the**  
 18 **council shall require each municipality, as a condition of substantive**  
 19 **certification, to provide, in a standardized electronic media format as**  
 20 **determined by the council, the details of the fair share plan as adopted**  
 21 **by the municipality and approved by the council. The council shall**  
 22 **publish and maintain such approved plans on its website.】**

23 b. (1) No later than <sup>1</sup>【90】 180<sup>1</sup> days following the enactment of  
 24 P.L. , c. (C. ) (pending before the Legislature as this bill), each  
 25 municipality shall provide the department with the information  
 26 necessary to comply with this section.

27 (2) Beginning with the year after the enactment of P.L. , c.  
 28 (C. ) (pending before the Legislature as this bill), by <sup>2</sup>【January】  
 29 February<sup>2</sup> 15, each municipality shall provide the department with the  
 30 information necessary to comply with this section.

31 c. The department may adopt, pursuant to the "Administrative  
 32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
 33 regulations as may be necessary to effectuate the provisions of this  
 34 section, including rules and regulations to ensure that municipalities  
 35 and developers report any information as may be necessary for the  
 36 department to fulfill its obligations pursuant to this section.

37 (cf: P.L.2008, c.46, s.10)

38  
 39 32. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended  
 40 to read as follows:

41 18. a. Notwithstanding any rules **【of the council】** to the  
 42 contrary, for developments consisting of newly-constructed  
 43 residential units located, or to be located, within the jurisdiction of  
 44 any regional planning entity required to adopt a master plan or  
 45 comprehensive management plan pursuant to statutory law,  
 46 including the New Jersey Meadowlands Commission pursuant to  
 47 subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6), the

1 Pinelands Commission pursuant to section 7 of the "Pinelands  
2 Protection Act," P.L.1979, c.111 (C.13:18A-8), the Fort Monmouth  
3 Economic Revitalization Planning Authority pursuant to section 5  
4 of P.L.2006, c.16 (C.52:27I-5), or its successor, and the Highlands  
5 Water Protection and Planning Council pursuant to section 11 of  
6 P.L.2004, c.120 (C.13:20-11), but excluding joint planning boards  
7 formed pursuant to section 64 of P.L.1975, c.291 (C.40:55D-77),  
8 there shall be required to be reserved for occupancy by **low or**  
9 **moderate income** low- or moderate-income households at least 20  
10 percent of the residential units constructed **], to the extent this is**  
11 **economically feasible]** with affordability controls as required  
12 pursuant to the rules and regulations of the agency.

13 b. Subject to the provisions of subsection d. of this section, a  
14 developer of a project consisting of newly-constructed residential  
15 units being financed in whole or in part with State funds, including,  
16 but not limited to, transit villages designated by the Department of  
17 Transportation and units constructed on State-owned property, shall  
18 be required to reserve at least 20 percent of the residential units  
19 constructed for occupancy by **low or moderate income** low- or  
20 moderate-income households, as those terms are defined in section  
21 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as  
22 required under the rules of the  **council, unless the municipality in**  
23 **which the property is located has received substantive certification**  
24 **from the council and such a reservation is not required under the**  
25 **approved affordable housing plan, or the municipality has been**  
26 **given a judgment of repose or a judgment of compliance by the**  
27 **court, and such a reservation is not required under the approved**  
28 **affordable housing plan]** agency.

29 c. **[(1)** The Legislature recognizes that regional planning  
30 entities are appropriately positioned to take a broader role in the  
31 planning and provision of affordable housing based on regional  
32 planning considerations. In recognition of the value of sound  
33 regional planning, including the desire to foster economic growth,  
34 create a variety and choice of housing near public transportation,  
35 protect critical environmental resources, including farmland and  
36 open space preservation, and maximize the use of existing  
37 infrastructure, there is created a new program to foster regional  
38 planning entities.

39 **(2)** The regional planning entities identified in subsection a. of  
40 this section shall identify and coordinate regional affordable  
41 housing opportunities in cooperation with municipalities in areas  
42 with convenient access to infrastructure, employment opportunities,  
43 and public transportation. Coordination of affordable housing  
44 opportunities may include methods to regionally provide housing in  
45 line with regional concerns, such as transit needs or opportunities,  
46 environmental concerns, or such other factors as the council may  
47 permit; provided, however, that such provision by such a regional

1 entity may not result in more than a 50 percent change in the fair  
2 share obligation of any municipality; provided that this limitation  
3 shall not apply to affordable housing units directly attributable to  
4 development by the New Jersey Sports and Exposition Authority  
5 within the New Jersey Meadowlands District.

6 (3) In addition to the entities identified in subsection a. of this  
7 section, the Casino Reinvestment Development Authority, in  
8 conjunction with the Atlantic County Planning Board, shall identify  
9 and coordinate regional affordable housing opportunities directly  
10 attributable to Atlantic City casino development, which may be  
11 provided anywhere within Atlantic County, subject to the  
12 restrictions of paragraph (4) of this subsection.

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

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

43 (cf: P.L.2011, c.89, s.5)

44  
45 33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to  
46 read as follows:

47 3. As used in this act:

1 "Affordable Home Ownership Opportunities Bonds" means any  
2 bonds of the New Jersey Housing and Mortgage Finance Agency  
3 that provide funds to facilitate the provisions of this act.

4 "Agency" means the New Jersey Housing and Mortgage Finance  
5 Agency.

6 "Annual income" means total income, from all sources, during  
7 the last full calendar year preceding the filing of an application for a  
8 loan pursuant to this act.

9 "Bonds" means bonds, notes or any other form of evidence of  
10 indebtedness of the agency, bearing either a fixed rate or a variable  
11 rate of interest, issued by the agency.

12 "Eligible project" means a project for the creation of low or  
13 moderate income housing which meets the standards of eligibility  
14 for loans under the program created by this act.

15 "Eligible purchaser" means a purchaser of a dwelling unit in an  
16 eligible project to whom a loan may be made under the program  
17 pursuant to section 5 of this act.

18 "Fund" means the Affordable Home Ownership Opportunities  
19 Fund established by section 5 of this act.

20 "Housing region" means a housing region as defined in  
21 subsection b. of section 4 of the "Fair Housing Act," P.L.1985,  
22 c.222 (C.52:27D-304) and determined **by the Council on**  
23 **Affordable Housing pursuant to section 7 of that act, P.L.1985,**  
24 **c.222 (C.52:27D-307)] pursuant to subsection b. of section 6 of**  
25 **P.L. , c. (C. ) (pending before the Legislature as this bill).**

26 "Local enforcement authority" means any officer or agency of  
27 local government responsible for the implementation or  
28 enforcement of land-use and building regulations established by or  
29 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
30 c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law,"  
31 P.L.1975, c.291 (C.40:55D-1 et seq.).

32 "Low income" means a gross annual household income equal to  
33 50% or less of the median gross annual household income for  
34 households of the same size within the relevant housing region.

35 "Moderate income" means a gross annual household income  
36 equal to not more than 80%, but more than 50% of the median gross  
37 annual household income for households of the same size within the  
38 relevant housing region.

39 "Program" means the Affordable Home Ownership Opportunities  
40 Program created by this act.

41 "Qualified nonprofit organization" means any corporation or  
42 association of persons organized under Title 15A of the New Jersey  
43 Statutes, having for its principal purpose, or as a purpose ancillary  
44 to its principal purpose, the improvement of realistic opportunities  
45 for low income and moderate income housing, as defined pursuant  
46 to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.),  
47 being within the description of section 501(c)(3) of the United  
48 States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been



1 determined by the agency to be a bona fide organization not under  
2 the effective control of any for-profit organization or governmental  
3 entity, and appearing capable, by virtue of past activities,  
4 qualifications of staff or board, or other features, of furthering the  
5 purposes of this act.

6 "Substantial rehabilitation" means repair, reconstruction or  
7 renovation which (1) costs in excess of 60% of the fair market value  
8 of a rehabilitated dwelling after such repair, reconstruction or  
9 renovation, or (2) renders a previously vacant and uninhabitable  
10 dwelling safe, sanitary and decent for residential purposes, or (3)  
11 converts to safe, sanitary and decent residential use a structure  
12 previously in non-residential use.

13 (cf: P.L.1995, c.343, s.3)

14  
15 34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to  
16 read as follows:

17 7. A project of new construction or substantial rehabilitation by  
18 a nonprofit organization shall be eligible for a loan under this act if  
19 (1) the homes to be constructed or substantially rehabilitated under  
20 the project are located within an identifiable neighborhood in which  
21 median family income does not exceed the current standard of  
22 "moderate income" pursuant to the contemporaneous standards [of  
23 the Council on Affordable Housing] established pursuant to the  
24 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the  
25 homes to be constructed or substantially rehabilitated under the  
26 project are sufficient in number and located on the same or  
27 contiguous parcels of land or within such proximity to each other as  
28 to render the cost per unit of housing practicable for acquisition by  
29 lower-income purchasers; and (3) each home constructed or  
30 substantially rehabilitated within the project will conform to all  
31 requirements of the State Uniform Construction Code, except as to  
32 the waiver of any fee or other requirement pursuant to subsection b.  
33 of section 9 of this act.

34 (cf: P.L.1995, c.343, s.7)

35  
36 35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to  
37 read as follows:

38 3. As used in this act:

39 "Agency" means the New Jersey Housing and Mortgage Finance  
40 Agency.

41 "Annual income" means total income, from all sources, during  
42 the last full calendar year preceding the filing of an application for a  
43 loan pursuant to this act.

44 "Bonds" means bonds, notes or any other form of evidence of  
45 indebtedness of the agency, bearing either a fixed rate or a variable  
46 rate of interest, issued by the agency.

47 "Eligible project" means a project undertaken by a qualified  
48 housing sponsor to create housing for shared occupancy by seniors

1 or persons with disability of low or moderate income, whether for  
2 home ownership or rental, which meets the standards of eligibility  
3 for loans under the program created by section 4 of P.L.1998, c.128  
4 (C.55:14K-75).

5 "Eligible purchaser" means a purchaser of a dwelling unit in an  
6 eligible project who fulfills the definition of a senior or person with  
7 disability pursuant to this section, is of low or moderate income and  
8 to whom a loan may be made under the program pursuant to section  
9 4 of P.L.1998, c.128 (C.55:14K-75).

10 "Fund" means the Senior and Disabled Cooperative Housing  
11 Incentive Fund established by section 6 of P.L.1998, c.128  
12 (C.55:14K-77).

13 "Housing region" means a housing region as defined in  
14 subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and  
15 determined **by the Council on Affordable Housing pursuant to**  
16 **section 7 of P.L.1985, c.222 (C.52:27D-307)] pursuant to**  
17 **subsection b. of section 6 of P.L. , c. (C. ) (pending before**  
18 **the Legislature as this bill).**

19 "Low income" means a gross annual household income equal to  
20 50% or less of the median gross annual household income for  
21 households of the same size within the relevant housing region.

22 "Moderate income" means a gross annual household income  
23 equal to not more than 80%, but more than 50% of the median gross  
24 annual household income for households of the same size within the  
25 relevant housing region.

26 "Person with disability" means any person who is 18 years of age  
27 or older and who fulfills the definition of having a "disability"  
28 pursuant to section 3 of the "Americans with Disabilities Act of  
29 1990," 42 U.S.C. s.12102).

30 "Program" means the New Jersey Senior and Disabled  
31 Cooperative Housing Finance Incentive Program created by  
32 P.L.1998, c.128 (C.55:14K-72 et seq.).

33 "Qualified housing sponsor" means any corporation or  
34 association of persons organized under the New Jersey Statutes, or  
35 any other corporation having for one of its purposes the  
36 improvement of realistic opportunities for low income and moderate  
37 income housing, as defined pursuant to the "Fair Housing Act,"  
38 P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by  
39 virtue of past activities, qualifications of staff or board, or other  
40 features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-  
41 72 et seq.).

42 "Retrofitting" means renovating or remodeling an existing  
43 residential or non-residential structure to allow for cooperative  
44 living.

45 "Senior" means an individual who is 55 years of age or older.

46 "Substantial rehabilitation" means repair, reconstruction or  
47 renovation which (1) costs in excess of 60% of the fair market value  
48 of a rehabilitated dwelling after such repair, reconstruction or

1 renovation, or (2) renders a previously vacant and uninhabitable  
 2 dwelling safe, sanitary and decent for residential purposes or (3)  
 3 converts to safe, sanitary and decent residential use a structure  
 4 previously in non-residential use.

5 (cf: P.L.1998, c.128, s.3)

6  
 7 36. (New section) a. (1) Notwithstanding the provisions of the  
 8 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)  
 9 to the contrary, the Commissioner of Community Affairs shall, in  
 10 consultation with the Administrative Director of the Courts and the  
 11 Executive Director of the New Jersey Housing and Mortgage Finance  
 12 Agency, adopt, immediately upon filing with the Office of  
 13 Administrative Law, no later than nine months after the effective date  
 14 of P.L. , c. (C. ) (pending before the Legislature as this bill),  
 15 such transitional rules and regulations as necessary for the  
 16 implementation of P.L. , c. (C. ) (pending before the  
 17 Legislature as this bill), including for <sup>2</sup>: (a)<sup>2</sup> the identification of any  
 18 vestigial duties of the Council on Affordable Housing and <sup>2</sup>["for"]<sup>2</sup> the  
 19 transfer of those duties within the Department of Community Affairs  
 20 to the extent that those duties are not otherwise assumed, pursuant to  
 21 P.L. , c. (C. ) (pending before the Legislature as this bill), by  
 22 municipalities or the Affordable Housing Dispute Resolution Program  
 23 <sup>2</sup>; and (b) the establishment of policies regarding the cost of the  
 24 assessments and fees of planned real estate developments, as defined  
 25 in section 3 of P.L.1977, c.419 (C.45:22A-23), on low- and moderate-  
 26 income housing units<sup>2</sup>.

27 (2) The department, in consultation with the agency, shall  
 28 thereafter amend, adopt, or readopt the regulations in accordance with  
 29 the requirements of the "Administrative Procedure Act," P.L.1968,  
 30 c.410 (C.52:14B-1 et seq.).

31 b. The Executive Director of the New Jersey Housing and  
 32 Mortgage Finance Agency <sup>2</sup>, in consultation with the department,<sup>2</sup>  
 33 shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968,  
 34 c.410 (C.52:14B-1 et seq.), no later than nine months after the  
 35 effective date of P.L. , c. (C. ) (pending before the Legislature  
 36 as this bill), rules and regulations to update the Uniform Housing  
 37 Affordability Controls as required pursuant to the "Fair Housing Act,"  
 38 P.L.1985, c.222 (C.52:27D-301 et al.). As part of updating the  
 39 Uniform Housing Affordability Controls, the agency shall set rules  
 40 establishing that, for the purpose of <sup>1</sup>newly created<sup>1</sup> low- and  
 41 moderate-income rental units, a <sup>1</sup>["40-year"] <sup>2</sup>["30-year"] <sup>1</sup> 40-year<sup>2</sup>  
 42 minimum deed restriction shall be required. For the purpose of for-  
 43 sale units, a <sup>2</sup>["20-year"] <sup>2</sup> 30-year<sup>2</sup> minimum deed restriction shall be  
 44 required. <sup>1</sup>For the purpose of housing units for which affordability  
 45 controls are extended for a new term of affordability <sup>2</sup>[": (1) a 20-year  
 46 minimum deed restriction shall be required if the unit was initially  
 47 created before October 1, 2001; and (2) a 30-year minimum deed

1 restriction shall be required if the unit was initially created on or  
2 following October 1, 2001】 , a 30-year minimum deed restriction shall  
3 be required, provided that the minimum extension term may be limited  
4 to no less than 20 years as long as the original and extended term, in  
5 combination, total at least 60 years. Any 100 percent affordable rental  
6 property shall have a right to extinguish a deed restriction regardless of  
7 original length, beginning 30 years following the start of the deed  
8 restriction, provided a refinancing or rehabilitation, or both, for the  
9 purpose of preservation is commenced and that a new deed restriction  
10 of at least 30 years is provided. A municipality shall be eligible to  
11 receive credits for all preserved units pursuant to this subsection, as  
12 long as the original and extended term total at least 60 years, and this  
13 credit may be obtained at the time of preservation. All 100 percent  
14 affordable projects shall be eligible for any affordable housing  
15 preservation program administered by the State, beginning 30 years  
16 following the start of the deed restriction, regardless of original length  
17 of the deed restriction. Any State administered preservation program  
18 may allow a refinancing funding process to commence prior to the  
19 30th year of the deed restriction when such refinancing or  
20 rehabilitation funding is needed to preserve affordable housing<sup>2 1</sup>

21  
22 37. The following sections are repealed:

23 Section 5 of P.L.1985 c.222 (C.52:27D-305);  
24 Section 6 of P.L.1985, c.222 (C.52:27D-306);  
25 Section 7 of P.L.1985, c.222 (C.52:27D-307);  
26 Section 1 of P.L.1991, c.479 (C.52:27D-307.1);  
27 Section 2 of P.L.1991, c.479 (C.52:27D-307.2);  
28 Section 3 of P.L.1991, c.479 (C.52:27D-307.3);  
29 Section 4 of P.L.1991, c.479 (C.52:27D-307.4);  
30 Section 5 of P.L.1991, c.479 (C.52:27D-307.5);  
31 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);  
32 Section 8 of P.L.1985, c.222 (C.52:27D-308);  
33 Section 9 of P.L.1985, c.222 (C.52:27D-309);  
34 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);  
35 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);  
36 Section 14 of P.L.1985, c.222 (C.52:27D-314);  
37 Section 15 of P.L.1985, c.222 (C.52:27D-315);  
38 Section 16 of P.L.1985, c.222 (C.52:27D-316);  
39 Section 17 of P.L.1985, c.222 (C.52:27D-317);  
40 Section 18 of P.L.1985, c.222 (C.52:27D-318);  
41 Section 19 of P.L.1985 c.222 (C.52:27D-319);  
42 Section 22 of P.L.1985, c.222 (C.52:27D-322);  
43 Section 26 of P.L.1985, c.222 (C.52:27D-326);  
44 Section 28 of P.L.1985, c.222 (C.52:27D-328); and  
45 Section 9 of P.L.2008, c.46 (C.52:27D-329.3).

46  
47 38. a. There is appropriated to the Affordable Housing Dispute  
48 Resolution Program, established pursuant to subsection a. of section

1 5 of P.L. , c. (C. ) (pending before the Legislature as this  
2 bill), from the General Fund \$12,000,000 for the purposes of  
3 carrying out its responsibilities for the fourth round of affordable  
4 housing obligations, as established pursuant to section 5 of  
5 P.L. , c. (C. ) (pending before the Legislature as this bill).  
6 b. There is appropriated to the Department of Community  
7 Affairs, from the General Fund, \$4,000,000 for the purposes of  
8 carrying out responsibilities allocated to it pursuant to P.L. , c.  
9 (C. ) (pending before the Legislature as this bill).  
10  
11 39. This act shall take effect immediately, and shall apply to  
12 each new round of affordable housing obligations that begins  
13 following enactment.

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 4**

**STATE OF NEW JERSEY**

DATED: JANUARY 29, 2024

The Assembly Housing Committee reports favorably Assembly Bill No. 4.

This bill would abolish the Council on Affordable Housing (COAH), initially established by the "Fair Housing Act," and would establish a process to enable a municipality to determine its own present and prospective fair share affordable housing obligation based on the formulas established in the bill, as calculated the Department of Community Affairs (DCA). In advance of the fourth, 10-year round of affordable housing obligations, beginning on July 1, 2025, the bill requires DCA to complete these calculations, and provide for their publication, on or before August 1, 2024.

The bill permits a municipality to diverge from DCA's calculations in determining its obligation as long as it adheres to the methodology established by the bill. In advance of the fourth round, the bill requires a municipality to adopt its obligation by binding resolution, on or before January 31, 2025, in order to be assured of protection from a builder's remedy lawsuit, as defined in the bill, through which a municipality may otherwise be compelled to permit development, when the fourth round begins. If the municipality meets this deadline, then the municipality's determination of its obligation would be established by default, beginning on March 1, 2025, as the municipality's obligation for the fourth round. However, if a challenge is filed with the "Affordable Housing Dispute Resolution Program" ("program"), established in the bill, on or before February 28, 2025, the program would be required to facilitate a resolution of the dispute prior to April 1, 2025.

The bill requires a municipality to establish a "housing element" to encompass its obligation, and a fair share plan to meet its obligation, in advance of the fourth round, and propose necessary changes to associated ordinances, on or before June 30, 2025, in order to be assured of protection from a builder's remedy lawsuit.

A municipality would be required to submit its adopted fair share plan and housing element to the program. The bill permits an interested party to initiate a challenge to a municipal fair share plan and housing element, if submitted through the program on or before August 31, 2025. The program would facilitate communication over the challenge, and provide the municipality until December 31, 2025 to commit to revising its fair share plan and housing element in

response to the challenge, or provide an explanation as to why it will not make all or the requested changes, or both. The bill requires municipalities to adopt associated changes to municipal ordinances on or before March 15, 2026. If a municipality fails to meet these deadlines, then the immunity of the municipality from builder's remedy litigation would end unless the program determines that the municipality's immunity shall be extended. If a municipality fails to adhere to any of these deadlines due to circumstances beyond the municipality's control, the bill directs the program to permit a grace period for the municipality to come into compliance with the timeline, the length of which, and effect of which on later deadlines, would be determined on a case-by-case basis.

After providing immunity, the bill also authorizes the program to subsequently terminate immunity under certain circumstances if it becomes apparent that the municipality is not determined to come into constitutional compliance. The municipality would still be permitted to seek immunity from a builder's remedy by initiating an action in Superior Court. A court would not grant a builder's remedy to a plaintiff in exclusionary zoning litigation during certain timeframes. The deadlines for subsequent 10-year rounds of affordable housing obligations would conform to the dates established in the bill for the fourth round.

In any challenge to a municipality's determination of its affordable housing obligation, or to its fair share plan and housing element, the bill requires the program to apply an objective assessment standard to determine whether or not the municipality's obligation determination, or its fair share plan and housing element, fails to comply with the requirements of the bill. Further, the challenger would be required to provide the basis for its challenge based on applicable law, and the program would have the power to dismiss challenges that do not provide such a basis.

All parties would be required to bear their own fees and costs for proceedings within the program. A determination by the program as to municipal obligations or compliance certification would be considered a final decision, subject to appellate review.

The Chief Justice of the Supreme Court would appoint an odd number of at least three and no more than seven members to serve as program leaders for the program established by the bill, consisting of retired and on recall judges, or other qualified experts. The members and employees of the program would be considered State officers and employees for the purposes of the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.). The Administrative Director of the Courts would also establish procedures for the purpose of efficiently resolving circumstances in which the program is unable to address a dispute over compliance certification within the time limitations established in the bill. As a part of these procedures, in order to facilitate an appropriate level of localized control of

affordable housing decisions, for each vicinage, the bill directs the Chief Justice of the Supreme Court to designate a Superior Court judge who sits within the vicinage, or a retired judge who, during his or her tenure as a judge, served within the vicinage, to serve as county level housing judge to resolve disputes over the compliance, of fair share plans and housing elements of municipalities within their county, with the "Fair Housing Act," when those disputes are not be resolved within the deadlines established in the bill. The Administrative Director of the Courts would adopt and apply a Code of Ethics for the program and county level housing judges modeled on the Code of Judicial Conduct of the American Bar Association, adopted by the State Supreme Court, and may establish additional more restrictive ethical standards in order to meet the specific needs of the program and of county level housing judges.

Each municipality's determination of its fair share obligation would be made through the guidance of preliminary calculations made by DCA. No later than August 1 of the year prior to the year when a new round of housing obligations begins, the bill requires DCA to calculate regional need and municipal present and prospective obligations in accordance with formulas established in the bill. DCA's calculations would be made publicly available, and provided to each municipality for use in determining their present and prospective obligations.

Municipal fair share obligations would be determined by applying the methods provided in the bill, along with the methods used by the Superior Court for the third round, to the extent that applicable methodologies are not explicitly articulated in the bill. Municipal present need obligations would be determined by estimating the existing deficient housing currently occupied by low- and moderate-income households within the municipality.

Regional prospective need would next be determined, upon which to base the municipal obligation, by estimating the regional growth of low- and moderate-income households during the housing round at issue. The bill would simplify the regional need estimation from the processes used in previous rounds in order to ease the administrative burden that has been associated with this process. First, projected household change for a 10-year round in a region would be estimated by establishing the household change experienced in the region between the most recent federal decennial census, the second-most recent federal decennial census. Although this relies on historical data, recent household change in a region is relevant to estimating future household change and associated housing need. This household change would be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address population change in the region, thereby determining the regional prospective need for the 10-year round. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and



moderate-income household change in the region and the regional prospective would be zero.

After determining regional prospective need, each municipality's fair share prospective obligation of that regional prospective need would be determined. To do this, DCA would first determine whether a municipality is a qualified urban aid municipality, and if so, the municipality would not have a prospective need obligation.

If the municipality is not a qualified urban aid municipality, three factors necessary for the prospective fair share determination would be calculated. First, the equalized nonresidential valuation factor, representing the municipality's share of the regional change in the value of nonresidential property, would be calculated. In prior rounds, this calculation, concerning nonresidential (commercial and industrial) property values, has been adopted as a representation of a municipality's employment potential. Data available from the Division of Local Government Services in DCA would be used for this calculation. Next, an income capacity factor would be determined, using a formula comparable to one used in prior rounds to estimate the municipality's ability to absorb low- and moderate-income households. The municipality's land capacity factor would then be determined, representing the municipality's relative share of developable and redevelopable land, available to accommodate development, using data made available by the Department of Environmental Protection or the Division of Taxation in the Department of Treasury. The average of these three factors would be determined and multiplied by the regional prospective need to determine the municipality's gross prospective need.

Finally, the bill would require, where appropriate, adjustments for secondary sources of housing supply and demand by first calculating demolitions of low- and moderate-income housing, and housing creation through residential conversions. To do this, a municipality's share of conversions would be subtracted from the sum of each municipality's allocated share of gross prospective need and demolitions of low- and moderate-income housing. After applying these secondary sources, as appropriate, the municipality's prospective fair share obligation for the 10-year round would be established.

A municipality would be permitted to make adjustments for a lack of available land resources as part of the determination of a municipality's fair share of affordable housing when, for example certain municipal lands are devoted for conservation purposes. However, the bill would require a municipality that receives such a vacant land adjustment to its fair share obligation to identify parcels for redevelopment to address at least 25 percent of the prospective need obligation that has been adjusted, and adopt zoning that allows for the adjusted obligation, or demonstrate why this is not possible.

A municipality would ultimately be permitted to reduce its prospective need if necessary to prevent establishing a prospective

need obligation that exceeds 1,000 units in total or 20 percent of the estimated occupied housing stock at the beginning of the 10-year round, whichever limitation results in a lower number.

The bill requires that a municipality is required to satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families with children. The bill amends existing statutory language to ensure that affordable housing is constructed that is accessible to persons with disabilities.

The bill permits a municipality to be credited for as much as 10 percent of its affordable housing obligation through transitional housing, and defines "transitional housing" as temporary housing, including but not limited to, single room occupancy housing or shared living and supportive living arrangements, that provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing.

The bill would establish limitations on the use of municipal affordable housing trust fund moneys for administrative costs, attorney fees, court costs to obtain immunity from a builder's remedy, to contest the municipality's fair share obligation, or use of the trust fund moneys while a municipality does not have immunity from builder's remedy litigation. The bill would authorize a municipality to expend a portion of its affordable housing trust fund on actions and efforts reasonably related to or necessary for certain processes of the program, as provided in the bill. The bill would require each municipality authorized to retain and expend non-residential development fees to periodically provide DCA with an accounting of all such fees that have been collected and expended.

The bill would prohibit a municipality from receiving bonus credit for any particular type of low- or moderate-income housing, unless authority to obtain bonus credit is expressly provided by the "Fair Housing Act," as amended and supplemented by the bill. The bill expressly prohibits a municipality from receiving more than one type of bonus credit for any unit, or from satisfying more than 25 percent of its prospective need obligation through the use of bonus credits. The bill expressly authorizes bonus credits in the amounts provided in the bill for: (1) housing for individuals with special needs or permanent supportive housing; (2) ownership units created in partnership sponsorship with a non-profit housing developer; (3) housing located in a Garden State Growth Zone or certain transit-oriented locations; (4) certain age-restricted housing units; (5) family housing with at least three bedrooms above the minimum number required by the bedroom distribution in a given development; (6) housing constructed on certain land previously used for retail, office, or commercial space; (7) certain existing rental housing for which affordability controls are extended through municipal contributions; (8) certain 100 percent

affordable developments built through municipal contributions of land or funding; and (9) certain housing for very low-income households. The bill also clarifies that all parties would be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms previously adopted by COAH unless those regulations are contradicted by statute, including but not limited to this bill, or binding court decisions.

The bill would require DCA to maintain certain affordable housing-related information on its website, including: (1) the start and expiration dates of deed restrictions; (2) residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures; and (3) the current balance in the municipality's affordable housing trust funds. The bill would also direct municipalities to provide the information to DCA necessary to comply with this requirement.

The bill would amend various parts of the statutory law to remove references to COAH, and to transfer rulemaking authority, to the extent necessary, from COAH to DCA and the New Jersey Housing and Mortgage Finance Agency (HMFA). The bill directs HMFA to update the Uniform Housing Affordability Controls within nine months following the effective date of the bill. With certain exceptions, for the purpose of affordable rental units, a 40-year minimum deed restriction would be required, and in the case of for-sale units, a 20-year minimum deed restriction would be required.

The bill would appropriate \$12 million to the program, and \$4 million to DCA, from the General Fund, for the purposes of carrying out their respective responsibilities for the fourth round of affordable housing obligations.

The bill would take effect immediately, and would apply to each new round of affordable housing obligations beginning after enactment of the bill.

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 4**

with committee amendments

# STATE OF NEW JERSEY

DATED: FEBRUARY 8, 2024

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 4.

As amended, this bill abolishes the Council on Affordable Housing (COAH), initially established by the "Fair Housing Act," and establishes a process to enable a municipality to determine its own present and prospective fair share affordable housing obligation based on the formulas established in the bill, as calculated the Department of Community Affairs (DCA). In advance of the fourth, 10-year round of affordable housing obligations, beginning on July 1, 2025, the bill requires DCA to complete these calculations, and provide for their publication, within the earlier of seven months of the effective date of the bill or December 1, 2024.

The bill permits a municipality to diverge from DCA's calculations in determining its obligation as long as it adheres to the methodology established by the bill. In advance of the fourth round, the bill requires a municipality to adopt its obligation by binding resolution, on or before January 31, 2025, in order to be assured of protection from exclusionary zoning litigation, as defined in the bill, through which a municipality may otherwise be compelled to permit development, when the fourth round begins. If the municipality meets this deadline, then the municipality's determination of its obligation would be established by default, beginning on March 1, 2025, as the municipality's obligation for the fourth round. However, if a challenge is filed with the "Affordable Housing Dispute Resolution Program" (program), established in the bill, on or before February 28, 2025, the program would be required to facilitate a resolution of the dispute prior to April 1, 2025. The presence of this ongoing dispute would not change the deadline for adoption of implementing ordinances and resolutions, but the implementing ordinances and resolutions adopted prior to the resolution of the dispute may be subject to changes to reflect the results of the dispute. As an alternative to adopting the implementing ordinances and resolutions by the March 15 deadline, a municipality involved in a continuing dispute over the issuance of compliance certification would be permitted to adopt a binding resolution by this date to commit to adopting the

implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments.

The bill requires a municipality to establish a "housing element" to encompass its obligation, and a fair share plan to meet its obligation, in advance of the fourth round, and proposes necessary changes to associated ordinances, on or before June 30, 2025, in order to be assured of protection from exclusionary zoning litigation.

A municipality would be required to submit its adopted fair share plan and housing element to the program. The bill permits an interested party to initiate a challenge to a municipal fair share plan and housing element, if submitted through the program on or before August 31, 2025. The program would facilitate communication over the challenge, and provide the municipality until December 31, 2025 to commit to revising its fair share plan and housing element in response to the challenge, or provide an explanation as to why it will not make all or the requested changes, or both. The bill requires municipalities to adopt associated changes to municipal ordinances on or before March 15, 2026. If a municipality fails to meet these deadlines, then the immunity of the municipality from exclusionary zoning litigation would end unless the program determines that the municipality's immunity shall be extended. If a municipality fails to materially adhere to any of these deadlines due to circumstances beyond the municipality's control, the bill directs the program to permit a grace period for the municipality to come into compliance with the timeline, the length of which, and effect of which on later deadlines, is to be determined on a case-by-case basis.

After providing immunity, the bill also authorizes the program to subsequently terminate immunity under certain circumstances if it becomes apparent that the municipality is not determined to come into constitutional compliance. The municipality would still be permitted to seek immunity from exclusionary zoning litigation by initiating an action in Superior Court. The deadlines for subsequent 10-year rounds of affordable housing obligations would conform to the dates established in the bill for the fourth round.

The bill provides that a municipality with compliance certification would only benefit from presumptive validity, not immunity, if an interested party is to challenge: (1) a municipality for failure to comply with the terms of its compliance certification; or (2) the program alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine. The program would be made a party to, and would be responsible for defending its issuance of compliance certification in, any litigation alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or implementing ordinances, are not in compliance with the Mount Laurel doctrine. A

municipality's determination of its fair share obligation, if determined to be in compliance with the bill, would have a presumption of validity in any challenge initiated through the program, before the issuance of compliance certification.

In any challenge to a municipality's determination of its affordable housing obligation, or to its fair share plan and housing element, the bill requires the program to apply an objective assessment standard to determine whether or not the municipality's obligation determination, or its fair share plan and housing element, fails to comply with the requirements of the bill. Further, the challenger would be required to provide the basis for its challenge based on applicable law, and the program would have the power to dismiss challenges that do not provide such a basis.

All parties would be required to bear their own fees and costs for proceedings within the program. A determination by the program as to municipal obligations or compliance certification would be considered a final decision, subject to appellate review.

The Administrative Director of the Courts would appoint an odd number of at least three and no more than seven members to serve as program leaders for the program established by the bill, consisting of retired and on recall judges, or other qualified experts. The members and employees of the program would be considered State officers and employees for the purposes of the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.). The Administrative Director of the Courts would also establish procedures for the purpose of efficiently resolving circumstances in which the program is unable to address a dispute over compliance certification within the time limitations established in the bill. As a part of these procedures, in order to facilitate an appropriate level of localized control of affordable housing decisions, for each vicinage, the bill directs the Chief Justice of the Supreme Court to designate a Superior Court judge who sits within the vicinage, or a retired judge who, during his or her tenure as a judge, served within the vicinage, to serve as county level housing judge to resolve disputes over the compliance, of fair share plans and housing elements of municipalities within their county, with the "Fair Housing Act," when those disputes are not be resolved within the deadlines established in the bill. The Administrative Director of the Courts would adopt and apply a Code of Ethics for the program and county level housing judges modeled on the Code of Judicial Conduct of the American Bar Association, adopted by the State Supreme Court, and may establish additional more restrictive ethical standards in order to meet the specific needs of the program and of county level housing judges.

Each municipality's determination of its fair share obligation would be made through the guidance of preliminary calculations made by DCA. No later than August 1 of the year prior to the year when a new round of housing obligations begins, or, for the fourth round,

within seven months of the effective date of the bill or December 1, 2024, whichever is earlier, the bill requires DCA to calculate regional need and municipal present and prospective obligations in accordance with formulas established in the bill. DCA's calculations would be made publicly available, and provided to each municipality for use in determining their present and prospective obligations.

Municipal fair share obligations would be determined by applying the methods provided in the bill, along with the methods used by the Superior Court for the third round, to the extent that applicable methodologies are not explicitly articulated in the bill. Municipal present need obligations would be determined by estimating the existing deficient housing currently occupied by low- and moderate-income households within the municipality.

Regional prospective need would next be determined, upon which to base the municipal obligation, by estimating the regional growth of low- and moderate-income households during the housing round at issue. The bill simplifies the regional need estimation from the processes used in previous rounds in order to ease the administrative burden that has been associated with this process. First, projected household change for a 10-year round in a region would be estimated by establishing the household change experienced in the region between the most recent federal decennial census, the second-most recent federal decennial census. Although this relies on historical data, recent household change in a region is relevant to estimating future household change and associated housing need. This household change would be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address population change in the region, thereby determining the regional prospective need for the 10-year round. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective would be zero.

After determining regional prospective need, each municipality's fair share prospective obligation of that regional prospective need would be determined. To do this, DCA would first determine whether a municipality is a qualified urban aid municipality, and if so, the municipality would not have a prospective need obligation.

If the municipality is not a qualified urban aid municipality, three factors necessary for the prospective fair share determination would be calculated. First, the equalized nonresidential valuation factor, representing the municipality's share of the regional change in the value of nonresidential property, would be calculated. In prior rounds, this calculation, concerning nonresidential (commercial and industrial) property values, has been adopted as a representation of a municipality's employment potential. Data available from the Division of Local Government Services in DCA would be used for this calculation. Next, an income capacity factor would be determined,

using a formula comparable to one used in prior rounds to estimate the municipality's ability to absorb low- and moderate-income households. The municipality's land capacity factor would then be determined, representing the municipality's relative share of developable land, available to accommodate development, using data made available by the Department of Environmental Protection or the Division of Taxation in the Department of Treasury. The average of these three factors would be determined and multiplied by the regional prospective need to determine the municipality's gross prospective need.

Finally, the bill requires, where appropriate, adjustments for secondary sources of housing supply and demand by first calculating demolitions of low- and moderate-income housing, and housing creation through residential conversions. To do this, a municipality's share of conversions would be subtracted from the sum of each municipality's allocated share of gross prospective need and demolitions of low- and moderate-income housing. After applying these secondary sources, as appropriate, the municipality's prospective fair share obligation for the 10-year round would be established.

A municipality would be permitted to make adjustments for a lack of available land resources as part of the determination of a municipality's fair share of affordable housing when, for example certain municipal lands are devoted for conservation purposes. However, the bill requires a municipality that receives such a vacant land adjustment to its fair share obligation to identify parcels for redevelopment to address at least 25 percent of the prospective need obligation that has been adjusted, and adopt zoning that allows for the adjusted obligation, or demonstrate why this is not possible.

A municipality would ultimately be permitted to reduce its prospective need if necessary to prevent establishing a prospective need obligation that exceeds 1,000 units in total or 20 percent of the estimated occupied housing stock at the beginning of the 10-year round, whichever limitation results in a lower number.

In response to the growth in population of senior citizens in the State, the bill changes the limit on the percentage of a municipality's prospective affordable housing obligation that may be satisfied through the creation of age-restricted housing to 30 percent of the units in a municipality's fair share plan, exclusive of any bonus credits. However, the bill requires that a municipality is required to satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families with children. The bill amends existing statutory language to ensure that affordable housing is constructed that is accessible to persons with disabilities.

The bill permits a municipality to be credited for as much as 10 percent of its affordable housing obligation through transitional



housing, and defines "transitional housing" as temporary housing, including but not limited to, single room occupancy housing or shared living and supportive living arrangements, that provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing.

The bill establishes limitations on the use of municipal affordable housing trust fund moneys for administrative costs, attorney fees, court costs to obtain immunity from exclusionary zoning litigation, to contest the municipality's fair share obligation, or use of the trust fund moneys while a municipality does not have immunity from exclusionary zoning litigation. The bill authorizes a municipality to expend a portion of its affordable housing trust fund on actions and efforts reasonably related to, or necessary for, certain processes of the program, as provided in the bill. The bill requires each municipality authorized to retain and expend non-residential development fees to periodically provide DCA with an accounting of all such fees that have been collected and expended.

The bill prohibits a municipality from receiving bonus credit for any particular type of low- or moderate-income housing, unless authority to obtain bonus credit is expressly provided by the "Fair Housing Act." The bill expressly prohibits a municipality from receiving more than one type of bonus credit for any unit, or from satisfying more than 25 percent of its prospective need obligation through the use of bonus credits. The bill expressly authorizes bonus credits in the amounts provided in the bill for: (1) housing for individuals with special needs or permanent supportive housing; (2) ownership units created in partnership sponsorship with a non-profit housing developer; (3) housing located in a Garden State Growth Zone or certain transit-oriented locations; (4) certain age-restricted housing units; (5) family housing with at least three bedrooms above the minimum number required by the bedroom distribution; (6) housing constructed on certain land previously used for retail, office, or commercial space; (7) certain existing rental housing for which affordability controls are extended through municipal contributions; (8) certain 100 percent affordable developments built through municipal contributions of real property or funding; (9) certain housing for very low-income households; and (10) certain transformation of existing market rate units to affordable housing. The bill also clarifies that all parties would be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms previously adopted by COAH unless those regulations are contradicted by statute, including but not limited to this bill, or binding court decisions.

The bill requires DCA to maintain certain affordable housing-related information on its website, including: (1) the start and expiration dates of deed restrictions; (2) residential and non-residential development fees collected and expended, including purposes and

amounts of such expenditures; and (3) the current balance in the municipality's affordable housing trust funds. The bill also directs municipalities to provide the information to DCA necessary to comply with this requirement.

The bill amends various parts of the statutory law to remove references to COAH, and to transfer rulemaking authority, to the extent necessary, from COAH to DCA and the New Jersey Housing and Mortgage Finance Agency (HMFA). The bill directs HMFA to update the Uniform Housing Affordability Controls (UHAC) within nine months following the effective date of the bill. With certain exceptions, for the purpose of newly created affordable rental units, a 30-year minimum deed restriction would be required, and in the case of for-sale units, a 20-year minimum deed restriction would be required. For housing units for which affordability controls are extended for a new term of affordability: a 20-year minimum deed restriction would be required if the unit was initially created before October 1, 2001; and a 30-year minimum deed restriction would be required if the unit was initially created on or following that date.

The bill appropriates \$12 million to the program, and \$4 million to DCA, from the General Fund, for the purposes of carrying out their respective responsibilities for the fourth round of affordable housing obligations.

The bill would take effect immediately, and would apply to each new round of affordable housing obligations beginning after enactment of the bill.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- require DCA to submit its report on the calculations of regional need and municipal obligations for the fourth round, within seven months following the effective date of the bill or December 1, 2024, whichever is earlier, instead of August 1, 2024;
- require that the Administrative Director of the Courts, instead of the Chief Justice of the Supreme Court: update the assignment of designated Mount Laurel judges within 60, instead of 40, days of the effective date of the bill, to indicate which current or retired and on recall judges of the Superior Court are to serve as members; take certain factors into consideration when making appointments; designate a member of the program to serve as chair, and make new appointments to the program as needs arise;
- expressly provide, in the findings and declarations of the bill, that the "Fair Housing Act," as amended and supplemented by the bill, is intended to implement the Mount Laurel doctrine, and that municipalities in compliance with the "Fair Housing

Act" would also be considered compliant with the Mount Laurel doctrine;

- change the limit on the percentage of a municipality's prospective affordable housing obligation that may be satisfied through the creation of age-restricted housing from 25 to 30 percent of the units in a municipality's fair share plan;
- revise language to clarify that, if a municipality misses certain deadlines required by the program, existing protections from exclusionary zoning litigation would not be impacted immediately, but may only be impacted at the end of the third round of affordable housing obligations;
- provide that the immunity given to a municipality with compliance certification protects the municipality from "exclusionary zoning litigation," as defined in the bill, instead of only protecting against a builder's remedy;
- qualify that a municipality with compliance certification would only benefit from presumptive validity, not immunity, if an interested party is to challenge: (1) a municipality for failure to comply with the terms of its compliance certification; or (2) the program alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine;
- provide that the program would be made a party to, and would be responsible for defending its issuance of compliance certification in, any litigation alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are not in compliance with the Mount Laurel doctrine;
- provide that a municipality's determination of its fair share obligation, if determined to be in compliance with the bill, would have a presumption of validity in any challenge initiated through the program, before the issuance of compliance certification;
- clarify that, in reviewing an unchallenged fair share plan and housing element, the program would limit the analysis to determining whether it enables the municipality to satisfy the fair share obligation, applies compliant mechanisms, meets the threshold requirements for rental and family units, does not exceed limits on other unit or category types, and is compliant with the "Fair Housing Act," and Mount Laurel doctrine;
- provide; (1) that the presence of an ongoing dispute over compliance certification would not change the deadline for a municipality to adopt ordinances and resolutions to implement its fair share plan and housing element, but the implementing

ordinances and resolutions adopted prior to the dispute resolution may be subject to changes to reflect the results of the dispute; and (2) that, as an alternative to adopting the implementing ordinances and resolutions by the deadline, a municipality would be permitted to adopt a binding resolution by March 15, 2026 to commit to adopting the implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments;

- provide that, if a municipality seeks a realistic opportunity review at the midpoint of a 10-year round, the municipality may, but would not be required to, propose one or more alternative sites with accompanying development plans that provide a realistic opportunity for the same number of affordable units;
- provide that, in determining a municipality's land capacity factor, developable land would be estimated, as opposed to "developable and redevelopable" land;
- provide that a municipality would not be permitted to apply bonus credits for age-restricted housing to more than 10 percent of the units of age-restricted housing constructed in the municipality that count towards the municipality's affordable housing obligation;
- provide that the bonus credit for certain family housing with at least three bedrooms would be calculated by taking into account the full municipal fair share plan and housing element, and the number of units with at least three bedrooms required for projects satisfying the minimum 50 percent family housing requirements;
- provide that for bonus credit authorized by the bill for certain 100 percent affordable developments built through municipal contributions of real property or funding, the municipality would obtain one full bonus credit if the contribution either consists of real property donations, or amounts to no less than three percent of the project cost;
- specify that, to obtain bonus credit for certain housing for very low-income households provided above the 13 percent of units required to be reserved for very low-income households, the municipality would not be required to provide that a specific percentage of the units in any specific project be reserved as very low-income housing, and the 13 percent level, for the purpose of bonus credits, would be calculated against the full prospective need obligation;
- provide that, with certain conditions, a municipality would receive one bonus credit for certain transformation of existing market rate units to affordable housing;

- revise the minimum deed restriction requirement for newly created low- and moderate-income rental units from 40 years to 30 years;
- for housing units for which affordability controls are extended for a new term of affordability: (1) a 20-year minimum deed restriction would be required if the unit was initially created before October 1, 2001 (the date of UHAC adoption); and (2) a 30-year minimum deed restriction would be required if the unit was initially created on or following that date;
- revise a requirement for each municipality authorized to retain and expend non-residential development fees to provide DCA with an accounting of all such fees that have been collected and expended, to allow the municipality 180 days, instead of 90 days, following enactment of the bill, to provide this information;
- revise a requirement for municipalities to provide certain information to DCA on affordable housing construction in its boundaries, to allow the municipality 180 days, instead of 90 days, following enactment of the bill, to provide this information;
- make other limited, clarifying, and technical changes.

FISCAL IMPACT:

The fiscal information for this bill is currently unavailable.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## **ASSEMBLY, No. 4**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 11, 2024

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 4 (1R).

As amended, this bill abolishes the Council on Affordable Housing (COAH), initially established by the "Fair Housing Act," and establishes a process to enable a municipality to determine its own present and prospective fair share affordable housing obligation based on the formulas established in the bill, as calculated the Department of Community Affairs (DCA). In advance of the fourth, 10-year round of affordable housing obligations, beginning on July 1, 2025, the bill requires DCA to complete these calculations, and provide for their publication, within the earlier of seven months of the effective date of the bill or December 1, 2024.

The bill permits a municipality to diverge from DCA's calculations in determining its obligation as long as it adheres to the methodology established by the bill. In advance of the fourth round, the bill requires a municipality to adopt its obligation by binding resolution, on or before January 31, 2025, in order to be assured of protection from exclusionary zoning litigation, as defined in the bill, through which a municipality may otherwise be compelled to permit development, when the fourth round begins. If the municipality meets this deadline, then the municipality's determination of its obligation would be established by default, beginning on March 1, 2025, as the municipality's obligation for the fourth round. However, if a challenge is filed with the "Affordable Housing Dispute Resolution Program" (program), established in the bill, on or before February 28, 2025, the program would be required to facilitate a resolution of the dispute prior to April 1, 2025. The presence of this ongoing dispute would not change the deadline for adoption of implementing ordinances and resolutions, but the implementing ordinances and resolutions adopted prior to the resolution of the dispute may be subject to changes to reflect the results of the dispute. As an alternative to adopting all necessary implementing ordinances and resolutions by the March 15 deadline, a municipality involved in a continuing dispute over the issuance of compliance certification would

be permitted to adopt a binding resolution by this date to commit to adopting the implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments.

The bill requires a municipality to establish a "housing element" to encompass its obligation, and a fair share plan to meet its obligation, in advance of the fourth round, and proposes necessary changes to associated ordinances, on or before June 30, 2025, in order to be assured of protection from exclusionary zoning litigation.

A municipality would be required to submit its adopted fair share plan and housing element to the program. The bill permits an interested party to initiate a challenge to a municipal fair share plan and housing element, if submitted through the program on or before August 31, 2025. The program would facilitate communication over the challenge, and provide the municipality until December 31, 2025 to commit to revising its fair share plan and housing element in response to the challenge, or provide an explanation as to why it will not make all or the requested changes, or both. The bill requires municipalities to adopt associated changes to municipal ordinances on or before March 15, 2026. If a municipality fails to meet these deadlines, then the immunity of the municipality from exclusionary zoning litigation would end unless the program determines that the municipality's immunity shall be extended. If a municipality fails to materially adhere to any of these deadlines due to circumstances beyond the municipality's control, the bill directs the program to permit a grace period for the municipality to come into compliance with the timeline, the length of which, and effect of which on later deadlines, is to be determined on a case-by-case basis.

After providing immunity, the bill also authorizes the program to subsequently terminate immunity under certain circumstances if it becomes apparent that the municipality is not determined to come into constitutional compliance. The municipality would still be permitted to seek immunity from exclusionary zoning litigation by initiating an action in Superior Court. The deadlines for subsequent 10-year rounds of affordable housing obligations would conform to the dates established in the bill for the fourth round.

The bill provides that a municipality with compliance certification would only benefit from presumptive validity, not immunity, if an interested party is to: (1) challenge a municipality for failure to comply with the terms of its compliance certification; or (2) bring a challenge before the program alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine. A municipality's determination of its fair share obligation, if determined to be in compliance with the bill, would have a presumption of validity in any challenge initiated through the program, before the issuance of compliance certification.

In any challenge to a municipality's determination of its affordable housing obligation, or to its fair share plan and housing element, the bill requires the program to apply an objective assessment standard to determine whether or not the municipality's obligation determination, or its fair share plan and housing element, fails to comply with the requirements of the bill. Further, the challenger would be required to provide the basis for its challenge based on applicable law, and the program would have the power to dismiss challenges that do not provide such a basis.

All parties would be required to bear their own fees and costs for proceedings within the program. A determination by the program as to municipal obligations or compliance certification would be considered a final decision, subject to appellate review.

The Administrative Director of the Courts would appoint an odd number of at least three and no more than seven members to serve as program leaders for the program established by the bill, consisting of retired and on recall judges, or other qualified experts. The members and employees of the program would be considered State officers and employees for the purposes of the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.). The Administrative Director of the Courts would also establish procedures for the purpose of efficiently resolving circumstances in which the program is unable to address a dispute over compliance certification within the time limitations established in the bill. As a part of these procedures, in order to facilitate an appropriate level of localized control of affordable housing decisions, for each vicinage, the bill directs the Chief Justice of the Supreme Court to designate a Superior Court judge who sits within the vicinage, or a retired judge who, during his or her tenure as a judge, served within the vicinage, to serve as county level housing judge to resolve disputes over the compliance, of fair share plans and housing elements of municipalities within their county, with the "Fair Housing Act," when those disputes are not be resolved within the deadlines established in the bill. The Administrative Director of the Courts would adopt and apply a Code of Ethics for the program and county level housing judges modeled on the Code of Judicial Conduct of the American Bar Association, adopted by the State Supreme Court, and may establish additional more restrictive ethical standards in order to meet the specific needs of the program and of county level housing judges.

Each municipality's determination of its fair share obligation would be made through the guidance of preliminary calculations made by DCA. No later than August 1 of the year prior to the year when a new round of housing obligations begins, or, for the fourth round, within seven months of the effective date of the bill or December 1, 2024, whichever is earlier, the bill requires DCA to calculate regional need and municipal present and prospective obligations in accordance with formulas established in the bill. DCA's calculations would be



made publicly available, and provided to each municipality for use in determining their present and prospective obligations.

Municipal fair share obligations would be determined by applying the methods provided in the bill, along with the methods used by the Superior Court for the third round, to the extent that applicable methodologies are not explicitly articulated in the bill. Municipal present need obligations would be determined by estimating the existing deficient housing currently occupied by low- and moderate-income households within the municipality.

Regional prospective need would next be determined, upon which to base the municipal obligation, by estimating the regional growth of low- and moderate-income households during the housing round at issue. The bill simplifies the regional need estimation from the processes used in previous rounds in order to ease the administrative burden that has been associated with this process. First, projected household change for a 10-year round in a region would be estimated by establishing the household change experienced in the region between the most recent federal decennial census, the second-most recent federal decennial census. Although this relies on historical data, recent household change in a region is relevant to estimating future household change and associated housing need. This household change would be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address population change in the region, thereby determining the regional prospective need for the 10-year round. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective would be zero.

After determining regional prospective need, each municipality's fair share prospective obligation of that regional prospective need would be determined. To do this, DCA would first determine whether a municipality is a qualified urban aid municipality, and if so, the municipality would not have a prospective need obligation.

If the municipality is not a qualified urban aid municipality, three factors necessary for the prospective fair share determination would be calculated. First, the equalized nonresidential valuation factor, representing the municipality's share of the regional change in the value of nonresidential property, would be calculated. In prior rounds, this calculation, concerning nonresidential (commercial and industrial) property values, has been adopted as a representation of a municipality's employment potential. Data available from the Division of Local Government Services in DCA would be used for this calculation. Next, an income capacity factor would be determined, using a formula comparable to one used in prior rounds to estimate the municipality's ability to absorb low- and moderate-income households. The municipality's land capacity factor would then be determined, representing the municipality's relative share of

developable land, available to accommodate development, using data made available by the Department of Environmental Protection or the Division of Taxation in the Department of Treasury. The average of these three factors would be determined and multiplied by the regional prospective need to determine the municipality's gross prospective need.

A municipality would be permitted to make adjustments for a lack of available land resources as part of the determination of a municipality's fair share of affordable housing when, for example certain municipal lands are devoted for conservation purposes. However, the bill requires a municipality that receives such a vacant land adjustment to its fair share obligation to identify parcels for redevelopment to address at least 25 percent of the prospective need obligation that has been adjusted, and adopt zoning that allows for the adjusted obligation, or demonstrate why this is not possible.

A municipality would ultimately be permitted to reduce its prospective need if necessary to prevent establishing a prospective need obligation that exceeds 1,000 units in total or 20 percent of the estimated occupied housing stock at the beginning of the 10-year round, whichever limitation results in a lower number.

In response to the growth in population of senior citizens in the State, the bill changes the limit on the percentage of a municipality's prospective affordable housing obligation that may be satisfied through the creation of age-restricted housing to 30 percent of the units in a municipality's fair share plan, exclusive of any bonus credits. However, the bill requires that a municipality is required to satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families with children. The bill amends existing statutory language to ensure that affordable housing is constructed that is accessible to persons with disabilities.

The bill permits a municipality to be credited for as much as 10 percent of its affordable housing obligation through transitional housing, and defines "transitional housing" as temporary housing, including but not limited to, single room occupancy housing or shared living and supportive living arrangements, that provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing.

The bill establishes limitations on the use of municipal affordable housing trust fund moneys for administrative costs, attorney fees, court costs to obtain immunity from exclusionary zoning litigation, to contest the municipality's fair share obligation, or use of the trust fund moneys while a municipality does not have immunity from exclusionary zoning litigation. The bill authorizes a municipality to expend a portion of its affordable housing trust fund on actions and efforts reasonably related to, or necessary for, certain processes of the

program, as provided in the bill. The bill requires each municipality authorized to retain and expend non-residential development fees to periodically provide DCA with an accounting of all such fees that have been collected and expended.

The bill prohibits a municipality from receiving bonus credit for any particular type of low- or moderate-income housing, unless authority to obtain bonus credit is expressly provided by the "Fair Housing Act." The bill expressly prohibits a municipality from receiving more than one type of bonus credit for any unit, or from satisfying more than 25 percent of its prospective need obligation through the use of bonus credits. The bill expressly authorizes bonus credits in the amounts provided in the bill for: (1) housing for individuals with special needs or permanent supportive housing; (2) ownership units created in partnership sponsorship with a non-profit housing developer; (3) housing located in a Garden State Growth Zone or certain transit-oriented locations; (4) certain age-restricted housing units; (5) family housing with at least three bedrooms above the minimum number required by the bedroom distribution; (6) housing constructed on certain land previously used for retail, office, or commercial space; (7) certain existing rental housing for which affordability controls are extended through municipal contributions; (8) certain 100 percent affordable developments built through municipal contributions of real property or funding; (9) certain housing for very low-income households; and (10) certain transformation of existing market rate units to affordable housing. The bill also clarifies that all parties would be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms previously adopted by COAH unless those regulations are contradicted by statute, including but not limited to this bill, or binding court decisions.

The bill requires DCA to maintain certain affordable housing-related information on its website, including: (1) the start and expiration dates of deed restrictions; (2) residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures; and (3) the current balance in the municipality's affordable housing trust funds. The bill also directs municipalities to provide the information to DCA necessary to comply with this requirement.

The bill amends various parts of the statutory law to remove references to COAH, and to transfer rulemaking authority, to the extent necessary, from COAH to DCA and the New Jersey Housing and Mortgage Finance Agency (HMFA). The bill directs HMFA to update the Uniform Housing Affordability Controls (UHAC) within nine months following the effective date of the bill. With certain exceptions, for the purpose of newly created affordable rental units, a 40-year minimum deed restriction would be required, and in the case of for-sale units, a 30-year minimum deed restriction would be

required. For housing units for which affordability controls are extended for a new term of affordability, a 30-year minimum deed restriction would be required, except that the bill permits certain flexibility on how the extensions are provided.

The bill appropriates \$12 million to the program, and \$4 million to DCA, from the General Fund, for the purposes of carrying out their respective responsibilities for the fourth round of affordable housing obligations.

As amended and reported by the committee, Assembly Bill No. 4 (1R) is identical to Senate Bill No. 50 (1R), which was also amended and reported by the committee on this date.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- clarify the intent of the bill in furthering consistency with the State Development and Redevelopment Plan;
- qualify that a municipality with compliance certification would only benefit from presumptive validity, not immunity, if an interested party is to bring a challenge before the program alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine;
- to assist in the calculation of regional need and municipal obligations, require the Highlands Water Protection and Planning Council shall provide a list of Highlands-conforming municipalities to DCA no less than five business days following the effective date;
- remove a requirement to provide that the program would be responsible for defending its issuance of compliance certification in certain court actions;
- require that the issuance of a compliance certification be accompanied by a written report providing for the basis of the certification's issuance;
- clarify the forms of data that may be used by DCA, and municipalities, in determining regional need and municipal obligations;
- for the purposes of determining the equalized nonresidential valuation factor as a part of calculating a municipality's obligation, provide that the beginning of the round of affordable housing obligations preceding the fourth round would be the beginning of the gap period in 1999;
- revise language referencing the Highlands Region for the purposes of adjusting a municipality's land capacity factor due to environmentally-sensitive lands, and add a definition of "Highlands-conforming municipality";

- remove a requirement to adjust for secondary sources of supply and demand in determining a municipal obligation;
- change the deadline for certain development fee reporting from January 15 to February 15 of each year;
- in a municipal housing element, require the inclusion of an analysis of consistency with the State Development and Redevelopment Plan, and require certain municipalities in the Highlands Region to include an analysis of the housing element's compliance with the Highlands Regional Master Plan;
- clarify that this bill does not require a municipality to fund infrastructure improvements for affordable housing projects beyond any commitments made in a fair share plan and housing element that has been provided with compliance certification;
- revise language concerning controls on the affordability of low- and moderate-income units, and provide that a 100 percent affordable rental property would have a right to extinguish a deed restriction regardless of the original length, beginning 30 years following the start of the restriction, provided certain actions are taken for the purpose of affordability preservation, and a new deed restriction of at least 30 years is provided;
- clarify that a municipality would be eligible to receive credits for units preserved for affordability at the time of preservation;
- provide that 100 percent affordable projects would be eligible for any affordable housing preservation program administered by the State, beginning 30 years following the start of the deed restriction;
- authorize HMFA to provide for certain exceptions to deed restriction minimums;
- adjust restrictions on expenditures of municipal development fee trust funds, and specify that the restrictions would not apply to qualified urban aid municipalities;
- require DCA to adopt rules and regulations to address the cost of the assessments and fees of planned real estate developments on low- and moderate-income housing units;
- make other clarifying and technical changes.

**FISCAL IMPACT:**

The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate impact to State costs associated with the role of the Department of Community Affairs to determine the regional need for affordable housing and the prospective fair share per municipality, as well as with certain responsibilities of the Affordable Housing Dispute Resolution Program related to any challenge of a municipality's obligation, housing element, or fair share plan. The bill

appropriates a total of \$16 million for: (1) the new program to function in the fourth round, which begins on July 1, 2025, and (2) the Department of Community Affairs to fulfill the requirements of the bill. The OLS finds that the State may experience cost avoidance in implementing the provisions of the bill, in lieu of the current Substantive Certification and Fair Share Housing Settlement Agreement regimes. The bill will also result in an indeterminate impact to municipal costs associated with the requirement that a municipality determine its affordable housing obligation and establish a housing element and fair share plan. The OLS notes that municipalities have incurred significant costs in the third round of affordable housing obligations through the court process that followed the Council on Affordable Housing becoming defunct.

**CORRECTED COPY**  
**LEGISLATIVE FISCAL ESTIMATE**  
[First Reprint]  
**ASSEMBLY, No. 4**  
**STATE OF NEW JERSEY**  
**221st LEGISLATURE**  
**SUMMARY**  
DATED: MARCH 6, 2024

**Synopsis:** Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.

**Type of Impact:** State and local cost impacts.

**Agencies Affected:** The Judiciary, Department of Community Affairs, New Jersey Housing and Mortgage Finance Agency, Municipalities.

**Office of Legislative Services Estimate**

| <b>Fiscal Impact</b>                 | <b><u>Fourth 10-Year Round</u></b><br><b><u>(Beginning in FY 2026)</u></b> | <b><u>Every 10-Year Round</u></b><br><b><u>Thereafter</u></b> |
|--------------------------------------|----------------------------------------------------------------------------|---------------------------------------------------------------|
| <b>State Cost Increase</b>           | \$16 million                                                               | Indeterminate                                                 |
| <b>Potential State Cost Decrease</b> | Indeterminate                                                              | Indeterminate                                                 |
| <b>Local Cost Impact</b>             | Indeterminate                                                              | Indeterminate                                                 |

- The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate impact to State costs associated with the role of the Department of Community Affairs to determine the regional need for affordable housing and the prospective fair share per municipality, as well as with certain responsibilities of the Affordable Housing Dispute Resolution Program related to any challenge of a municipality’s obligation, housing element, or fair share plan.
- The bill appropriates a total of \$16 million for: (1) the new program to function in the fourth round, which begins on July 1, 2025, and (2) the Department of Community Affairs to fulfill the requirements of the bill.
- The OLS finds that the State may experience cost avoidance in implementing the provisions of the bill, in lieu of the current Substantive Certification and Fair Share Housing Settlement Agreement regimes.

- The bill will also result in an indeterminate impact to municipal costs associated with the requirement that a municipality determine its affordable housing obligation and establish a housing element and fair share plan. The OLS notes that municipalities have incurred significant costs in the third round of affordable housing obligations through the court process that followed the Council on Affordable Housing becoming defunct.

## **BILL DESCRIPTION**

This bill abolishes the Council on Affordable Housing, initially established by the Fair Housing Act, and establishes a process to enable a municipality to determine its own present and prospective fair share affordable housing obligation based on the formulas established in the bill, as calculated by the Department of Community Affairs. In advance of the fourth, 10-year round of affordable housing obligations, beginning on July 1, 2025, the bill requires the department to complete these calculations, and provide for their publication, within the earlier of seven months of the effective date of the bill or December 1, 2024.

The bill permits a municipality to diverge from the Department of Community Affairs' calculations in determining its obligation as long as it adheres to the methodology established by the bill. In advance of the fourth round, the bill requires a municipality to adopt its obligation by binding resolution, on or before January 31, 2025, in order to be assured of protection from exclusionary zoning litigation through which a municipality may otherwise be compelled to permit development, when the fourth round begins. If the municipality meets this deadline, then the municipality's determination of its obligation would be established by default, beginning on March 1, 2025, as the municipality's obligation for the fourth round. However, if a challenge is filed with the Affordable Housing Dispute Resolution Program on or before February 28, 2025, the program would be required to facilitate a resolution of the dispute prior to April 1, 2025. The presence of this ongoing dispute would not change the deadline for adoption of implementing ordinances and resolutions, but the implementing ordinances and resolutions adopted prior to the resolution of the dispute may be subject to changes to reflect the results of the dispute. As an alternative to adopting the implementing ordinances and resolutions by the March 15 deadline, a municipality involved in a continuing dispute over the issuance of compliance certification would be permitted to adopt a binding resolution by this date to commit to adopting the implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments.

The bill requires a municipality to establish a "housing element" to encompass its obligation, and a fair share plan to meet its obligation, in advance of the fourth round, and proposes necessary changes to associated ordinances, on or before June 30, 2025, in order to be assured of protection from exclusionary zoning litigation.

A municipality would be required to submit its adopted fair share plan and housing element to the program. The bill permits an interested party to initiate a challenge to a municipal fair share plan and housing element, if submitted through the program on or before August 31, 2025. The program would facilitate communication over the challenge, and provide the municipality until December 31, 2025 to commit to revising its fair share plan and housing element in response to the challenge, or provide an explanation as to why it will not make all or the requested changes, or both. The bill requires municipalities to adopt associated changes to municipal ordinances on or before March 15, 2026. If a municipality fails to meet these deadlines, then the immunity of the municipality from exclusionary zoning litigation would end unless the program determines that the municipality's immunity shall be extended. If a municipality fails to materially adhere to any of these deadlines due to circumstances beyond the municipality's control, the bill directs the program to permit a grace period for the municipality to come into compliance with the timeline,



the length of which, and effect of which on later deadlines, is to be determined on a case-by-case basis.

After providing immunity, the bill also authorizes the program to subsequently terminate immunity under certain circumstances if it becomes apparent that the municipality is not determined to come into constitutional compliance. The municipality would still be permitted to seek immunity from exclusionary zoning litigation by initiating an action in Superior Court. The deadlines for subsequent 10-year rounds of affordable housing obligations would conform to the dates established in the bill for the fourth round.

The bill provides that a municipality with compliance certification would only benefit from presumptive validity, not immunity, if an interested party is to challenge: (1) a municipality for failure to comply with the terms of its compliance certification; or (2) the program alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine. The program would be made a party to, and would be responsible for defending its issuance of compliance certification in, any litigation alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or implementing ordinances, are not in compliance with the Mount Laurel doctrine. A municipality's determination of its fair share obligation, if determined to be in compliance with the bill, would have a presumption of validity in any challenge initiated through the program, before the issuance of compliance certification.

In any challenge to a municipality's determination of its affordable housing obligation, or to its fair share plan and housing element, the bill requires the program to apply an objective assessment standard to determine whether or not the municipality's obligation determination, or its fair share plan and housing element, fails to comply with the requirements of the bill. Further, the challenger would be required to provide the basis for its challenge based on applicable law, and the program would have the power to dismiss challenges that do not provide such a basis.

All parties would be required to bear their own fees and costs for proceedings within the program. A determination by the program as to municipal obligations or compliance certification would be considered a final decision, subject to appellate review.

The Administrative Director of the Courts would appoint an odd number of at least three and no more than seven members to serve as program leaders for the program established by the bill, consisting of retired and on recall judges, or other qualified experts. The Administrative Director of the Courts would also establish procedures for the purpose of efficiently resolving circumstances in which the program is unable to address a dispute over compliance certification within the time limitations established in the bill. As a part of these procedures, in order to facilitate an appropriate level of localized control of affordable housing decisions, for each vicinage, the bill directs the Chief Justice of the Supreme Court to designate a Superior Court judge who sits within the vicinage, or a retired judge who, during his or her tenure as a judge, served within the vicinage, to serve as county level housing judge to resolve disputes over the compliance, of fair share plans and housing elements of municipalities within their county, with the Fair Housing Act, when those disputes are not be resolved within the deadlines established in the bill.

Each municipality's determination of its fair share obligation would be made through the guidance of preliminary calculations made by the Department of Community Affairs. No later than August 1 of the year prior to the year when a new round of housing obligations begins, or, for the fourth round, within seven months of the effective date of the bill or December 1, 2024, whichever is earlier, the bill requires the department to calculate regional need and municipal present and prospective obligations in accordance with formulas established in the bill. The department's calculations would be made publicly available, and provided to each municipality for use in determining their present and prospective obligations.

Municipal fair share obligations would be determined by applying the methods provided in the bill, along with the methods used by the Superior Court for the third round, to the extent that applicable methodologies are not explicitly articulated in the bill. Municipal present need obligations would be determined by estimating the existing deficient housing currently occupied by low- and moderate- income households within the municipality.

Regional prospective need would next be determined, upon which to base the municipal obligation, by estimating the regional growth of low- and moderate-income households during the housing round at issue. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective would be zero.

After determining regional prospective need, each municipality's fair share prospective obligation of that regional prospective need would be determined. To do this, the Department of Community Affairs would first determine whether a municipality is a qualified urban aid municipality, and if so, the municipality would not have a prospective need obligation.

If the municipality is not a qualified urban aid municipality, three factors necessary for the prospective fair share determination would be calculated based on three factors, as specified in the bill. The average of these three factors would be determined and multiplied by the regional prospective need to determine the municipality's gross prospective need.

Finally, the bill requires, where appropriate, adjustments for secondary sources of housing supply and demand by first calculating demolitions of low- and moderate-income housing, and housing creation through residential conversions. After applying these secondary sources, as appropriate, the municipality's prospective fair share obligation for the 10-year round would be established.

The bill establishes limitations on the use of municipal affordable housing trust fund moneys for administrative costs, attorney fees, court costs to obtain immunity from exclusionary zoning litigation, to contest the municipality's fair share obligation, or use of the trust fund moneys while a municipality does not have immunity from exclusionary zoning litigation. The bill authorizes a municipality to expend a portion of its affordable housing trust fund on actions and efforts reasonably related to, or necessary for, certain processes of the program, as provided in the bill. The bill requires each municipality authorized to retain and expend non-residential development fees to periodically provide the Department of Community Affairs with an accounting of all such fees that have been collected and expended.

The bill requires the Department of Community Affairs to maintain certain affordable housing-related information on its website, including: (1) the start and expiration dates of deed restrictions; (2) residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures; and (3) the current balance in the municipality's affordable housing trust funds. The bill also directs municipalities to provide the information to the department necessary to comply with this requirement.

The bill amends various parts of the statutory law to remove references to the Council on Affordable Housing, and to transfer rulemaking authority, to the extent necessary, from the council to the Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency. The bill directs the agency to update the Uniform Housing Affordability Controls within nine months following the effective date of the bill.

The bill appropriates \$12 million to the program, and \$4 million to the Department of Community Affairs, from the General Fund, for the purposes of carrying out their respective responsibilities for the fourth round of affordable housing obligations.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

#### ***Background***

In 1975 and 1983, respectively, the New Jersey Supreme Court ruled that each municipality has a constitutional obligation to provide a realistic opportunity for the construction of their fair share of affordable housing and created the “builder’s remedy” suit. The purpose of the builder’s remedy is to enable builders to commence litigation against municipalities to defend the constitutional rights of low- and moderate-income households in return for having their properties rezoned for high density multi-family housing which contain an affordable housing element. In response to these Supreme Court decisions, lawmakers enacted the Fair Housing Act which provided an alternative administrative process for municipalities to participate in, to be overseen by the Council on Affordable Housing. One purpose of the council was to review a municipality’s affordable housing plan and provide “substantive certification” to those plans that would provide a realistic opportunity for the construction of affordable housing within the municipality. Any municipality that received substantive certification would be shielded from the costly court process of a builder’s remedy lawsuit. The council was also responsible for developing regulations and creating criteria related to each municipality’s affordable housing obligation. Using its rulemaking authority, the council was meant to determine and assign a municipality’s affordable housing obligation. Between 1986 and 1999, the council undertook two successful rounds of rulemaking to establish a formula meant to set each municipality’s affordable housing obligation, but failed to establish rules for the third round, which was intended to begin in 1999, but ultimately began in 2015 following a 16-year gap period.

Today, the Council on Affordable Housing has been effectively defunct through inaction in appointing members as required by the Fair Housing Act. Municipalities are currently required to go through the process created by the court and overseen by a court appointed special master to obtain the functional equivalent of Substantive Certification, and to be protected from builder’s remedy lawsuits and certain other exclusionary zoning lawsuits.

#### ***Impact***

The OLS concludes that the bill will result in increases to State costs associated with the role of the Department of Community Affairs to determine the regional need for affordable housing and the prospective fair share per municipality, as well as with certain responsibilities of the program related to any challenge of a municipality’s obligation, housing element, or fair share plan. The bill appropriates a total \$16 million for: (1) the new program to function in the fourth round, which begins on July 1, 2025, and (2) the Department of Community Affairs to fulfill the requirements of the bill. The bill will also result in an indeterminate impact to municipal costs associated with the requirement for a municipality to determine its affordable housing obligation and establish a housing element and fair share plan.

Under the bill, the Department of Community Affairs would be responsible for determining regional affordable housing need and for calculating the prospective fair share for each municipality using formulas prescribed by the bill. The bill’s regional need formula considers factors in a method similar to what was used by the courts in the third round of affordable housing

obligations. The department would be required to make these calculations in advance of each new 10-year round.

Municipalities would then be required to determine their own affordable housing obligation, using the Department of Community Affairs' fair share calculations and local factors, and establish a housing element to encompass their obligation and a fair share plan to meet the obligation with accompanying resolutions and ordinances, which documents would be required to be made publically available on the municipality's Internet website. Municipalities would be permitted to utilize monies from their respective Municipal Affordable Housing Trust Funds for the development of their obligation, housing element, and fair share plan. While municipalities are expected to incur costs to come into constitutional compliance based on the bill's amendatory nature of the current statutory process, the OLS notes that certain municipalities have incurred significant costs over lengthy periods of time through the process created by the court for the third round of affordable housing obligations. The OLS also notes that a municipality's affordable housing obligation can also be established through declaratory judgement or exclusionary zoning litigation. The OLS is unable to predict the number of municipalities that will establish their affordable housing obligation through the program versus litigation.

Municipalities would be protected from exclusionary zoning litigation, including builder's remedy lawsuits, if the required resolution and ordinances are adopted by the deadlines established by the bill. However, the program may remove exclusionary zoning litigation immunity in certain circumstances in which it is apparent that the municipality is not determined to come into constitutional compliance. Additionally, any party can bring a challenge to the program of a municipality's obligation, housing element, or fair share plan. The municipality would be required to participate in the resolution of any challenges and, in the event a housing element or fair share plan is challenged through the program, commit to revising its fair share plan and housing element to be in compliance with the changes requested in the challenge, or provide an explanation as to why it will not make all of the requested changes, or both. Municipalities would be required to bear the costs for their role in resolving disputes. Municipalities would be permitted to utilize monies from their Municipal Affordable Housing Trust Funds to resolve disputes under the Affordable Housing Dispute Resolution Program, but would not be permitted to utilize these monies for certain court costs that may arise outside of the program. The OLS is unable to predict the number or complexity of disputes that may need to be resolved for each municipality and is therefore unable to estimate the costs that may be incurred by municipalities as a result of disputes. Additionally, the OLS is unable to predict whether municipalities will lose their immunity to exclusionary zoning litigation due to noncompliance with the bill and is therefore unable to estimate any costs that may be incurred by a municipality due to participating in exclusionary zoning litigation.

Municipalities may also incur administrative costs associated with requirements to report to the Department of Community Affairs annually on any collection and expenditure of development fees as well as on number affordable of housing units actually constructed, construction starts, certificates of occupancy granted, the start and expiration dates of deed restrictions, and residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures, along with the current balance in the municipality's affordable housing trust funds. The department would then be required to make this information publically available on its Internet website.

The Administrative Director of the Courts would be required to appoint between three and seven members to the Affordable Housing Dispute Resolution Program. In the event a challenge is brought by an interested party, the program would be required to receive the challenge, and generally facilitate communication between the parties to assist the municipality and challenger in reaching a resolution. The program would also be required to apply an objective assessment of

the obligation, housing element, or fair share plan to determine whether the municipality is in compliance with the provisions of the bill. The program would be required to defend the issuance of a compliance certification in litigation that alleges a municipality's noncompliance with the Mount Laurel doctrine. Of the bill's \$16 million appropriation, \$12 million is intended for use by the program in the fourth round, which begins in 2025. The OLS is unable to predict the number or complexity of challenges sought to be resolved by the program and whether the \$12 million appropriation will be sufficient for the program's responsibilities in the fourth round. Therefore, the OLS is unable to estimate the amount that may need to be appropriated by the Legislature for future rounds.

If the program is unable to facilitate the resolution of a challenge, a superior court judge assigned to the applicable vicinage or retired superior court judge who, during the judge's tenure, served in the applicable vicinage, to be appointed by the Chief Justice of the Supreme Court, would be responsible for resolving the dispute, through procedures to be established by the Administrative Office of the Courts. The Administrative Office of the Courts would also be responsible for adopting a code of ethics for the program and county-level housing judges to be modeled upon the Code of Judicial Conduct of the American Bar Association, as amended and adopted by the Supreme Court of New Jersey.

Of the bill's \$16 million appropriation, \$4 million is intended to be used by the Department of Community Affairs for purposes of carrying out its responsibilities for the fourth round of affordable housing obligations. The OLS is unable to predict the extent to which the department may incur costs in the fourth and future rounds. The OLS is also unable to predict any potential cost avoidance that might be experienced by the State in implementing the provisions of the bill, in lieu of the current Substantive Certification and Fair Share Housing Settlement Agreement regimes.

The bill is also expected to result in cost shifting and increased administrative costs to the State to transfer responsibilities from the Council on Affordable Housing to the Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency, as well as for various rulemaking responsibilities required pursuant to the bill.

*Section: Local Government*  
*Analyst: Abigail Stoyer*  
*Associate Fiscal Analyst*  
*Approved: Thomas Koenig*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4

STATE OF NEW JERSEY

221st LEGISLATURE

DATED: MARCH 21, 2024

SUMMARY

- Synopsis:** Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.
- Type of Impact:** State and local cost impacts.
- Agencies Affected:** The Judiciary, Department of Community Affairs, New Jersey Housing and Mortgage Finance Agency, Highlands Water Protection and Planning Council, Municipalities.

Office of Legislative Services Estimate

| <b>Fiscal Impact</b>                 | <b><u>Fourth 10-Year Round</u></b><br><b><u>(Beginning in FY 2026)</u></b> | <b><u>Every 10-Year Round</u></b><br><b><u>Thereafter</u></b> |
|--------------------------------------|----------------------------------------------------------------------------|---------------------------------------------------------------|
| <b>State Cost Increase</b>           | \$16 million                                                               | Indeterminate                                                 |
| <b>Potential State Cost Decrease</b> | Indeterminate                                                              | Indeterminate                                                 |
| <b>Local Cost Impact</b>             | Indeterminate                                                              | Indeterminate                                                 |

- The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate impact to State costs associated with the role of the Department of Community Affairs to determine the regional need for affordable housing and the prospective fair share per municipality, as well as with certain responsibilities of the Affordable Housing Dispute Resolution Program related to any challenge of a municipality’s obligation, housing element, or fair share plan.
- The bill appropriates a total of \$16 million for: (1) the new program to function in the fourth round, which begins on July 1, 2025, and (2) the Department of Community Affairs to fulfill the requirements of the bill.
- The OLS finds that the State may experience cost avoidance in implementing the provisions of the bill, in lieu of the current Substantive Certification and Fair Share Housing Settlement Agreement regimes.

- The bill will also result in an indeterminate impact to municipal costs associated with the requirement that a municipality determine its affordable housing obligation and establish a housing element and fair share plan. The OLS notes that municipalities have incurred significant costs in the third round of affordable housing obligations through the court process that followed the Council on Affordable Housing becoming defunct.

## **BILL DESCRIPTION**

This bill abolishes the Council on Affordable Housing, initially established by the Fair Housing Act, and establishes a process to enable a municipality to determine its own present and prospective fair share affordable housing obligation based on the formulas established in the bill, as calculated the Department of Community Affairs. In advance of the fourth 10-year round of affordable housing obligations, beginning on July 1, 2025, the bill requires the department to complete these calculations, and provide for their publication, within the earlier of seven months of the effective date of the bill or December 1, 2024.

The bill permits a municipality to diverge from Department of Community Affairs' calculations in determining its obligation as long as it adheres to the methodology established by the bill. In advance of the fourth round, the bill requires a municipality to adopt its obligation by binding resolution, on or before January 31, 2025, in order to be assured of protection from exclusionary zoning litigation through which a municipality may otherwise be compelled to permit development, when the fourth round begins. If the municipality meets this deadline, then the municipality's determination of its obligation would be established by default, beginning on March 1, 2025, as the municipality's obligation for the fourth round. However, if a challenge is filed with the Affordable Housing Dispute Resolution Program, established in the bill, on or before February 28, 2025, the program would be required to facilitate a resolution of the dispute prior to April 1, 2025. The presence of this ongoing dispute would not change the deadline for adoption of implementing ordinances and resolutions, but the implementing ordinances and resolutions adopted prior to the resolution of the dispute may be subject to changes to reflect the results of the dispute. As an alternative to adopting all necessary implementing ordinances and resolutions by the March 15 deadline, a municipality involved in a continuing dispute over the issuance of compliance certification would be permitted to adopt a binding resolution by this date to commit to adopting the implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments.

The bill requires a municipality to establish a "housing element" to encompass its obligation, and a fair share plan to meet its obligation, in advance of the fourth round, and proposes necessary changes to associated ordinances, on or before June 30, 2025, in order to be assured of protection from exclusionary zoning litigation.

A municipality would be required to submit its adopted fair share plan and housing element to the program. The bill permits an interested party to initiate a challenge to a municipal fair share plan and housing element, if submitted through the program on or before August 31, 2025. The program would facilitate communication over the challenge, and provide the municipality until December 31, 2025 to commit to revising its fair share plan and housing element in response to the challenge, or provide an explanation as to why it will not make all or the requested changes, or both. The bill requires municipalities to adopt associated changes to municipal ordinances on or before March 15, 2026. If a municipality fails to meet these deadlines, then the immunity of the municipality from exclusionary zoning litigation would end unless the program determines that the municipality's immunity shall be extended. If a municipality fails to materially adhere to any of these deadlines due to circumstances beyond the municipality's control, the bill directs the

program to permit a grace period for the municipality to come into compliance with the timeline, the length of which, and effect of which on later deadlines, is to be determined on a case-by-case basis.

In any challenge to a municipality's determination of its affordable housing obligation, or to its fair share plan and housing element, the bill requires the program to apply an objective assessment standard to determine whether or not the municipality's obligation determination, or its fair share plan and housing element, fails to comply with the requirements of the bill. Further, the challenger would be required to provide the basis for its challenge based on applicable law, and the program would have the power to dismiss challenges that do not provide such a basis.

All parties would be required to bear their own fees and costs for proceedings within the program. A determination by the program as to municipal obligations or compliance certification would be considered a final decision, subject to appellate review.

The Administrative Director of the Courts would appoint an odd number of at least three and no more than seven members to serve as program leaders for the program established by the bill, consisting of retired and on recall judges, or other qualified experts. The members and employees of the program would be considered State officers and employees for the purposes of the New Jersey Conflicts of Interest Law, P.L.1971, c.182. The Administrative Director of the Courts would also establish procedures for the purpose of efficiently resolving circumstances in which the program is unable to address a dispute over compliance certification within the time limitations established in the bill. As a part of these procedures, in order to facilitate an appropriate level of localized control of affordable housing decisions, for each vicinage, the bill directs the Chief Justice of the Supreme Court to designate a Superior Court judge who sits within the vicinage, or a retired judge who, during his or her tenure as a judge, served within the vicinage, to serve as county level housing judge to resolve disputes over the compliance, of fair share plans and housing elements of municipalities within their county, with the Fair Housing Act, when those disputes are not be resolved within the deadlines established in the bill. The Administrative Director of the Courts would adopt and apply a Code of Ethics for the program and county level housing judges modeled on the Code of Judicial Conduct of the American Bar Association, adopted by the State Supreme Court, and may establish additional more restrictive ethical standards in order to meet the specific needs of the program and of county level housing judges.

Each municipality's determination of its fair share obligation would be made through the guidance of preliminary calculations made by the Department of Community Affairs. No later than August 1 of the year prior to the year when a new round of housing obligations begins, or, for the fourth round, within seven months of the effective date of the bill or December 1, 2024, whichever is earlier, the bill requires the department to calculate regional need and municipal present and prospective obligations in accordance with formulas established in the bill. The department's calculations would be made publicly available, and provided to each municipality for use in determining their present and prospective obligations.

Municipal fair share obligations would be determined by applying the methods provided in the bill, along with the methods used by the Superior Court for the third round, to the extent that applicable methodologies are not explicitly articulated in the bill. Municipal present need obligations would be determined by estimating the existing deficient housing currently occupied by low- and moderate- income households within the municipality.

Regional prospective need would next be determined, upon which to base the municipal obligation, by estimating the regional growth of low- and moderate-income households during the housing round at issue. If household change is zero or negative, the number of low- and moderate income homes needed to address low- and moderate-income household change in the region and the regional prospective would be zero.



After determining regional prospective need, each municipality's fair share prospective obligation of that regional prospective need would be determined. To do this, the Department of Community Affairs would first determine whether a municipality is a qualified urban aid municipality, and if so, the municipality would not have a prospective need obligation.

If the municipality is not a qualified urban aid municipality, three factors necessary for the prospective fair share determination would be calculated based on three factors, as specified in the bill. The average of these three factors would be determined and multiplied by the regional prospective need to determine the municipality's gross prospective need.

Finally, the bill requires, where appropriate, adjustments for secondary sources of housing supply and demand by first calculating demolitions of low- and moderate-income housing, and housing creation through residential conversions. After applying these secondary sources, as appropriate, the municipality's prospective fair share obligation for the 10-year round would be established.

The bill establishes limitations on the use of municipal affordable housing trust fund moneys for administrative costs, attorney fees, court costs to obtain immunity from exclusionary zoning litigation, to contest the municipality's fair share obligation, or use of the trust fund moneys while a municipality does not have immunity from exclusionary zoning litigation. The bill authorizes a municipality to expend a portion of its affordable housing trust fund on actions and efforts reasonably related to, or necessary for, certain processes of the program, as provided in the bill. The bill requires each municipality authorized to retain and expend non-residential development fees to periodically provide the Department of Community Affairs with an accounting of all such fees that have been collected and expended.

The bill requires the Department of Community Affairs to maintain certain affordable housing-related information on its website, including: (1) the start and expiration dates of deed restrictions; (2) residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures; and (3) the current balance in the municipality's affordable housing trust funds. The bill also directs municipalities to provide the information to the department necessary to comply with this requirement.

The bill appropriates \$12 million to the program, and \$4 million to the Department of Community Affairs, from the General Fund, for the purposes of carrying out their respective responsibilities for the fourth round of affordable housing obligations.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

#### ***Background***

In 1975 and 1983, respectively, the New Jersey Supreme Court ruled that each municipality has a constitutional obligation to provide a realistic opportunity for the construction of their fair share of affordable housing and created the "builder's remedy" suit. The purpose of the builder's remedy is to enable builders to commence litigation against municipalities to defend the constitutional rights of low- and moderate-income households in return for having their properties rezoned for high density multi-family housing which contain an affordable housing element. In response to these Supreme Court decisions, lawmakers enacted the Fair Housing Act which

provided an alternative administrative process for municipalities to participate in, to be overseen by the Council on Affordable Housing. One purpose of the council was to review a municipality's affordable housing plan and provide "substantive certification" to those plans that would provide a realistic opportunity for the construction of affordable housing within the municipality. Any municipality that received substantive certification would be shielded from the costly court process of a builder's remedy lawsuit. The council was also responsible for developing regulations and creating criteria related to each municipality's affordable housing obligation. Using its rulemaking authority, the council was meant to determine and assign a municipality's affordable housing obligation. Between 1986 and 1999, the council undertook two successful rounds of rulemaking to establish a formula meant to set each municipality's affordable housing obligation, but failed to establish rules for the third round, which was intended to begin in 1999, but ultimately began in 2015 following a 16-year gap period.

Today, the Council on Affordable Housing has been effectively defunct through inaction in appointing members as required by the Fair Housing Act. Municipalities are currently required to go through the process created by the court and overseen by a court appointed special master to obtain the functional equivalent of Substantive Certification, and to be protected from builder's remedy lawsuits and certain other exclusionary zoning lawsuits.

### *Impact*

The OLS concludes that the bill will result in increases to State costs associated with the role of the Department of Community Affairs to determine the regional need for affordable housing and the prospective fair share per municipality, as well as with certain responsibilities of the program related to any challenge of a municipality's obligation, housing element, or fair share plan. The bill appropriates a total \$16 million for: (1) the new program to function in the fourth round, which begins on July 1, 2025, and (2) the Department of Community Affairs to fulfill the requirements of the bill. The bill will also result in an indeterminate impact to municipal costs associated with the requirement for a municipality to determine its affordable housing obligation and establish a housing element and fair share plan.

Under the bill, the Department of Community Affairs would be responsible for determining regional affordable housing need and for calculating the prospective fair share for each municipality using formulas prescribed by the bill. The bill's regional need formula considers factors in a method similar to what was used by the courts in the third round of affordable housing obligations. The department would be required to make these calculations in advance of each new 10-year round. The calculations of municipal obligations would be informed by information provided by the Highlands Water Protection and Planning Council regarding Highlands-conforming municipalities.

Municipalities would then be required to determine their own affordable housing obligation, using the Department of Community Affairs' fair share calculations and local factors, and establish a housing element to encompass their obligation and a fair share plan to meet the obligation with accompanying resolutions and ordinances, which documents would be required to be made publicly available on the municipality's Internet website. Municipalities would be permitted to utilize monies from their respective Municipal Affordable Housing Trust Funds for the development of their obligation, housing element, and fair share plan. While municipalities are expected to incur costs to come into constitutional compliance based on the bill's amendatory nature of the current statutory process, the OLS notes that certain municipalities have incurred significant costs over lengthy periods of time through the process created by the court for the third round of affordable housing obligations. The OLS also notes that a municipality's affordable housing obligation can also be established through declaratory judgement or exclusionary zoning

litigation. The OLS is unable to predict the number of municipalities that will establish their affordable housing obligation through the program versus litigation.

Municipalities would be protected from exclusionary zoning litigation, including builder's remedy lawsuits, if the required resolution and ordinances are adopted by the deadlines established by the bill. However, the program may remove exclusionary zoning litigation immunity in certain circumstances in which it is apparent that the municipality is not determined to come into constitutional compliance. Additionally, any party can bring a challenge to the program of a municipality's obligation, housing element, or fair share plan. The municipality would be required to participate in the resolution of any challenges and, in the event a housing element or fair share plan is challenged through the program, commit to revising its fair share plan and housing element to be in compliance with the changes requested in the challenge, or provide an explanation as to why it will not make all of the requested changes, or both. Municipalities would be required to bear the costs for their role in resolving disputes. Municipalities would be permitted to utilize monies from their Municipal Affordable Housing Trust Funds to resolve disputes under the Affordable Housing Dispute Resolution Program, but would not be permitted to utilize these monies for certain court costs that may arise outside of the program. The OLS is unable to predict the number or complexity of disputes that may need to be resolved for each municipality and is therefore unable to estimate the costs that may be incurred by municipalities as a result of disputes. Additionally, the OLS is unable to predict whether municipalities will lose their immunity to exclusionary zoning litigation due to noncompliance with the bill and is therefore unable to estimate any costs that may be incurred by a municipality due to participating in exclusionary zoning litigation.

Municipalities may also incur administrative costs associated with requirements to report to the Department of Community Affairs annually on any collection and expenditure of development fees as well as on number affordable of housing units actually constructed, construction starts, certificates of occupancy granted, the start and expiration dates of deed restrictions, and residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures, along with the current balance in the municipality's affordable housing trust funds. The department would then be required to make this information publicly available on its Internet website.

The Administrative Director of the Courts would be required to appoint between three and seven members to the Affordable Housing Dispute Resolution Program. In the event a challenge is brought by an interested party, the program would be required to receive the challenge, and generally facilitate communication between the parties to assist the municipality and challenger in reaching a resolution. The program would also be required to apply an objective assessment of the obligation, housing element, or fair share plan to determine whether the municipality is in compliance with the provisions of the bill. Of the bill's \$16 million appropriation, \$12 million is intended for use by the program in the fourth round, which begins in 2025. The OLS is unable to predict the number or complexity of challenges sought to be resolved by the program and whether the \$12 million appropriation will be sufficient for the program's responsibilities in the fourth round. Therefore, the OLS is unable to estimate the amount that may need to be appropriated by the Legislature for future rounds.

If the program is unable to facilitate the resolution of a challenge, a superior court judge assigned to the applicable vicinage or retired superior court judge who, during the judge's tenure, served in the applicable vicinage, to be appointed by the Chief Justice of the Supreme Court, would be responsible for resolving the dispute, through procedures to be established by the Administrative Office of the Courts. The entity that issues a municipality a compliance certification, through the program or through judgement of repose, would be required to include a written report containing the basis for issuing the compliance certification. The Administrative

Office of the Courts would also be responsible for adopting a code of ethics for the program and county-level housing judges to be modeled upon the Code of Judicial Conduct of the American Bar Association, as amended and adopted by the Supreme Court of New Jersey.

Of the bill's \$16 million appropriation, \$4 million is intended to be used by the Department of Community Affairs for purposes of carrying out its responsibilities for the fourth round of affordable housing obligations. The OLS is unable to predict the extent to which the department may incur costs in the fourth and future rounds. The OLS is also unable to predict any potential cost avoidance that might be experienced by the State in implementing the provisions of the bill, in lieu of the current Substantive Certification and Fair Share Housing Settlement Agreement regimes.

The bill is also expected to result in cost shifting and increased administrative costs to the State to transfer responsibilities from the Council on Affordable Housing to the Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency, as well as for various rulemaking responsibilities required pursuant to the bill.

*Section: Local Government*  
*Analyst: Abigail Stoyer*  
*Associate Fiscal Analyst*  
*Approved: Thomas Koenig*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

**SENATE, No. 50**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED JANUARY 9, 2024

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Somerset and Union)**

**Co-Sponsored by:**

**Senators Beach and Burgess**

**SYNOPSIS**

Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/25/2024)**

1   **AN ACT** concerning affordable housing, including administration  
2       and municipal obligations, amending, supplementing, and  
3       repealing various parts of the statutory law, and making an  
4       appropriation.

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

8  
9       1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to  
10      read as follows:

11      2. The Legislature finds that:

12      a. The New Jersey Supreme Court, through its rulings in  
13      **【South】** Southern Burlington County NAACP v. Mount Laurel, 67  
14      N.J. 151 (1975) and **【South】** Southern Burlington County NAACP  
15      v. Mount Laurel, 92 N.J. 158 (1983), has determined that every  
16      municipality in a growth area has a constitutional obligation to  
17      provide through its land use regulations a realistic opportunity for a  
18      fair share of its region's present and prospective needs for housing  
19      for **【low and moderate income】** low- and moderate-income  
20      families.

21      b. In the second Mount Laurel ruling, the Supreme Court stated  
22      that the determination of the methods for satisfying this  
23      constitutional obligation "is better left to the Legislature," that the  
24      court has "always preferred legislative to judicial action in their  
25      field," and that the judicial role in upholding the Mount Laurel  
26      doctrine "could decrease as a result of legislative and executive  
27      action."

28      c. The interest of all citizens, including **【low and moderate**  
29      **income】** low- and moderate-income families in need of affordable  
30      housing, and the needs of the workforce, would be best served by a  
31      comprehensive planning and implementation response to this  
32      constitutional obligation.

33      d. There are a number of essential ingredients to a  
34      comprehensive planning and implementation response, including  
35      the establishment of reasonable fair share housing guidelines and  
36      standards, the initial determination of fair share by officials at the  
37      municipal level and the preparation of a municipal housing element,  
38      State review of the local fair share study and housing element, and  
39      continuous State funding for **【low and moderate income】** low- and  
40      moderate-income housing to replace the federal housing subsidy  
41      programs which have been almost completely eliminated.

42      e. The State can maximize the number of **【low and moderate**  
43      **income】** low- and moderate-income units provided in New Jersey  
44      by allowing its municipalities to adopt appropriate phasing  
45      schedules for meeting their fair share, so long as the municipalities

**EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is**  
      **not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 permit a timely achievement of an appropriate fair share of the  
2 regional need for **low and moderate income** low- and moderate-  
3 income housing as required by the Mt. Laurel I and II opinions and  
4 other relevant court decisions.

5 f. The State can also maximize the number of **low and**  
6 **moderate income** low- and moderate-income units by creating new  
7 affordable housing and by rehabilitating existing, but substandard,  
8 housing in the State. Because the Legislature has determined,  
9 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.), that it is no  
10 longer appropriate or in harmony with the Mount Laurel doctrine to  
11 permit the transfer of the fair share obligations among  
12 municipalities within a housing region, it is necessary and  
13 appropriate to create a new program to create new affordable  
14 housing and to foster the rehabilitation of existing, but substandard,  
15 housing.

16 g. Since the urban areas are vitally important to the State,  
17 construction, conversion and rehabilitation of housing in our urban  
18 centers should be encouraged. However, the provision of housing  
19 in urban areas must be balanced with the need to provide housing  
20 throughout the State for the free mobility of citizens.

21 h. The Supreme Court of New Jersey in its Mount Laurel  
22 decisions demands that municipal land use regulations affirmatively  
23 afford a **reasonable** realistic opportunity for a variety and choice  
24 of housing including low and moderate cost housing, to meet the  
25 needs of people desiring to live there. While provision for the  
26 actual construction of that housing by municipalities is not required,  
27 they are encouraged but not mandated to expend their own  
28 resources to help provide **low and moderate income** low- and  
29 moderate-income housing.

30 i. **Certain amendments to the enabling act of the Council on**  
31 **Affordable Housing are necessary to provide guidance to the**  
32 **council to ensure consistency with the legislative intent, while at the**  
33 **same time clarifying the limitations of the council in its rulemaking.**  
34 **Although the court has remarked in several decisions that the**  
35 **Legislature has granted the council considerable deference in its**  
36 **rulemaking, the Legislature retains its power and obligation to**  
37 **clarify and amend the enabling act from which the council derives**  
38 **its rulemaking power, from time to time, in order to better guide the**  
39 **council.】 (Deleted by amendment, P.L. , c. ) (pending before the**  
40 **Legislature as this bill)**

41 j. The Legislature finds that the use of regional contribution  
42 agreements, which permits municipalities to transfer a certain  
43 portion of their fair share housing obligation outside of the  
44 municipal borders, should no longer be utilized as a mechanism for  
45 the creation of affordable housing **by the council**.

46 k. The Legislature finds that the role of the Council on  
47 Affordable Housing, as intended in the original enactment of the

1 "Fair Housing Act," has not developed in practice as was intended  
2 in the legislation.

3 l. The council's inability to function ultimately led the Supreme  
4 Court in 2015 to order the temporary dissolution of the requirement  
5 that administrative remedies be exhausted prior to resolving  
6 affordable housing disputes before the court, and allowed the courts  
7 to resume their role as the forum of first resort for evaluating  
8 municipal compliance with Mount Laurel obligations pursuant to  
9 guidelines laid out by the Supreme Court's order.

10 m. The Legislature finds that the council's inability to function  
11 led to a "gap period" that frustrated the intent of the Legislature and  
12 compliance with constitutional and statutory obligations, and that it  
13 is necessary to establish definitive deadlines for municipal action  
14 and any challenges to those actions to avoid such a "gap period"  
15 from being repeated in the future.

16 n. The Legislature finds that although the court-led system that  
17 has developed since 2015 has resulted in a significant number of  
18 settlement agreements and increased production of affordable  
19 housing, the system could operate more expeditiously to produce  
20 affordable housing, and at a lower cost to all parties, if appropriate  
21 standards are established by the Legislature to be applied  
22 throughout the State including more clarity on calculation on fair  
23 share affordable housing obligations using transparent and  
24 established data sources to eliminate the lengthy and costly  
25 processes of determining those obligations that have characterized  
26 both the Council on Affordable Housing and court-led system.

27 o. The Legislature determines that, considering the unique  
28 history of the "Fair Housing Act," the Council on Affordable  
29 Housing shall be abolished, and that, pursuant to the formulas and  
30 process established pursuant to sections 6 and 7 of P.L. , c. (C.  
31 and C. ) (pending before the Legislature as this bill), a  
32 municipality shall be authorized to seek approval of its fair share  
33 affordable housing obligation, adopted pursuant to binding  
34 resolution and then filed with the court, with the guidance of  
35 calculations published by the Department of Community Affairs,  
36 but that advocates for the low- and moderate-income households of  
37 the State shall be provided with an opportunity to contest the  
38 municipal determination.

39 p. The Legislature finds that the population of persons aged 65  
40 years and older in the State has grown from approximately 13  
41 percent in 1990, to 17 percent in 2021, and that such growth, in  
42 conjunction with expected future growth, makes it appropriate for  
43 the Legislature to continue to allow up to 25 percent of the units  
44 towards a municipality's prospective affordable housing obligation  
45 to be satisfied through the creation of age-restricted housing.

46 (cf: P.L.2008, c.46, s.4)



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

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

4       a. "Council" means the Council on Affordable Housing  
5 established in P.L.1985, c.222 (C.52:27D-301 et al.), **【**which shall  
6 have primary jurisdiction for the administration of housing  
7 obligations in accordance with sound regional planning  
8 considerations in this State**】** abolished pursuant to section 3 of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill).

10       b. "Housing region" means a geographic area **【**of not less than  
11 two nor more than four contiguous, whole counties which exhibit  
12 significant social, economic and income similarities, and which  
13 constitute to the greatest extent practicable the primary metropolitan  
14 statistical areas as last defined by the United States Census Bureau  
15 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.)**】**  
16 established pursuant to subsection b. of section 6  
17 of P.L. , c. (C. ) (pending before the Legislature as this  
18 bill).

19       c. **【**"Low income" "Low-income housing" means housing  
20 affordable according to federal Department of Housing and Urban  
21 Development or other recognized standards for home ownership  
22 and rental costs and occupied or reserved for occupancy by  
23 households with a gross household income equal to 50 percent or  
24 less of the median gross household income for households of the  
25 same size within the housing region in which the housing is located.

26       d. **【**"Moderate income" "Moderate-income housing" means  
27 housing affordable according to federal Department of Housing and  
28 Urban Development or other recognized standards for home  
29 ownership and rental costs and occupied or reserved for occupancy  
30 by households with a gross household income equal to more than 50  
31 **【**%**】** percent but less than 80 percent of the median gross household  
32 income for households of the same size within the housing region in  
33 which the housing is located.

34       e. **【**"Resolution of participation" means a resolution adopted by  
35 a municipality in which the municipality chooses to prepare a fair  
36 share plan and housing element in accordance with P.L.1985, c.222  
37 (C.52:27D-301 et al.)**】** (Deleted by amendment, P.L. , c. )  
38 (pending before the Legislature as this bill)

39       f. "Inclusionary development" means a residential housing  
40 development in which a substantial percentage of the housing units  
41 are provided for a reasonable income range of **【**low and moderate  
42 income**】** low- and moderate-income households.

43       g. "Conversion" means the conversion of existing commercial,  
44 industrial, or residential structures for **【**low and moderate income**】**  
45 low- and moderate-income housing purposes where a substantial  
46 percentage of the housing units are provided for a reasonable

- 1 income range of **low and moderate income** low- and moderate-  
2 income households.
- 3 h. "Development" means any development for which  
4 permission may be required pursuant to the "Municipal Land Use  
5 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 6 i. "Agency" means the New Jersey Housing and Mortgage  
7 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et  
8 seq.).
- 9 j. "Prospective need" means a projection of housing needs  
10 based on development and growth which is reasonably likely to  
11 occur in a region or a municipality, as the case may be, as a result  
12 of actual determination of public and private entities. **[In**  
13 **determining prospective need, consideration shall be given to**  
14 **approvals of development applications, real property transfers, and**  
15 **economic projections prepared by the State Planning Commission**  
16 **established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-**  
17 **196 et seq.)]** Prospective need shall be determined by the  
18 methodology set forth pursuant to sections 6 and 7 of P.L. , c.  
19 (C. and C. ) (pending before the Legislature as this bill)  
20 for the fourth round and all future rounds of housing obligations.
- 21 k. "Person with a disability" means a person with a physical  
22 disability, infirmity, malformation, or disfigurement which is  
23 caused by bodily injury, birth defect, aging, or illness including  
24 epilepsy and other seizure disorders, and which shall include, but  
25 not be limited to, any degree of paralysis, amputation, lack of  
26 physical coordination, blindness or visual impairment, deafness or  
27 hearing impairment, the inability to speak or a speech impairment,  
28 or physical reliance on a service animal, wheelchair, or other  
29 remedial appliance or device.
- 30 l. "Adaptable" means constructed in compliance with the  
31 technical design standards of the barrier free subcode adopted by  
32 the Commissioner of Community Affairs pursuant to the "State  
33 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119  
34 et seq.) and in accordance with the provisions of section 5 of  
35 P.L.2005, c.350 (C.52:27D-123.15).
- 36 m. "Very **low income** low-income housing" means housing  
37 affordable according to federal Department of Housing and Urban  
38 Development or other recognized standards for home ownership  
39 and rental costs and occupied or reserved for occupancy by  
40 households with a gross household income equal to 30 percent or  
41 less of the median gross household income for households of the  
42 same size within the housing region in which the housing is located.
- 43 n. "Accessory dwelling unit" means a residential dwelling unit  
44 that provides complete independent living facilities with a private  
45 entrance for one or more persons, consisting of provisions for  
46 living, sleeping, eating, sanitation, and cooking, including a stove  
47 and refrigerator, and is located within a proposed or existing  
48 primary dwelling, within an existing or proposed structure that is

1 accessory to a dwelling on the same lot, constructed in whole or  
2 part as an extension to a proposed or existing primary dwelling, or  
3 constructed as a separate detached structure on the same lot as the  
4 existing or proposed primary dwelling.

5 o. "Builder's remedy" means court imposed site-specific relief  
6 for a litigant who seeks to build affordable housing for which the  
7 court requires a municipality to utilize zoning techniques such as  
8 mandatory set-asides or density bonuses, including techniques  
9 which provide for the economic viability of a residential  
10 development by including housing that is not for low- and  
11 moderate-income households.

12 p. "Commissioner" means the Commissioner of Community  
13 Affairs.

14 q. "Compliance certification" means the certification obtained  
15 by a municipality pursuant to section 3 of P.L. , c. (C. )  
16 (pending before the Legislature as this bill), that protects the  
17 municipality from a builder's remedy during the current round of  
18 present and prospective need and through July 1 of the year the next  
19 round begins, which is also known as a "judgment of compliance"  
20 or "judgment of repose." The term "compliance certification" shall  
21 include a judgment of repose granted in an action filed pursuant to  
22 section 13 of P.L.1985, c.222 (C.52:27D-313).

23 r. "County level housing judge" means a judge appointed  
24 pursuant to section 5 of P.L. , c. (C. ) (pending before the  
25 Legislature as this bill), to resolve disputes over the compliance of  
26 municipal fair share affordable housing obligations and municipal  
27 fair share plans and housing elements, with the "Fair Housing Act,"  
28 P.L.1985, c.222 (C.52:27D-301 et al.

29 s. "Deficient housing unit" means housing that: (1) is over fifty  
30 years old and overcrowded; (2) lacks complete plumbing; or (3)  
31 lacks complete kitchen facilities.

32 t. "Department" means the Department of Community Affairs.

33 u. "Fair share plan" means the plan or proposal that is in a form  
34 which may readily be adopted, with accompanying ordinances and  
35 resolutions, pursuant to subsection f. of section 3 of  
36 P.L. , c. (C. ) (pending before the Legislature as this bill),  
37 by which a municipality proposes to satisfy its obligation to create a  
38 realistic opportunity to meet its fair share of low- and moderate-  
39 income housing needs of its region and which details the  
40 affirmative measures the municipality proposes to undertake to  
41 achieve its fair share of low- and moderate-income housing, as  
42 provided in the municipal housing element, and addresses the  
43 development regulations necessary to implement the housing  
44 element, including, but not limited to, inclusionary requirements  
45 and development fees, and the elimination of unnecessary housing  
46 cost-generating features from the municipal land use ordinances and  
47 regulations.

1       v. "Housing element" means that portion of a municipality's  
2 master plan consisting of reports, statements, proposals, maps,  
3 diagrams, and text designed to meet the municipality's fair share of  
4 its region's present and prospective housing needs, particularly with  
5 regard to low- and moderate-income housing, and which shall  
6 contain the municipal present and prospective obligation for  
7 affordable housing, determined pursuant to subsection f. of section  
8 3 of P.L. , c. (C. ) (pending before the Legislature as this  
9 bill).

10       w. "Program" means the Affordable Housing Dispute Resolution  
11 Program, established pursuant to section 5 of P.L. , c. (C. )  
12 (pending before the Legislature as this bill).

13       x. "Transitional housing" means temporary housing that:

14       (1) includes, but is not limited to, single-room occupancy  
15 housing or shared living and supportive living arrangements;

16       (2) provides access to on-site or off-site supportive services for  
17 very low-income households who have recently been homeless or  
18 lack stable housing;

19       (3) is licensed by the department; and

20       (4) allows households to remain for a minimum of six months.

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

22  
23       3. (New section) a. The Council on Affordable Housing,  
24 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-  
25 301 et al.), is abolished. Each municipality shall determine its  
26 municipal present and prospective obligations in accordance with  
27 the formulas established in sections 6 and 7 of P.L. , c. (C.  
28 and C. ) (pending before the Legislature as this bill) and may  
29 take into consideration the calculations in the report published by  
30 the department in accordance with this section.

31       b. Following the expiration of the third round of affordable  
32 housing obligations on July 1, 2025, a municipality shall have  
33 immunity from a builder's remedy if the municipality complies with  
34 the deadlines established in P.L. , c. (C. ) (pending before  
35 the Legislature as this bill) for both determining present and  
36 prospective obligations, and for adopting a housing element and fair  
37 share plan to meet those obligations.

38       c. Prior to the beginning of each new 10-year round of housing  
39 obligations beginning with the fourth round on July 1, 2025, the  
40 Department of Community Affairs shall conduct a calculation of  
41 regional need and municipal present and prospective obligations in  
42 accordance with the formulas established in sections 6 and 7 of  
43 P.L. , c. (C. and C. ) (pending before the Legislature as  
44 this bill).

45       d. For the fourth round of affordable housing obligations, the  
46 department shall prepare and submit a report to the Governor, and,  
47 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the  
48 Legislature providing a report on the calculations of regional need

1 and municipal obligations for each region of the State on or before  
2 August 1, 2024. The department shall provide the report to each  
3 municipality in the State at the same time that it submits the report  
4 to the Governor and Legislature and shall also publish such report  
5 on the department's Internet website. For the fifth round, and each  
6 subsequent new round of housing obligations, the department shall  
7 prepare and submit a report to each municipality in the State, the  
8 Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-  
9 19.1), to the Legislature on these calculations on or before August 1  
10 of the year prior to the start of the new round and shall also publish  
11 such report on the department's Internet website. For each 10-year  
12 round of housing obligations, a municipality may take into  
13 consideration the calculations in the report prepared by the  
14 department pursuant to this subsection in determining its present  
15 and prospective obligations.

16 e. Nothing in the provisions of subsections c., d., or f. of this  
17 section shall be interpreted to render any calculation in a report by  
18 the department published pursuant to this section binding on any  
19 municipality or other entity, nor to render any failure by the  
20 department to timely conduct the calculations or publish a report  
21 required by this section to alter the deadlines or process set forth in  
22 this section. The ultimate determination of a municipality's present  
23 and prospective need shall be through the process as set forth  
24 below.

25 f. (1) (a) With consideration of the calculations contained in  
26 the relevant report published by the department pursuant to this  
27 section, for each 10-year round of affordable housing obligations  
28 beginning with the fourth round, a municipality shall determine its  
29 present and prospective fair share obligation for affordable housing  
30 in accordance with the formulas established in sections 6 and 7 of  
31 P.L. , c. (C. and C. ) (pending before the Legislature as  
32 this bill) by resolution, which shall describe the basis for the  
33 municipality's determination and bind the municipality to adopt a  
34 housing element and fair share plan pursuant to paragraph (2) of  
35 this subsection based on this determination as may be adjusted by  
36 the program as set forth in this subsection.

37 (b) For the fourth round of affordable housing obligations, this  
38 determination of present and prospective fair share obligation shall  
39 be made by binding resolution no later than January 31, 2025.  
40 After adoption of this binding resolution, the municipality shall file  
41 an action regarding the resolution with the program no later than 48  
42 hours following adoption. The resolution, along with the date of  
43 filing with the program, shall be published on the program's  
44 publicly accessible Internet website. The municipality shall also  
45 publish the resolution on its publicly accessible Internet website, if  
46 the municipality maintains one. If the municipality does not meet  
47 this deadline, it immediately shall lose immunity from builder's  
48 remedy litigation until such time as the municipality is determined

1 to have come into compliance with the "Fair Housing Act,"  
2 P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel  
3 doctrine. A determination of the municipality's present and  
4 prospective obligation may be established before a county level  
5 housing judge as part of any resulting declaratory judgment action  
6 pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as  
7 amended by P.L. , c. (C. ) (pending before the Legislature  
8 as this bill), or through builder's remedy litigation. If the  
9 municipality meets this January 31 deadline, then the municipality's  
10 determination of its obligation shall be established by default  
11 beginning on March 1, 2025, as the municipality's obligation for  
12 the fourth round, unless challenged by an interested party on or  
13 before February 28, 2025. An interested party may file a challenge  
14 with the program, after adoption of the binding resolution and prior  
15 to March 1, 2025, alleging that the municipality's determination of  
16 its present and prospective obligation does not comply with the  
17 requirements of sections 6 and 7 of P.L. , c.  
18 (C. and C. ) (pending before the Legislature as this bill).  
19 For the fifth round, and each subsequent new round of housing  
20 obligations, the deadlines established in this subparagraph shall be  
21 on the last day of January, the last day of February, and the first day  
22 of March, respectively, of the year of the start of each new round.

23 (c) The Administrative Director of the Courts shall establish  
24 procedures for the program to consider a challenge and resolve a  
25 dispute initiated by an interested party pursuant to subparagraph (b)  
26 of this paragraph. To resolve a challenge, the program shall apply  
27 an objective assessment standard to determine whether or not the  
28 municipality's calculation of its obligation is compliant with the  
29 requirements of sections 6 and 7 of P.L. , c.  
30 (C. and C. ) (pending before the Legislature as this bill).  
31 Any challenge must state with particularity how the municipal  
32 calculation fails to comply with sections 6 and 7 of P.L. , c. (C.  
33 and C. ) (pending before the Legislature as this bill) and  
34 include the challenger's own calculation of the fair share  
35 obligations in compliance with sections 6 and 7 of P.L. , c. (C.  
36 and C. ) (pending before the Legislature as this bill). The  
37 program shall establish procedures to summarily dismiss any  
38 objection or challenge that does not meet these minimum standards.  
39 For the purpose of efficiency, the program shall, in its own  
40 discretion, permit multiple challenges to the same municipal  
41 determination to be consolidated. The program's approach to  
42 resolving a dispute may include: (i) a finding that the municipality's  
43 determination of its present and prospective need obligation did not  
44 facially comply with the requirements of sections 6 and 7 of P.L. ,  
45 c. (C. and C. ) (pending before the Legislature as this  
46 bill) and thus the municipality's immunity shall be revoked; (ii) an  
47 adjustment of the municipality's determination of its present and  
48 prospective need obligation to comply with the requirements of

1 sections 6 and 7 of P.L. , c. (C. and C. ) (pending  
2 before the Legislature as this bill) without revoking immunity; or  
3 (iii) a rejection of a challenge and affirm the municipality's  
4 determination. The decision shall be provided to the municipality  
5 and all parties that have filed challenges no later than March 31 of  
6 the year when the current round is expiring and the new round is  
7 beginning and concurrently posted on the program's Internet  
8 website. The Administrative Director of the Courts shall establish  
9 procedures for any further appellate review of such determinations,  
10 and may establish an expedited process for consolidated review of  
11 any such challenges by the Supreme Court, provided that any party  
12 seeking appellate review shall not change the deadlines established  
13 for municipal filing of a housing element and fair share plan, and  
14 implementing ordinances.

15 (2) (a) A municipality shall adopt a housing element and fair  
16 share plan as provided for by the "Fair Housing Act," P.L.1985,  
17 c.222 (C.52:27D-301 et al.), and propose drafts of the appropriate  
18 zoning and other ordinances and resolutions to implement its  
19 present and prospective obligation established in paragraph (1) of  
20 this subsection on or before June 30, 2025. After adoption of the  
21 housing element and fair share plan, and the proposal of drafts of  
22 the appropriate zoning and other ordinances and resolutions, the  
23 municipality shall within 48 hours of adoption or by June 30, 2025,  
24 whichever is sooner, file the same with the program as part of the  
25 action initiated pursuant to subparagraph (b) of paragraph (1) of this  
26 subsection through the program's Internet website. Any  
27 municipality that does not do so by June 30, 2025, shall not retain  
28 immunity from builder's remedy litigation until such time as the  
29 municipality is determined to have come into compliance with the  
30 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the  
31 Mount Laurel doctrine and shall be subject to review through the  
32 declaratory judgment process as established in paragraph (3) of this  
33 subsection. As part of its housing element and fair share plan, the  
34 municipality shall include an assessment of the degree to which the  
35 municipality has met its fair share obligation from the prior rounds  
36 of affordable housing obligations as established by prior court  
37 approval, or approval by the council, and determine to what extent  
38 this obligation is unfulfilled or whether the municipality has credits  
39 in excess of its prior round obligations. If a prior round obligation  
40 remains unfulfilled, or a municipality never received an approval  
41 from court or the council for any prior round, the municipality shall  
42 address such unfulfilled prior round obligation in its housing  
43 element and fair share plan. Units included as part of the  
44 municipality's unfulfilled prior round obligation shall not count  
45 towards the cap on units in the municipality's prospective need  
46 obligation. In addressing prior round obligations, the municipality  
47 shall retain any sites that, in furtherance of the prior round  
48 obligation, are the subject of a contractual agreement with a

1 developer, or for which the developer has filed a complete  
2 application seeking subdivision or site plan approval prior to the  
3 date by which the housing element and fair share plan are required  
4 to be submitted, and shall demonstrate how any sites that were not  
5 built in the prior rounds continue to present a realistic opportunity,  
6 which may include proposing changes to the zoning on the site to  
7 make its development more likely, and which may also include the  
8 dedication of municipal affordable housing trust fund dollars or  
9 other monetary or in-kind resources. The municipality shall only  
10 plan to replace any sites planned for development as provided by a  
11 prior court approval, settlement agreement, or approval by the  
12 council, with alternative development plans, if it is determined that  
13 the previously planned sites no longer present a realistic  
14 opportunity, and the sites in the alternative development plan  
15 provide at least an equivalent number of affordable units and are  
16 otherwise in compliance with the "Fair Housing Act," P.L.1985,  
17 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. If a  
18 municipality proposes to replace a site for which a complete  
19 application seeking subdivision or site plan approval has not been  
20 filed prior to date by which the housing element and fair share plan  
21 is required to be submitted, there shall be a rebuttable presumption  
22 in any challenge filed to the municipality's plan that any site for  
23 which a zoning designation was adopted creating a realistic  
24 opportunity for the development of a site prior to July 1, 2020, or  
25 July 1 of every 10th year thereafter, as applicable, may be replaced  
26 with one or more alternative sites that provide a realistic  
27 opportunity for at least the same number of affordable units and is  
28 otherwise in compliance with the "Fair Housing Act," P.L.1985,  
29 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. To the  
30 extent a municipality has credits, including bonus credits, from  
31 units created during a prior round that are otherwise permitted to be  
32 allocated toward the municipality's unfulfilled prior round  
33 obligation or present or prospective need obligation in an upcoming  
34 round, the municipality shall be entitled to rely on the rules,  
35 including rules for bonus credits, applicable for the round during  
36 which those credits were accumulated. If a municipality has credits  
37 in excess of its prior round obligations, and such excess credits  
38 represent housing that will continue to be deed-restricted and  
39 affordable through the current round, the municipality may include  
40 such housing, and applicable bonus credits, towards addressing the  
41 municipality's new calculation of prospective need. Consistent  
42 with subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311),  
43 the total number of bonus credits shall in no circumstance exceed  
44 25 percent of the municipality's prospective obligation in any  
45 round. The municipality may in its plan lower its prospective need  
46 obligation to the extent necessary to prevent establishing a  
47 prospective need obligation that requires the municipality to  
48 provide a realistic opportunity for more than 1,000 housing units,



1 after the application of any excess credits, or to prevent a  
2 prospective need obligation that exceeds 20 percent of the total  
3 number of households in a municipality according to the most  
4 recent federal decennial census, not including any prior round  
5 obligation. If a municipality is subject to both a 1,000 unit cap or  
6 20 percent cap it may apply whichever cap results in a lower  
7 prospective need obligation. For the fifth round, and for each  
8 subsequent new round of housing obligations, the deadlines in this  
9 paragraph shall be June 30 for the adoption of the housing element  
10 and fair share plan, and the proposal of drafts of the appropriate  
11 zoning and other ordinances and resolutions to implement its  
12 present and prospective obligation, of the year of the start of the  
13 new round.

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

1 requested in the challenge, or provide an explanation as to why it  
2 will not make all of the requested changes, or both. Upon  
3 resolution of a challenge, the program shall issue compliance  
4 certification, conditioned on the municipality's commitment, as  
5 necessary, to revise its fair share plan and housing element in  
6 accordance with the resolution of the challenge. The program may  
7 also terminate immunity if it finds that the municipality is not  
8 determined to come into constitutional compliance at any point in  
9 the process. If by December 31, 2025, the municipality and any  
10 interested party that filed a response have resolved the issues raised  
11 in the response through agreement or withdrawal of the filing, then  
12 the program shall review the fair share plan and housing element for  
13 consistency and to determine whether it is compliant with the "Fair  
14 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount  
15 Laurel doctrine, and issue a compliance certification unless these  
16 objective standards are not met. For the fifth round, and each  
17 subsequent new round of housing obligations, the deadline  
18 established in this subparagraph for an interested party to file a  
19 challenge shall be August 31, and for the municipality to revise its  
20 housing element and fair share plan in response, shall be December  
21 31, of the year of the beginning of the new round.

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

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

1 deadline for adoption of implementing ordinances and resolutions  
2 pursuant to this paragraph.

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

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

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

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

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

9 (e) A municipality shall not be deemed out of compliance with  
10 the deadlines of P.L. , c. (C. ) (pending before the  
11 Legislature as this bill), or lose immunity from builder's remedy  
12 litigation, due to a failure by the program to promptly maintain and  
13 update its Internet website, or other operational failure of the  
14 program.

15

16 4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to  
17 read as follows:

18 13. a. **【A】** If a municipality 【which】 has 【filed a housing  
19 element may, at any time during a two-year period following the  
20 filing of the housing element, petition the council for a substantive  
21 certification of its element and ordinances or】 adopted a housing  
22 element and fair share plan pursuant to section 3 of  
23 P.L. , c. (C. ) (pending before the Legislature as this bill),  
24 but has failed to satisfy the June 30 deadline established pursuant to  
25 paragraph (2) of subsection f. of section 3 of P.L. , c. (C. )  
26 (pending before the Legislature as this bill), for any round of  
27 affordable housing obligations, the municipality may request and be  
28 provided with a grace period pursuant to paragraph (3) of  
29 subsection f. of section 3 of P.L. , c. (C. ) (pending before  
30 the Legislature as this bill), if authorized by the program or county  
31 level housing judge, as determined by the rules of court. If a  
32 municipality that has not satisfied this June 30 deadline is not  
33 provided with a grace period, the municipality may institute an  
34 action for declaratory judgment granting it repose in the Superior  
35 Court 【, but in no event shall a grant of substantive certification  
36 extend beyond a 10-year period starting on the date the municipality  
37 files its housing element with the council】 for the 10-year period  
38 constituting the current round of fair share obligations. The  
39 municipality shall publish notice of its 【petition】 filing of a  
40 declaratory judgment action in a newspaper of general circulation  
41 within the municipality and county and shall make available to the  
42 public information on the element and ordinances by submitting  
43 such information to the program to be published on the Internet  
44 website of the program in accordance with 【such procedures as the  
45 council shall establish. The council shall also establish a procedure  
46 for providing public notice of each petition which it receives】

1 section 3 of P.L. , c. (C. ) (pending before the Legislature  
2 as this bill).

3 b. **【Notwithstanding the provisions of subsection a. of this**  
4 **section, a municipality which filed a housing element prior to the**  
5 **effective date of P.L.1990, c.121, shall be permitted to petition for**  
6 **substantive certification at any time within two years following that**  
7 **filing, or within one year following the effective date of P.L.1990,**  
8 **c.121, whichever shall result in permitting the municipality the**  
9 **longer period of time within which to petition.】** (Deleted by  
10 amendment, P.L. , c. ) (pending before the Legislature as this  
11 bill)

12 **【The Council shall establish procedures for】** c. (1) A  
13 municipality or other interested party may file an action through the  
14 program seeking a realistic opportunity review 【at the midpoint of  
15 the certification period and shall provide for notice to the public】 at  
16 the midpoint of the certification period and shall provide for notice  
17 to the public, including a realistic opportunity review of any  
18 inclusionary development site in the housing element and fair share  
19 plan that has not received preliminary site plan approval prior to the  
20 midpoint of the 10-year round. If such an action is initiated by a  
21 municipality, the municipality shall propose one or more alternative  
22 sites with an accompanying development plan or plans that provide  
23 a realistic opportunity for the same number of affordable units and  
24 is otherwise in compliance with the "Fair Housing Act," P.L.1985,  
25 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine,  
26 provided that if the facts demonstrate that the municipality or its  
27 subordinate boards have prevented the site from receiving site plan  
28 approval, then the program shall reject the municipality's challenge.

29 (2) Any party may file a request for information from the  
30 program regarding the progress of development at any inclusionary  
31 development site in the housing element and fair share plan of a  
32 municipality, or at any alternative site proposed by the  
33 municipality. The program may respond to a request independently  
34 or in coordination with the department.

35 (cf: P.L.2001, c.435, s.5)

36  
37 5. (New section) a. There is established an Affordable Housing  
38 Dispute Resolution Program that shall have the purpose of  
39 efficiently resolving disputes involving the "Fair Housing Act,"  
40 P.L.1985, c.222 (C.52:27D-301 et al.), to consist of an odd number  
41 of members, of at least three and no more than seven members who  
42 shall lead the administration of the program. The Chief Justice of  
43 the Supreme Court shall update the assignment of designated Mount  
44 Laurel judges to indicate which current or retired and on recall  
45 judges of the Superior Court shall serve as members, within 40 days  
46 following the effective date of P.L. , c. (C. ) (pending  
47 before the Legislature as this bill). The Chief Justice of the

1 Supreme Court may appoint other qualified experts as members if  
2 sufficient current and retired judges are unavailable. The Chief  
3 Justice of the Supreme Court shall take into consideration in  
4 making such appointments experience in the employment of  
5 alternative dispute resolution methods and in relevant subject  
6 matter.

7 b. The Chief Justice of the Supreme Court shall designate a  
8 member to serve as chair. The Chief Justice of the Supreme Court  
9 shall make new appointments as needs arise for new appointments.

10 c. The program, in its discretion and in accordance with Rules of  
11 Court, may consult or employ the services of one or more special  
12 masters or staff to assist it in rendering determinations, resolving  
13 disputes, and facilitating communication as required by  
14 subparagraph (b) of paragraph (2) of subsection f. of section 3 of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill).  
16 In addition, the program may incorporate any existing or newly  
17 established court mediation or alternative dispute resolution process  
18 to assist the program in resolving disputes and facilitating  
19 communication among municipalities and interested parties.

20 d. The Administrative Director of the Courts shall establish a  
21 filing system via an Internet website in which the public is able to  
22 access, without cost, filings made pursuant to P.L. , c. (C. )  
23 (pending before the Legislature as this bill) and such other related  
24 filings as the Administrative Director of the Courts may include on  
25 the filing system.

26 e. The Administrative Director of the Courts may assign  
27 additional responsibilities to the program for resolving disputes  
28 arising out of or related to the "Fair Housing Act," P.L.1985, c.222  
29 (C.52:27D-301 et al.).

30 f. The Administrative Director of the Courts shall establish  
31 procedures for the purpose of efficiently resolving disputes  
32 involving the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
33 et al.), for circumstances in which the program is unable to address  
34 the dispute within the time limitations established pursuant to  
35 section 3 of P.L. , c. (C. ) (pending before the Legislature  
36 as this bill). As a part of the procedures established pursuant to this  
37 section, in order to facilitate an appropriate level of localized  
38 control of affordable housing decisions, for each vicinage, the Chief  
39 Justice of the Supreme Court shall designate a Superior Court judge  
40 who sits within the vicinage, or a retired judge who, during the  
41 judge's tenure as a judge, served within the vicinage, to serve as  
42 county level housing judge to resolve disputes over the compliance,  
43 of fair share plans and housing elements of municipalities within  
44 their designated county or counties, with the "Fair Housing Act,"  
45 P.L.1985, c.222 (C.52:27D-301 et al.), as well as disputes that arise  
46 with respect to ongoing compliance or noncompliance with  
47 obligations created by fair share plans, housing elements, and the  
48 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A

1 judge shall be permitted to serve as a county level housing judge for  
2 more than one county in the same vicinage.

3 g. The Administrative Director of the Courts shall promulgate,  
4 maintain, and apply a Code of Ethics that is modeled upon the Code  
5 of Judicial Conduct of the American Bar Association, as amended  
6 and adopted by the Supreme Court of New Jersey, and may  
7 establish additional, more restrictive ethical standards in order to  
8 meet the specific needs of the program, and of county level housing  
9 judges.

10

11 6. (New section) a. Municipal present need for each 10-year  
12 round of affordable housing obligations shall be determined by  
13 estimating the deficient housing units occupied by low- and  
14 moderate-income households in the region, following a  
15 methodology similar to the methodology used to determine third  
16 round municipal present need, through the use of most recent  
17 datasets made available through the federal decennial census and  
18 the American Community Survey.

19 b. For the purpose of determining regional need for the 10-year  
20 round of low- and moderate-income housing obligations, running  
21 from July 1, 2025 through June 30, 2035, and each 10-year round  
22 thereafter:

23 (1) The regions of the State shall be comprised as follows:

24 (a) Region 1 shall consist of the counties of Bergen, Hudson,  
25 Passaic, and Sussex;

26 (b) Region 2 shall consist of the counties of Essex, Morris,  
27 Union, and Warren;

28 (c) Region 3 shall consist of the counties of Hunterdon,  
29 Middlesex, and Somerset;

30 (d) Region 4 shall consist of the counties of Mercer, Monmouth,  
31 and Ocean;

32 (e) Region 5 shall consist of the counties of Burlington,  
33 Camden, and Gloucester; and

34 (f) Region 6 shall consist of the counties of Atlantic, Cape May,  
35 Cumberland, and Salem.

36 (2) Regional prospective need for a 10-year round of low- and  
37 moderate-income housing obligations shall be determined through  
38 the calculation provided in this subsection. Projected household  
39 change for a 10-year round in a region shall be estimated by  
40 establishing the household change experienced in the region  
41 between the most recent federal decennial census, and the second-  
42 most recent federal decennial census. This household change, if  
43 positive, shall be divided by 2.5 to estimate the number of low- and  
44 moderate-income homes needed to address low- and moderate-  
45 income household change in the region, and to determine the  
46 regional prospective need for a 10-year round of low- and  
47 moderate-income housing obligations. If household change is zero  
48 or negative, the number of low- and moderate-income homes

1 needed to address low- and moderate-income household change in  
2 the region and the regional prospective need shall be zero.

3  
4 7. (New section) a. The present and prospective fair share  
5 obligation for low- and moderate-income housing for each  
6 municipality in the State shall be determined as described in this  
7 section. In addition, the March 8, 2018 unpublished decision of the  
8 Superior Court, Law Division, Mercer County, In re Application of  
9 Municipality of Princeton shall be referenced as to datasets and  
10 methodologies that are not explicitly addressed by this section.  
11 These determinations of municipal present and prospective need  
12 shall be based on a determination of the present and prospective  
13 regional need for low- and moderate-income housing, established  
14 pursuant to section 6 of P.L. , c. (C. ) (pending before the  
15 Legislature as this bill). These calculations of municipal present  
16 and prospective need shall use necessary datasets that are updated  
17 to the greatest extent practicable.

18 b. A municipality's present need obligation shall be determined  
19 by estimating the existing deficient housing units currently  
20 occupied by low- and moderate-income households within the  
21 municipality, following a methodology comparable to the  
22 methodology used to determine third round present need, through  
23 the use of datasets made available through the federal decennial  
24 census and the American Community Survey.

25 c. A municipality's prospective fair share obligation of the  
26 regional prospective need for the upcoming 10-year round shall be  
27 determined in accordance with this subsection:

28 (1) If a municipality is a qualified urban aid municipality, the  
29 municipality shall be exempt from responsibility for any fair share  
30 prospective need obligation for the upcoming 10-year round. For  
31 the purposes of this section, a municipality is a qualified urban aid  
32 municipality if the municipality, as of July 1 of the year prior to the  
33 beginning of a new round, is designated by the department, pursuant  
34 to P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid, and  
35 the municipality meets at least one of the following criteria:

36 (a) The ratio of substandard existing deficient housing units  
37 currently occupied by low- and moderate-income households within  
38 the municipality, compared to all existing housing in the  
39 municipality, is greater than the equivalent ratio in the region;

40 (b) The municipality has a population density greater than  
41 10,000 persons per square mile of land area; or

42 (c) The municipality has a population density of more than  
43 6,000, but less than 10,000 persons per square mile of land area,  
44 and less than five percent vacant parcels not used as farmland, as  
45 measured by the average of:

46 (i) The number of vacant land parcels in the municipality as a  
47 percentage of the total number of parcels in the municipality; and



1 (ii) The valuation of vacant land in the municipality as a  
2 percentage of total valuations in the municipality.

3 (2) A municipality's equalized nonresidential valuation factor  
4 shall be determined. To determine this factor, the changes in  
5 nonresidential property valuations in the municipality, since the  
6 beginning of the round preceding the round being calculated, shall  
7 be calculated using data published by the Division of Local  
8 Government Services in the department. The change in the  
9 municipality's nonresidential valuations shall be divided by the  
10 regional total change in nonresidential valuations to determine the  
11 municipality's share of the regional change as the equalized  
12 nonresidential valuation factor.

13 (3) A municipality's income capacity factor shall be determined.  
14 This factor shall be determined by calculating the average of the  
15 following measures:

16 (a) The municipal share of the regional sum of the differences  
17 between the median municipal household income, according to the  
18 most recent American Community Survey Five-Year Estimates, and  
19 an income floor of \$100 below the lowest median household  
20 income in the region; and

21 (b) The municipal share of the regional sum of the differences  
22 between the median municipal household incomes and an income  
23 floor of \$100 below the lowest median household income in the  
24 region, weighted by the number of the households in the  
25 municipality.

26 (4) A municipality's land capacity factor shall be determined.  
27 This factor shall be determined by estimating the area of  
28 developable and redevelopable land in the municipality's  
29 boundaries, and regional boundaries, that may accommodate  
30 development through the use of the "land use / land cover data"  
31 most recently published by the Department of Environmental  
32 Protection, and weighing such land based on the planning area type  
33 in which such land is located. After the weighing factors are  
34 applied, the sum of the total developable and redevelopable land  
35 area that may accommodate development in the municipality, and in  
36 the region shall be determined. The municipality's share of its  
37 region's developable and redevelopable land shall be its land  
38 capacity factor. Developable and redevelopable land that may  
39 accommodate development shall be weighted based on the planning  
40 area type in which such land is located, as designated pursuant to  
41 P.L.1985, c.398 (C.52:18A-196 et seq.), P.L.1979, c.111  
42 (C.13:18A-1 et seq.), or P.L.2004, c.120 (C.13:20-1 et seq.), as  
43 follows:

44 (a) Planning Area 1 (Metropolitan) shall have a weighting factor  
45 of 1.0;

46 (b) Planning Area 2 (Suburban) shall have a weighting factor of  
47 1.0;

- 1 (c) Planning Area 3 (Fringe) shall have a weighting factor of  
2 0.5;
- 3 (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;
- 4 (e) Planning Area 5 (Environmentally Sensitive) shall have a  
5 weighting factor of 0.0;
- 6 (f) Centers in Planning Areas 1 and 2 shall have a weighting  
7 factor of 1.0;
- 8 (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting  
9 factor of 0.5;
- 10 (h) Pinelands Regional Growth Area shall have a weighting  
11 factor of 0.5;
- 12 (i) Pinelands Town shall have a weighting factor of 0.5;
- 13 (j) All other Pinelands shall have a weighting factor of 0.0;
- 14 (k) Meadowlands shall have a weighting factor of 1.0;
- 15 (l) Meadowlands Center shall have a weighting factor of 1.0;
- 16 (m) Highlands Preservation Area shall have a weighting factor  
17 of 0.0;
- 18 (n) Highlands Planning Area Existing Community Zone, opted  
19 in municipality by May 1, 2022 shall have a weighting factor of 1.0;
- 20 (o) Highlands Planning Area, State-designated sewer service  
21 area, municipality not opted in by May 1, 2022, shall have a  
22 weighting factor of 1.0; and
- 23 (p) All other Highlands Planning Areas shall have a weighting  
24 factor of 0.0.
- 25 (5) The equalized nonresidential valuation factor, income  
26 capacity factor, and land capacity factor, determined in paragraphs  
27 (2), (3), and (4) of this subsection, shall be averaged to yield the  
28 municipality's average allocation factor for distributing gross  
29 regional prospective need to the municipality. The regional  
30 prospective need shall then be multiplied by the municipality's  
31 average allocation factor to determine the municipality's gross  
32 prospective need for the 10-year round.
- 33 (6) Secondary sources of supply and demand shall be adjusted  
34 for by first calculating demolitions of low- and moderate-income  
35 housing, and housing creation through low- and moderate-income  
36 residential conversions. A municipality's share of low- and  
37 moderate-income conversions shall then be subtracted from the sum  
38 of each municipality's allocated share of gross prospective need and  
39 demolitions of low- and moderate-income housing.
- 40
- 41 8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read  
42 as follows:
- 43 4. a. Upon failure to perform any obligation of a residential  
44 mortgage by the residential mortgage debtor and before any  
45 residential mortgage lender may accelerate the maturity of any  
46 residential mortgage obligation and commence any foreclosure or  
47 other legal action to take possession of the residential property  
48 which is the subject of the mortgage, the residential mortgage

1 lender shall give a notice of intention, which shall include a notice  
2 of the right to cure the default as provided in section 5 of P.L.1995,  
3 c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in  
4 advance of such action as provided in this section, to the residential  
5 mortgage debtor, and, if the mortgage is secured by a residence for  
6 which a restriction on affordability was recorded in the county in  
7 which the property is located, the clerk of the municipality in which  
8 the subject property is located, the municipal housing liaison, if one  
9 has been appointed by the municipality [pursuant to the regulations  
10 of the Council on Affordable Housing, and the Commissioner of  
11 Community Affairs]. For the purposes of this section, "restriction  
12 on affordability" means any conditions recorded with a mortgage or  
13 a deed which would limit the sale of such property to income  
14 qualified households pursuant to the rules adopted to effectuate the  
15 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

16 b. Notice of intention to take action as specified in subsection  
17 a. of this section shall be in writing, provided to the Department of  
18 Community Affairs in accordance with subsection a. of section 2 of  
19 P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or  
20 certified mail, return receipt requested, at the debtor's last known  
21 address, and, if different, to the address of the property which is the  
22 subject of the residential mortgage. The notice is deemed to have  
23 been effectuated on the date the notice is delivered in person or  
24 mailed to the party.

25 c. The written notice shall clearly and conspicuously state in a  
26 manner calculated to make the debtor aware of the situation:

- 27 (1) the particular obligation or real estate security interest;  
28 (2) the nature of the default claimed;  
29 (3) the right of the debtor to cure the default as provided in  
30 section 5 of P.L.1995, c.244 (C.2A:50-57);  
31 (4) what performance, including what sum of money, if any, and  
32 interest, shall be tendered to cure the default as of the date specified  
33 under paragraph (5) of this subsection c.;  
34 (5) the date by which the debtor shall cure the default to avoid  
35 initiation of foreclosure proceedings, which date shall not be less  
36 than 30 days after the date the notice is effective, and the name and  
37 address and phone number of a person to whom the payment or  
38 tender shall be made;  
39 (6) that if the debtor does not cure the default by the date  
40 specified under paragraph (5) of this subsection c., the lender may  
41 take steps to terminate the debtor's ownership in the property by  
42 commencing a foreclosure suit in a court of competent jurisdiction;  
43 (7) that if the lender takes the steps indicated pursuant to  
44 paragraph (6) of this subsection c., a debtor shall still have the right  
45 to cure the default pursuant to section 5 of P.L.1995, c.244  
46 (C.2A:50-57), but that the debtor shall be responsible for the  
47 lender's court costs and attorneys' fees in an amount not to exceed

1 that amount permitted pursuant to the Rules Governing the Courts  
2 of the State of New Jersey;

3 (8) the right, if any, of the debtor to transfer the real estate to  
4 another person subject to the security interest and that the transferee  
5 may have the right to cure the default as provided in P.L.1995,  
6 c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;

7 (9) that the debtor is advised to seek counsel from an attorney of  
8 the debtor's own choosing concerning the debtor's residential  
9 mortgage default situation, and that, if the debtor is unable to obtain  
10 an attorney, the debtor may communicate with the New Jersey Bar  
11 Association or Lawyer Referral Service in the county in which the  
12 residential property securing the mortgage loan is located; and that,  
13 if the debtor is unable to afford an attorney, the debtor may  
14 communicate with the Legal Services Office in the county in which  
15 the property is located;

16 (10) the possible availability of financial assistance for curing a  
17 default from programs operated by the State or federal government  
18 or nonprofit organizations, if any, as identified by the  
19 Commissioner of Banking and Insurance and, if the property is  
20 subject to restrictions on affordability, the address and phone  
21 number of the municipal affordable housing liaison and of the New  
22 Jersey Housing and Mortgage Finance Agency. This requirement  
23 shall be satisfied by attaching a list of such programs promulgated  
24 by the commissioner;

25 (11) the name and address of the lender and the telephone  
26 number of a representative of the lender whom the debtor may  
27 contact if the debtor disagrees with the lender's assertion that a  
28 default has occurred or the correctness of the mortgage lender's  
29 calculation of the amount required to cure the default;

30 (12) that if the lender takes the steps indicated pursuant to  
31 paragraph (6) of this subsection, the debtor has the option to  
32 participate in the Foreclosure Mediation Program following the  
33 filing of a mortgage foreclosure complaint by initiating mediation  
34 pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019,  
35 c.64 (C.2A:50-77). Notice of the option to participate in the  
36 Foreclosure Mediation Program shall adhere to the requirements of  
37 section 3 of P.L.2019, c.64 (C.2A:50-76) and any court rules,  
38 procedures, or guidelines adopted by the Supreme Court;

39 (13) that the debtor is entitled to housing counseling, at no cost  
40 to the debtor, through the Foreclosure Mediation Program  
41 established by the New Jersey Judiciary, including information on  
42 how to contact the program;

43 (14) that if the property which is the subject of the mortgage has  
44 more than one dwelling unit but less than five, one of which is  
45 occupied by the debtor or a member of the debtor's immediate  
46 family as the debtor's or member's residence at the time the loan is  
47 originated, and is not properly maintained and meets the necessary  
48 conditions for receivership eligibility, established pursuant to

1 section 4 of the "Multifamily Housing Preservation and  
2 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
3 mortgage lender shall file an order to show cause to appoint a  
4 receiver; and

5 (15) that the lender is either licensed in accordance with the  
6 "New Jersey Residential Mortgage Lending Act," sections 1  
7 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89)  
8 or exempt from licensure under the act in accordance with  
9 applicable law.

10 d. The notice of intention to foreclose required to be provided  
11 pursuant to this section shall not be required if the debtor has  
12 voluntarily surrendered the property which is the subject of the  
13 residential mortgage.

14 e. The duty of the lender under this section to serve notice of  
15 intention to foreclose is independent of any other duty to give  
16 notice under the common law, principles of equity, State or federal  
17 statute, or rule of court and of any other right or remedy the debtor  
18 may have as a result of the failure to give such notice.

19 f. Compliance with this section and subsection a. of section 2  
20 of P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the  
21 pleadings of any legal action referred to in this section. If the  
22 plaintiff in any complaint seeking foreclosure of a residential  
23 mortgage alleges that the property subject to the residential  
24 mortgage has been abandoned or voluntarily surrendered, the  
25 plaintiff shall plead the specific facts upon which this allegation is  
26 based.

27 g. If more than 180 days have elapsed since the date the notice  
28 required pursuant to this section is sent, and any foreclosure or  
29 other legal action to take possession of the residential property  
30 which is the subject of the mortgage has not yet been commenced,  
31 the lender shall send a new written notice at least 30 days, but not  
32 more than 180 days, in advance of that action.

33 h. If the property which is the subject of the notice of intention  
34 to foreclose has more than one dwelling unit but less than five, one  
35 of which is occupied by the debtor or a member of the debtor's  
36 immediate family as the debtor's or member's residence at the time  
37 the loan is originated, and is not properly maintained and meets the  
38 necessary conditions for receivership eligibility, established  
39 pursuant to section 4 of the "Multifamily Housing Preservation and  
40 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
41 mortgage lender shall file an order to show cause to appoint a  
42 receiver.

43 (cf: P.L.2019, c.134, s.4)

44  
45 9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as  
46 follows:

47 2. The New Jersey Council on Physical Fitness and Sports,  
48 established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is

1 authorized to provide grants to assist low-income families in  
2 purchasing the protective eyewear. As used in this section, a "low-  
3 income family" means a family which qualifies for low-income  
4 housing under the standards promulgated by the **【Council on**  
5 **Affordable Housing】** New Jersey Housing and Mortgage Finance  
6 Agency pursuant to the "Fair Housing Act," P.L.1985, c.222  
7 (C.52:27D-301 et al.).  
8 (cf: P.L.2005, c.306, s.2)

10 10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to  
11 read as follows:

12 25. a. The **【Council on Affordable Housing** shall take into  
13 consideration the **】** regional master plan **【prior to making any】** shall  
14 be taken into account as part of the determination of obligations  
15 pursuant to the method in section 7 of P.L. , c. (C. )  
16 (pending before the Legislature as this bill) regarding the allocation  
17 of the prospective fair share of the housing need **【in any**  
18 **municipality in the Highlands Region】** under the "Fair Housing  
19 Act," P.L.1985, c.222 (C.52:27D-301 et al.) for **【the】** any fair share  
20 period subsequent to **【1999】** the effective date of  
21 P.L. , c. (C. ) (pending before the Legislature as this bill) if  
22 a municipality is in the Highlands Region.

23 b. Nothing in **【this act】** P.L.2004, c.120 (C.13:20-1 et al.) shall  
24 affect protections provided through a grant of substantive  
25 certification or a judgment of repose granted prior to **【the date of**  
26 **enactment of this act】** August 10, 2004.  
27 (cf: P.L.2004, c.120, s.25)

29 11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to  
30 read as follows:

31 5. The requirements of this act shall not apply to:

32 a. Depository institutions; but subsidiaries and service  
33 corporations of these institutions shall not be exempt. A depository  
34 institution may register with the department for the purpose of  
35 sponsoring individuals, licensed as mortgage loan originators  
36 subject to subparagraph (b) of paragraph (1) of subsection c. of  
37 section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such  
38 registered entity obtains and maintains bond coverage for mortgage  
39 loan originators consistent with section 13 of P.L.2009, c.53  
40 (C.17:11C-63). A depository institution registered with the  
41 department in accordance with this subsection a. shall otherwise  
42 remain exempt from the licensing requirements of P.L.2009, c.53  
43 (C.17:11C-51 et seq.).

44 b. A registered mortgage loan originator that is registered  
45 under the federal "Secure and Fair Enforcement for Mortgage  
46 Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101  
47 et seq.).

1 c. A licensed attorney who negotiates the terms of a residential  
2 mortgage loan on behalf of a client as an ancillary matter to the  
3 attorney's representation of the client, unless the attorney is  
4 compensated by a residential mortgage lender, residential mortgage  
5 broker, or mortgage loan originator.

6 d. A person licensed as a real estate broker or salesperson  
7 pursuant to R.S.45:15-1 et seq., and not engaged in the business of a  
8 residential mortgage lender or residential mortgage broker. Any  
9 person holding a license under this act as a residential mortgage  
10 lender or broker shall be exempt from the licensing and other  
11 requirements of R.S.45:15-1 et seq. in the performance of those  
12 functions authorized by this act.

13 e. Any employer, other than a residential mortgage lender, who  
14 provides residential mortgage loans to his employees as a benefit of  
15 employment which are at an interest rate which is not in excess of  
16 the usury rate in existence at the time the loan is made, as  
17 established in accordance with the law of this State, and on which  
18 the borrower has not agreed to pay, directly or indirectly, any  
19 charge, cost, expense or any fee whatsoever, other than that interest.

20 f. The State of New Jersey or a municipality, or any agency or  
21 instrumentality thereof, which, in accordance with a housing  
22 element that has previously received substantive certification from  
23 the Council on Affordable Housing, or a judgment of repose or  
24 other court approval, pursuant to the "Fair Housing Act," P.L.1985,  
25 c.222 (C.52:27D-301 et al.), or in fulfillment of a regional  
26 contribution agreement with a municipality that has received a  
27 certification, employs or proposes to employ municipally generated  
28 funds, funds obtained through any State or federal subsidy, or funds  
29 acquired by the municipality under a regional contribution  
30 agreement, to finance the provision of affordable housing by  
31 extending loans or advances, the repayment of which is secured by  
32 a lien, subordinate to any prior lien, upon the property that is to be  
33 rehabilitated.

34 g. Any individual who offers or negotiates terms of a  
35 residential mortgage loan:

- 36 (1) with or on behalf of an immediate family member; or  
37 (2) secured by a dwelling that serves as the individual's  
38 residence.

39 h. Any person who, during a calendar year takes three or fewer  
40 residential mortgage loan applications or offers or negotiates the  
41 terms of three or fewer residential mortgage loans or makes three or  
42 fewer residential mortgage loans related to manufactured housing  
43 structures which are:

- 44 (1) titled by the New Jersey Motor Vehicle Commission;  
45 (2) located in a mobile home park as defined in subsection e. of  
46 section 3 of P.L.1983, c.400 (C.54:4-1.4); and  
47 (3) exempt from taxation as real property pursuant to subsection  
48 b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

1 i. A bona fide not for profit entity and any individuals directly  
2 employed by that entity, so long as the entity maintains its tax  
3 exempt status under Section 501(c)(3) of the Internal Revenue Code  
4 of 1986 and otherwise meets the definition of "bona fide not for  
5 profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as  
6 periodically determined by the department in accordance with rules  
7 established by the commissioner.  
8 (cf: P.L.2018, c.108, s.3)

9  
10 12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to  
11 read as follows:

12 2. a. A person who violates a requirement of this act shall be  
13 warned of the violation by the enforcing official. The parent or  
14 legal guardian of that person also may be fined a maximum of \$25  
15 for the person's first offense and a maximum of \$100 for a  
16 subsequent offense if it can be shown that the parent or guardian  
17 failed to exercise reasonable supervision or control over the  
18 person's conduct. Penalties provided in this section for a failure to  
19 wear a helmet may be waived if an offender or his parent or legal  
20 guardian presents suitable proof that an approved helmet was  
21 owned at the time of the violation or has been purchased since the  
22 violation occurred.

23 b. All money collected as fines under subsection a. of this  
24 section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-  
25 10.6) shall be deposited in a nonlapsing revolving fund to be known  
26 as the "Bicycle and Skating Safety Fund." Interest earned on  
27 money deposited in the fund shall accrue to the fund. Money in the  
28 fund shall be utilized by the director to provide educational  
29 programs devoted to bicycle, roller skating and skateboarding  
30 safety. If the director determines that sufficient money is available  
31 in the fund, he also may use, in a manner prescribed by rule and  
32 regulation, the money to assist **low income** low-income families  
33 in purchasing approved bicycle helmets. For the purposes of this  
34 subsection, **["low income family"]** "low-income family" means a  
35 family which qualifies for **low income** low-income housing under  
36 the standards promulgated by the **Council on Affordable Housing**  
37 New Jersey Housing and Mortgage Finance Agency pursuant to the  
38 provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).  
39 (cf: P.L.1997, c.411, s.11)

40  
41 13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to  
42 read as follows:

43 33. The Legislature finds and declares:

44 a. The collection of development fees from builders of  
45 residential and non-residential properties has been authorized by the  
46 court through the powers **delegated to the Council on Affordable**  
47 **Housing** established pursuant to the "Fair Housing Act," P.L.1985,



1 c.222 (C.52:27D-301 et al.). Due to the Legislature's determination  
2 that the role of the Council on Affordable Housing has not  
3 developed in practice as intended, the Legislature further  
4 determines that authority relating to rulemaking on the collection of  
5 residential and non-residential development fees is appropriately  
6 delegated to the Department of Community Affairs, given the  
7 department's existing roles related to local government finance and  
8 the funding and financing of affordable housing throughout the  
9 State.

10 b. New Jersey's land resources are becoming more scarce, while  
11 its redevelopment needs are increasing. In order to balance the  
12 needs of developing and redeveloping communities, a reasonable  
13 method of providing for the housing needs of **low and moderate**  
14 **income** ~~low-, moderate-, and middle income~~ middle-income  
15 households, without mandating the inclusion of housing in every  
16 non-residential project, must be established.

17 c. A Statewide non-residential development fee program, which  
18 permits municipalities **under the council's jurisdiction** that have  
19 obtained or are in the process of seeking compliance certification to  
20 retain these fees for use in the municipality will provide a fair and  
21 balanced funding method to address the State's affordable housing  
22 needs, while providing an incentive to all municipalities to **seek**  
23 **substantive** obtain compliance certification **from the council**.

24 d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),  
25 organizations are directed to invest in the Casino Reinvestment  
26 Development Authority to ensure that the development of housing  
27 for families of **low and moderate income** ~~low- and moderate-~~  
28 income shall be provided. The Casino Reinvestment Development  
29 Authority **, in consultation with the council,** shall work to  
30 effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301  
31 et al.).

32 e. **The "Statewide Non-Residential Development Fee Act,"**  
33 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through  
34 C.40:55D-8.7), prohibits municipalities from imposing their own  
35 fees to fund affordable housing on non-residential development, and  
36 P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this  
37 underlying policy. **Deleted by amendment P.L. , c. (pending**  
38 **before the Legislature as this bill)**

39 f. The negative impact of a State policy that over-relies on a  
40 municipal fee structure and of State programs that require a  
41 municipality to impose fees and charges on developers must be  
42 balanced against any public good expected from such regulation. It  
43 is undisputable that the charging of fees at high levels dissuades  
44 commerce from locating within a State or municipality or locality  
45 and halts non-residential and residential development, and these ill  
46 effects directly increase the overall costs of housing, and could

1   impede the constitutional obligation to provide for a realistic  
2   opportunity for housing for families at all income levels.

3   (cf: P.L.2009, c.90, s.36)

4  
5       14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to  
6   read as follows:

7       34. As used in sections 32 through 38 of P.L.2008, c.46  
8   (C.40:55D-8.1 through C.40:55D-8.7):

9       "Construction" means new construction and additions, but does  
10   not include alterations, reconstruction, renovations, and repairs as  
11   those terms are defined under the State Uniform Construction Code  
12   promulgated pursuant to the "State Uniform Construction Code  
13   Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

14       "Commissioner" means the Commissioner of Community  
15   Affairs.

16       **["Council" means the Council on Affordable Housing,**  
17   **established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).]**

18       "Department" means the Department of Community Affairs.

19       "Developer" means the legal or beneficial owner or owners of a  
20   lot or of any land proposed to be included in a proposed  
21   development, including the holder of an option or contract to  
22   purchase, or other person having an enforceable proprietary interest  
23   in such land.

24       "Equalized assessed value" means the assessed value of a  
25   property divided by the current average ratio of assessed to true  
26   value for the municipality in which the property is situated, as  
27   determined in accordance with sections 1, 5, and 6 of P.L.1973,  
28   c.123 (C.54:1-35a through C.54:1-35c).

29       "Mixed use development" means any development which  
30   includes both a non-residential development component and a  
31   residential development component, and shall include developments  
32   for which (1) there is a common developer for both the residential  
33   development component and the non-residential development  
34   component, provided that for purposes of this definition, multiple  
35   persons and entities may be considered a common developer if there  
36   is a contractual relationship among them obligating each entity to  
37   develop at least a portion of the residential or non-residential  
38   development, or both, or otherwise to contribute resources to the  
39   development; and (2) the residential and non-residential  
40   developments are located on the same lot or adjoining lots,  
41   including but not limited to lots separated by a street, a river, or  
42   another geographical feature.

43       "Non-residential development" means: (1) any building or  
44   structure, or portion thereof, including but not limited to any  
45   appurtenant improvements, which is designated to a use group other  
46   than a residential use group according to the State Uniform  
47   Construction Code promulgated to effectuate the "State Uniform  
48   Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),

1 including any subsequent amendments or revisions thereto; (2)  
2 hotels, motels, vacation timeshares, and child-care facilities; and (3)  
3 the entirety of all continuing care facilities within a continuing care  
4 retirement community which is subject to the "Continuing Care  
5 Retirement Community Regulation and Financial Disclosure Act,"  
6 P.L.1986, c.103 (C.52:27D-330 et seq.).

7 "Non-residential development fee" means the fee authorized to  
8 be imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
9 (C.40:55D-8.1 through C.40:55D-8.7).

10 "Relating to the provision of housing" shall be liberally  
11 construed to include the construction, maintenance, or operation of  
12 housing, including but not limited to the provision of services to  
13 such housing and the funding of any of the above.

14 "Spending plan" means a method of allocating funds collected  
15 and to be collected pursuant to an approved municipal development  
16 fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)  
17 for the purpose of meeting the housing needs of low and moderate  
18 income individuals.

19 "Treasurer" means the Treasurer of the State of New Jersey.  
20 (cf: P.L.2008, c.46, s.34)

21

22 15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to  
23 read as follows:

24 35. a. Beginning on the effective date of P.L.2008, c.46  
25 (C.52:27D-329.1 et al.), a fee is imposed on all construction  
26 resulting in non-residential development, as follows:

27 (1) A fee equal to two and one-half percent of the equalized  
28 assessed value of the land and improvements, for all new non-  
29 residential construction on an unimproved lot or lots; or

30 (2) A fee equal to two and one-half percent of the increase in  
31 equalized assessed value, of the additions to existing structures to  
32 be used for non-residential purposes.

33 b. All non-residential construction of buildings or structures on  
34 property used by churches, synagogues, mosques, and other houses  
35 of worship, and property used for educational purposes, which is  
36 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the  
37 imposition of a non-residential development fee pursuant to this  
38 section, provided that the property continues to maintain its tax  
39 exempt status under that statute for a period of at least three years  
40 from the date of issuance of the certificate of occupancy. In  
41 addition, the following shall be exempt from the imposition of a  
42 non-residential development fee:

43 (1) parking lots and parking structures, regardless of whether the  
44 parking lot or parking structure is constructed in conjunction with a  
45 non-residential development, such as an office building, or whether  
46 the parking lot is developed as an independent non-residential  
47 development;

1       (2) any non-residential development which is an amenity to be  
2 made available to the public, including, but not limited to,  
3 recreational facilities, community centers, and senior centers, which  
4 are developed in conjunction with or funded by a non-residential  
5 developer;

6       (3) non-residential construction resulting from a relocation of or  
7 an on-site improvement to a nonprofit hospital or a nursing home  
8 facility;

9       (4) projects that are located within a specifically delineated  
10 urban transit hub, as defined pursuant to section 2 of P.L.2007,  
11 c.346 (C.34:1B-208);

12       (5) projects that are located within an eligible municipality, as  
13 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a  
14 majority of the project is located within a one-half mile radius of  
15 the midpoint of a platform area for a light rail system; and

16       (6) projects determined by the New Jersey Transit Corporation  
17 to be consistent with a transit village plan developed by a transit  
18 village designated by the Department of Transportation.

19       A developer of a non-residential development exempted from the  
20 non-residential development fee pursuant to this section shall be  
21 subject to it at such time the basis for the exemption set forth in this  
22 subsection no longer applies, and shall make the payment of the  
23 non-residential development fee, in that event, within three years  
24 after that event or after the issuance of the final certificate of  
25 occupancy of the non-residential development whichever is later.

26       For purposes of this subsection, "recreational facilities and  
27 community center" means any indoor or outdoor buildings, spaces,  
28 structures, or improvements intended for active or passive  
29 recreation, including but not limited to ball fields, meeting halls,  
30 and classrooms, accommodating either organized or informal  
31 activity; and "senior center" means any recreational facility or  
32 community center with activities and services oriented towards  
33 serving senior citizens.

34       If a property which was exempted from the collection of a non-  
35 residential development fee thereafter ceases to be exempt from  
36 property taxation, the owner of the property shall remit the fees  
37 required pursuant to this section within 45 days of the termination  
38 of the property tax exemption. Unpaid non-residential development  
39 fees under these circumstances may be enforceable by the  
40 municipality as a lien against the real property of the owner.

41       c. (1) Unless authorized to pay directly to the municipality in  
42 which the non-residential construction is occurring in accordance  
43 with paragraph (2) of this subsection, developers shall pay non-  
44 residential development fees imposed pursuant to P.L.2008, c.46  
45 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with  
46 subsection g. of this section in a manner and on such forms as  
47 required by the Treasurer, provided that a certified proof concerning

1 the payment shall be furnished by the Treasurer, to the  
2 municipality.

3 (2) The **【council】** department shall maintain on its Internet  
4 website a list of each municipality that is authorized to use the  
5 development fees collected pursuant to this section and that has a  
6 confirmed status of compliance with the "Fair Housing Act,"  
7 P.L.1985, c.222 (C.52:27D-301 et al.) , or is in the process of  
8 seeking compliance certification, which compliance shall include a  
9 spending plan **【authorized by the council】** pursuant to section 8 of  
10 P.L.2008, c.46 (C.52:27D-329.2) for all development fees collected.

11 (3) No later than 90 days following the enactment of P.L. , c.  
12 (C. ) (pending before the Legislature as this bill), any  
13 municipality that is or has been authorized to retain and expend  
14 non-residential development fees shall provide the department with  
15 a detailed accounting of all such fees that have been collected and  
16 expended since the inception of the municipal authorization to  
17 collect and retain said fees.

18 (4) Beginning with the year after the enactment of P.L. , c.  
19 (C. ) (pending before the Legislature as this bill), by January  
20 15, every municipality that is or has been authorized to retain and  
21 expend non-residential development fees shall provide the  
22 department with a detailed accounting of all such fees that have  
23 been collected and expended previous year.

24 d. The payment of non-residential development fees required  
25 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
26 through C.40:55D-8.7) shall be made prior to the issuance of a  
27 certificate of occupancy for such development. A final certificate  
28 of occupancy shall not be issued for any non-residential  
29 development until such time as the fee imposed pursuant to this  
30 section has been paid by the developer. A non-residential developer  
31 may deposit with the appropriate entity the development fees as  
32 calculated by the municipality under protest, and the local code  
33 enforcement official shall thereafter issue the certificate of  
34 occupancy provided that the construction is otherwise eligible for a  
35 certificate of occupancy.

36 e. The construction official responsible for the issuance of a  
37 building permit shall notify the local tax assessor of the issuance of  
38 the first building permit for a development which may be subject to  
39 a non-residential development fee. Within 90 days of receipt of that  
40 notice, the municipal tax assessor, based on the plans filed, shall  
41 provide an estimate of the equalized assessed value of the non-  
42 residential development. The construction official responsible for  
43 the issuance of a final certificate of occupancy shall notify the local  
44 assessor of any and all requests for the scheduling of a final  
45 inspection on property which may be subject to a non-residential  
46 development fee. Within 10 business days of a request for the  
47 scheduling of a final inspection, the municipal assessor shall  
48 confirm or modify the previously estimated equalized assessed

1 value of the improvements of the non-residential development in  
2 accordance with the regulations adopted by the Treasurer pursuant  
3 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential  
4 development fee pursuant to sections 32 through 38 of P.L.2008,  
5 c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the  
6 developer of the amount of the non-residential development fee.  
7 Should the municipality fail to determine or notify the developer of  
8 the amount of the non-residential development fee within 10  
9 business days of the request for final inspection, the developer may  
10 estimate the amount due and pay that estimated amount consistent  
11 with the dispute process set forth in subsection b. of section 37 of  
12 P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-  
13 residential development fee, provided the developer is in full  
14 compliance with all other applicable laws, the municipality shall  
15 issue a final certificate of occupancy for the subject property.  
16 Failure of the municipality to comply with the timeframes or  
17 procedures set forth in this subsection may subject it to penalties to  
18 be imposed by the commissioner; any penalties so imposed shall be  
19 deposited into the "New Jersey Affordable Housing Trust Fund"  
20 established pursuant to section 20 of P.L.1985, c.222 as amended  
21 by section 17 of P.L.2008, c.46 (C.52:27D-320).

22 A developer of a mixed use development shall be required to pay  
23 the Statewide non-residential development fee relating to the non-  
24 residential development component of a mixed use development  
25 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

26 Non-residential construction which is connected with the  
27 relocation of the facilities of a for-profit hospital shall be subject to  
28 the fee authorized to be imposed under this section to the extent of  
29 the increase in equalized assessed valuation in accordance with  
30 regulations to be promulgated by the Director of the Division of  
31 Taxation, Department of the Treasury.

32 f. Any municipality that is not in compliance with the  
33 requirements established pursuant to sections 32 through 38 of  
34 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or  
35 regulations of the **【council】** commissioner adopted thereto, may be  
36 subject to forfeiture of any or all funds remaining within its  
37 municipal development trust fund. Any funds so forfeited shall be  
38 deposited into the New Jersey Affordable Housing Trust Fund  
39 established pursuant to section 20 of P.L.1985, c.222 as amended  
40 by section 17 of P.L.2008, c.46 (C.52:27D-320).

41 g. The Treasurer shall credit to the "Urban Housing Assistance  
42 Fund," established pursuant to section 13 of P.L.2008, c.46  
43 (C.52:27D-329.7) annually from the receipts of the fees authorized  
44 to be imposed pursuant to this section an amount equal to \$20  
45 million; all receipts in excess of this amount shall be deposited into  
46 the "New Jersey Affordable Housing Trust Fund," established  
47 pursuant to section 20 of P.L.1985, c.222 as amended by section 17

1 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of  
2 that fund.

3 The Treasurer shall adopt such regulations as necessary to  
4 effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
5 through C.40:55D-8.7), in accordance with the "Administrative  
6 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).  
7 (cf: P.L.2008, c.46, s.35)  
8

9 16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to  
10 read as follows:

11 36. a. The commissioner **【**, in consultation with the council,**】**  
12 shall promulgate, in accordance with the provisions of the  
13 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
14 seq.), such regulations as are necessary for the prompt and effective  
15 implementation of the provisions and purposes of **【**P.L.2008, c.46  
16 (C.52:27D-329.1 et al.)**】** section 8 of P.L.2008, c.46 (C.52:27D-  
17 329.2), including, but not limited to, provisions for the payment of  
18 any necessary administrative costs related to the assessment of  
19 properties and collection of any development fees by a  
20 municipality.

21 b. **【**Notwithstanding the authority granted to the commissioner  
22 herein, the council**】** The commissioner shall adopt and promulgate,  
23 in accordance with the provisions of the "Administrative Procedure  
24 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are  
25 necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et  
26 al.), including but not limited to, regulations necessary for the  
27 establishment, implementation, review, monitoring, and  
28 enforcement of a municipal affordable housing trust fund and  
29 spending plan.  
30 (cf: P.L.2008, c.46, s.36)  
31

32 17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to  
33 read as follows:

34 38. a. Except as expressly provided in P.L.2008, c.46  
35 (C.52:27D-329.1 et al.), including subsection b. of this section, any  
36 provision of a local ordinance which imposes a fee for the  
37 development of affordable housing upon a developer of non-  
38 residential property, including any and all development fee  
39 ordinances adopted in accordance with any regulations of the  
40 **【**Council on Affordable Housing**】** department, or any provision of  
41 an ordinance which imposes an obligation relating to the provision  
42 of housing affordable to **【**low and moderate income**】** low- and  
43 moderate-income households, or payment in-lieu of building as a  
44 condition of non-residential development, shall be void and of no  
45 effect. A provision of an ordinance which imposes a development  
46 fee which is not prohibited by any provision of P.L.2008, c.46  
47 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

1       b. No affordable housing obligation shall be imposed  
2 concerning a mixed use development that would result in an  
3 affordable housing obligation greater than that which would have  
4 been imposed if the residential portion of the mixed use  
5 development had been developed independently of the non-  
6 residential portion of the mixed use development.

7       c. Whenever the developer of a non-residential development  
8 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or  
9 committed itself to make a financial or other contribution relating to  
10 the provision of housing affordable to low and moderate income  
11 households, the non-residential development fee authorized  
12 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied  
13 through the investment obligations made pursuant to P.L.1977,  
14 c.110 (C.5:12-1 et seq.).  
15 (cf: P.L.2008, c.46, s.38)

16  
17       18. Section 39 of P.L.2009, c.90 (C.40:55D-8.8) is amended to  
18 read as follows:

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

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

32       b. A developer of a non-residential project that, prior to July  
33 17, 2008, has been referred to a planning board by the State, a  
34 governing body, or other public agency for review pursuant to  
35 section 22 of P.L.1975, c.291 (C.40:55D-31) and that was subject to  
36 the payment of a nonresidential development fee prior to the  
37 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be  
38 entitled to a return of any moneys paid that represent the difference  
39 between moneys committed prior to July 17, 2008 and moneys paid  
40 on or after that date.

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



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

9 e. **【**Notwithstanding the provisions of subsections a., b., c., and  
10 d. of this section, if, on the effective date of P.L.2009, c.90  
11 (C.52:27D-489a et al.), a municipality that has returned all or a  
12 portion of non-residential fees in accordance with subsection a. or  
13 b. of this section shall be reimbursed from the funds available  
14 through the appropriation made into the "New Jersey Affordable  
15 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90  
16 (C.52:27D-320.1) within 30 days of the municipality providing  
17 written notice to the Council on Affordable Housing. **】** (Deleted by  
18 amendment, P.L. , c. ) (pending before the Legislature as this  
19 bill)

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

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

38  
39 19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to  
40 read as follows:

41 3. a. There is established in, but not of, the department a Site  
42 Improvement Advisory Board, to devise statewide site improvement  
43 standards pursuant to section 4 of **【this act】** P.L.1993, c.32  
44 (C.40:55D-40.4). The board shall consist of the commissioner or  
45 **【his】** the commissioner's designee, who shall be a non-voting  
46 member of the board, the Director of the Division of **【Housing】**  
47 Codes and Standards in the Department of Community Affairs, who

1 shall be a voting member of the board, the Executive Director of the  
2 New Jersey Housing and Mortgage Finance Agency, or the  
3 executive director's designee, who shall be a voting member of the  
4 board, and **【10】** nine other voting members, to be appointed by the  
5 commissioner. The other members shall include two professional  
6 planners, one of whom serves as a planner for a governmental entity  
7 or whose professional experience is predominantly in the public  
8 sector and who has worked in the public sector for at least the  
9 previous five years and the other of whom serves as a planner in  
10 private practice and has particular expertise in private residential  
11 development and has been involved in private sector planning for at  
12 least the previous five years, and one representative each from:

13 (1) The New Jersey Society of Professional Engineers;

14 (2) The New Jersey Society of Municipal Engineers;

15 (3) The New Jersey Association of County Engineers;

16 (4) The New Jersey Federation of Planning Officials;

17 (5) **【The Council on Affordable Housing】** (Deleted by  
18 amendment, P.L. , c. (pending before the Legislature as this  
19 bill);

20 (6) The New Jersey Builders' Association;

21 (7) The New Jersey Institute of Technology;

22 (8) The New Jersey State League of Municipalities.

23 b. Among the members to be appointed by the commissioner  
24 who are first appointed, four shall be appointed for terms of two  
25 years each, four shall be appointed for terms of three years each,  
26 and two shall be appointed for terms of four years each. Thereafter,  
27 each appointee shall serve for a term of four years. Vacancies in  
28 the membership shall be filled in the same manner as original  
29 appointments are made, for the unexpired term. The **【commission】**  
30 board shall select a chair from among its members **【a chairman】**.  
31 Members may be removed by the commissioner for cause.

32 c. Board members shall serve without compensation, but may  
33 be entitled to reimbursement, from moneys appropriated or  
34 otherwise made available for the purposes of this act, for expenses  
35 incurred in the performance of their duties.

36 (cf: P.L.1993, c.32, s.3)

37  
38 20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to  
39 read as follows:

40 3. As used in **【this act】** P.L.1992, c.79 (C.40A:12A-1 et seq.):

41 "Bonds" means any bonds, notes, interim certificates, debentures  
42 or other obligations issued by a municipality, county,  
43 redevelopment entity, or housing authority pursuant to P.L.1992,  
44 c.79 (C.40A:12A-1 et al.).

45 "Comparable, affordable replacement housing" means newly-  
46 constructed or substantially rehabilitated housing to be offered to a  
47 household being displaced as a result of a redevelopment project,

1 that is affordable to that household based on its income under the  
2 guidelines established by the **【Council on Affordable Housing in**  
3 **the Department of Community Affairs】** New Jersey Housing and  
4 Mortgage Finance Agency for maximum affordable sales prices or  
5 maximum fair market rents, and that is comparable to the  
6 household's dwelling in the redevelopment area with respect to the  
7 size and amenities of the dwelling unit, the quality of the  
8 neighborhood, and the level of public services and facilities offered  
9 by the municipality in which the redevelopment area is located.

10 "Development" means the division of a parcel of land into two or  
11 more parcels, the construction, reconstruction, conversion,  
12 structural alteration, relocation, or enlargement of any building or  
13 other structure, or of any mining, excavation or landfill, and any use  
14 or change in the use of any building or other structure, or land or  
15 extension of use of land, for which permission may be required  
16 pursuant to the "Municipal Land Use Law," P.L.1975, c.291  
17 (C.40:55D-1 et seq.).

18 "Electric vehicle charging station" means an electric component  
19 assembly or cluster of component assemblies designed specifically  
20 to charge batteries within electric vehicles by permitting the transfer  
21 of electric energy to a battery or other storage device in an electric  
22 vehicle.

23 "Governing body" means the body exercising general legislative  
24 powers in a county or municipality according to the terms and  
25 procedural requirements set forth in the form of government  
26 adopted by the county or municipality.

27 "Housing authority" means a housing authority created or  
28 continued pursuant to this act.

29 "Housing project" means a project, or distinct portion of a  
30 project, which is designed and intended to provide decent, safe and  
31 sanitary dwellings, apartments or other living accommodations for  
32 persons of **【low and moderate income】** low- and moderate-income;  
33 such work or undertaking may include buildings, land, equipment,  
34 facilities and other real or personal property for necessary,  
35 convenient or desirable appurtenances, streets, sewers, water  
36 service, parks, site preparation, gardening, administrative,  
37 community, health, recreational, educational, welfare or other  
38 purposes. The term "housing project" also may be applied to the  
39 planning of the buildings and improvements, the acquisition of  
40 property, the demolition of existing structures, the construction,  
41 reconstruction, alteration and repair of the improvements and all  
42 other work in connection therewith.

43 "Parking authority" means a public corporation created pursuant  
44 to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et  
45 seq.), and authorized to exercise redevelopment powers within the  
46 municipality.

47 "Persons of **【low and moderate income】** low- and moderate-  
48 income" means persons or families who are, in the case of State

1 assisted projects or programs, so defined by the **【Council on**  
2 **Affordable Housing in the Department of Community Affairs】** New  
3 Jersey Housing and Mortgage Finance Agency, or in the case of  
4 federally assisted projects or programs, defined as of **【"low and**  
5 **very low income"】** "low- and very low-income" by the United  
6 States Department of Housing and Urban Development.

7 "Public body" means the State or any county, municipality,  
8 school district, authority or other political subdivision of the State.

9 "Public electric vehicle charging station" means an electric  
10 vehicle charging station located at a publicly available parking  
11 space.

12 "Public housing" means any housing for persons of **【low and**  
13 **moderate income】** low- and moderate-income owned by a  
14 municipality, county, the State or the federal government, or any  
15 agency or instrumentality thereof.

16 "Public hydrogen fueling station" means publicly available  
17 equipment to store and dispense hydrogen fuel to vehicles  
18 according to industry codes and standards.

19 "Publicly assisted housing" means privately owned housing  
20 which receives public assistance or subsidy, which may be grants or  
21 loans for construction, reconstruction, conservation, or  
22 rehabilitation of the housing, or receives operational or maintenance  
23 subsidies either directly or through rental subsidies to tenants, from  
24 a federal, State or local government agency or instrumentality.

25 "Publicly available parking space" means a parking space that is  
26 available to, and accessible by, the public and may include on-street  
27 parking spaces and parking spaces in surface lots or parking  
28 garages, but shall not include: a parking space that is part of, or  
29 associated with, a private residence; or a parking space that is  
30 reserved for the exclusive use of an individual driver or vehicle or  
31 for a group of drivers or vehicles, such as employees, tenants,  
32 visitors, residents of a common interest development, or residents  
33 of an adjacent building.

34 "Real property" means all lands, including improvements and  
35 fixtures thereon, and property of any nature appurtenant thereto or  
36 used in connection therewith, and every estate, interest and right,  
37 legal or equitable, therein, including terms for years and liens by  
38 way of judgment, mortgage or otherwise, and indebtedness secured  
39 by such liens.

40 "Redeveloper" means any person, firm, corporation or public  
41 body that shall enter into or propose to enter into a contract with a  
42 municipality or other redevelopment entity for the redevelopment or  
43 rehabilitation of an area in need of redevelopment, or an area in  
44 need of rehabilitation, or any part thereof, under the provisions of  
45 this act, or for any construction or other work forming part of a  
46 redevelopment or rehabilitation project.

1 "Redevelopment" means clearance, replanning, development and  
2 redevelopment; the conservation and rehabilitation of any structure  
3 or improvement, the construction and provision for construction of  
4 residential, commercial, industrial, public or other structures and  
5 the grant or dedication of spaces as may be appropriate or necessary  
6 in the interest of the general welfare for streets, parks, playgrounds,  
7 or other public purposes, including recreational and other facilities  
8 incidental or appurtenant thereto, in accordance with a  
9 redevelopment plan.

10 "Redevelopment agency" means a redevelopment agency created  
11 pursuant to subsection a. of section 11 of P.L.1992, c.79  
12 (C.40A:12A-11) or established heretofore pursuant to the  
13 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et  
14 al.), repealed by this act, which has been permitted in accordance  
15 with the provisions of **[this act]** P.L.1992, c.79 (C.40A:12A-1 et  
16 seq.) to continue to exercise its redevelopment functions and  
17 powers.

18 "Redevelopment area" or "area in need of redevelopment" means  
19 an area determined to be in need of redevelopment pursuant to  
20 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6)  
21 or determined heretofore to be a "blighted area" pursuant to  
22 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both  
23 determinations as made pursuant to the authority of Article VIII,  
24 Section III, paragraph 1 of the Constitution. A redevelopment area  
25 may include lands, buildings, or improvements which of themselves  
26 are not detrimental to the public health, safety or welfare, but the  
27 inclusion of which is found necessary, with or without change in  
28 their condition, for the effective redevelopment of the area of which  
29 they are a part.

30 "Redevelopment entity" means a municipality or an entity  
31 authorized by the governing body of a municipality pursuant to  
32 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to  
33 implement redevelopment plans and carry out redevelopment  
34 projects in an area in need of redevelopment, or in an area in need  
35 of rehabilitation, or in both.

36 "Redevelopment plan" means a plan adopted by the governing  
37 body of a municipality for the redevelopment or rehabilitation of all  
38 or any part of a redevelopment area, or an area in need of  
39 rehabilitation, which plan shall be sufficiently complete to indicate  
40 its relationship to definite municipal objectives as to appropriate  
41 land uses, public transportation and utilities, recreational and  
42 municipal facilities, and other public improvements; and to indicate  
43 proposed land uses and building requirements in the redevelopment  
44 area or area in need of rehabilitation, or both.

45 "Redevelopment project" means any work or undertaking  
46 pursuant to a redevelopment plan; such undertaking may include  
47 any buildings, land, including demolition, clearance or removal of  
48 buildings from land, equipment, facilities, or other real or personal

1 properties which are necessary, convenient, or desirable  
2 appurtenances, such as but not limited to streets, sewers, utilities,  
3 parks, site preparation, landscaping, and administrative, community,  
4 health, recreational, educational, and welfare facilities, and zero-  
5 emission vehicle fueling and charging infrastructure.

6 "Rehabilitation" means an undertaking, by means of extensive  
7 repair, reconstruction or renovation of existing structures, with or  
8 without the introduction of new construction or the enlargement of  
9 existing structures, in any area that has been determined to be in  
10 need of rehabilitation or redevelopment, to eliminate substandard  
11 structural or housing conditions and arrest the deterioration of that  
12 area.

13 "Rehabilitation area" or "area in need of rehabilitation" means  
14 any area determined to be in need of rehabilitation pursuant to  
15 section 14 of P.L.1992, c.79 (C.40A:12A-14).

16 "Zero-emission vehicle" means a vehicle certified as a zero  
17 emission vehicle pursuant to the California Air Resources Board  
18 zero emission vehicle standards for the applicable model year,  
19 including but not limited to, battery electric-powered vehicles and  
20 hydrogen fuel cell vehicles.

21 "Zero-emission vehicle fueling and charging infrastructure"  
22 means infrastructure to charge or fuel zero-emission vehicles,  
23 including but not limited to, public electric vehicle charging  
24 stations and public hydrogen fueling stations.

25 (cf: P.L.2021, c.168, s.1)

26

27 21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to  
28 read as follows:

29 16. a. In order to carry out the housing purposes of this act, a  
30 municipality, county, or housing authority may exercise the  
31 following powers, in addition to those set forth in section 22 of  
32 P.L.1992, c.79 (C.40A:12A-22):

33 (1) Plan, construct, own, and operate housing projects; maintain,  
34 reconstruct, improve, alter, or repair any housing project or any part  
35 thereof; and for these purposes, receive and accept from the State or  
36 federal government, or any other source, funds or other financial  
37 assistance;

38 (2) Lease or rent any dwelling house, accommodations, lands,  
39 buildings, structures or facilities embraced in any housing project;  
40 and pursuant to the provisions of this act, establish and revise the  
41 rents and charges therefor;

42 (3) Acquire property pursuant to subsection i. of section 22 of  
43 P.L.1992, c.79 (C.40A:12A-22);

44 (4) Acquire, by condemnation, any land or building which is  
45 necessary for the housing project, pursuant to the provisions of the  
46 "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

47 (5) Issue bonds in accordance with the provisions of section 29  
48 of P.L.1992, c.79 (C.40A:12A-29);

1 (6) Cooperate with any other municipality, private, county, State  
2 or federal entity to provide funds to the municipality or other  
3 governmental entity and to homeowners, tenant associations,  
4 nonprofit or private developers to acquire, construct, rehabilitate or  
5 operate publicly assisted housing, and to provide rent subsidies for  
6 persons of **low and moderate income** low- and moderate-income,  
7 including the elderly, pursuant to applicable State or federal  
8 programs;

9 (7) Encourage the use of demand side subsidy programs such as  
10 certificates and vouchers for low-income families and promote the  
11 use of project based certificates which provide subsidies for units in  
12 newly constructed and substantially rehabilitated structures, and of  
13 tenant based certificates which subsidize rent in existing units;

14 (8) Cooperate with any State or federal entity to secure  
15 mortgage assistance for any person of **low or moderate income**  
16 low- or moderate-income;

17 (9) Provide technical assistance and support to nonprofit  
18 organizations and private developers interested in constructing **low**  
19 **and moderate income** low- and moderate-income housing;

20 (10) If it owns and operates public housing units, provide to the  
21 tenants public safety services, including protection against  
22 substance use disorder, and social services, including counseling  
23 and financial management, in cooperation with other agencies;

24 (11) Provide emergency shelters, transitional housing and  
25 supporting services to homeless families and individuals.

26 b. All housing projects, programs and actions undertaken  
27 pursuant to this act shall accord with the housing element of the  
28 master plan of the municipality within which undertaken, and with  
29 any fair share housing plan **filed by** of the municipality **with the**  
30 Council on Affordable Housing, based upon the council's criteria  
31 and guidelines**], adopted** pursuant to the "Fair Housing Act,"  
32 P.L.1985, c.222 (C.52:27D-301 et al.) **], whether or not the**  
33 municipality has petitioned for substantive certification of the  
34 plan**].**

35 (cf: P.L.2017, c.131, s.176)

36  
37 22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to  
38 read as follows:

39 10. A municipality's housing element shall be designed to  
40 achieve the goal of access to affordable housing to meet present and  
41 prospective housing needs, with particular attention to **low and**  
42 **moderate income** low- and moderate-income housing, and shall  
43 contain at least:

44 a. An inventory of the municipality's housing stock by age,  
45 condition, purchase or rental value, occupancy characteristics, and  
46 type, including the number of units affordable to **low and moderate**  
47 **income** low- and moderate-income households and substandard

1 housing capable of being rehabilitated, and in conducting this  
2 inventory the municipality shall have access, on a confidential basis  
3 for the sole purpose of conducting the inventory, to all necessary  
4 property tax assessment records and information in the assessor's  
5 office, including but not limited to the property record cards;

6 b. A projection of the municipality's housing stock, including  
7 the probable future construction of **low and moderate income**  
8 low- and moderate-income housing, for the next ten years, taking  
9 into account, but not necessarily limited to, construction permits  
10 issued, approvals of applications for development and probable  
11 residential development of lands;

12 c. An analysis of the municipality's demographic  
13 characteristics, including but not necessarily limited to, household  
14 size, income level and age;

15 d. An analysis of the existing and probable future employment  
16 characteristics of the municipality;

17 e. A determination of the municipality's present and prospective  
18 fair share for **low and moderate income** low- and moderate-  
19 income housing and its capacity to accommodate its present and  
20 prospective housing needs, including its fair share for **low and**  
21 **moderate income** low- and moderate-income housing, as  
22 established pursuant to section 3 of P.L. , c. (C. ) (pending  
23 before the Legislature as this bill);

24 f. A consideration of the lands that are most appropriate for  
25 construction of **low and moderate income** low- and moderate-  
26 income housing and of the existing structures most appropriate for  
27 conversion to, or rehabilitation for, **low and moderate income**  
28 low- and moderate-income housing, including a consideration of  
29 lands of developers who have expressed a commitment to provide  
30 **low and moderate income** low- and moderate-income housing;  
31 and

32 g. An analysis of the extent to which municipal ordinances and  
33 other local factors advance or detract from the goal of preserving  
34 multigenerational family continuity as expressed in the  
35 recommendations of the Multigenerational Family Housing  
36 Continuity Commission, adopted pursuant to paragraph (1) of  
37 subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20).  
38 (cf: P.L.2021, c.273, s.2)

39  
40 23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended  
41 to read as follows:

42 1. Any municipality that receives an adjustment of its  
43 prospective need obligations for the fourth round or subsequent  
44 rounds based on a lack of vacant land shall as part of the process of  
45 adopting and implementing its housing element and fair share plan  
46 identify sufficient parcels likely to redevelop during the current  
47 round of obligations to address at least 25 percent of the prospective



1 need obligation that has been adjusted, and adopt realistic zoning  
2 that allows for such adjusted obligation, or demonstrate why the  
3 municipality is unable to do so. When computing a municipal  
4 adjustment regarding available land resources as part of the  
5 determination of a municipality's fair share of affordable housing,  
6 the **【Council on Affordable Housing】** municipality, in filing a  
7 housing element and fair share plan pursuant to subsection f. of  
8 section 3 of P.L. , c. (C. and C. ) (pending before the  
9 Legislature as this bill), shall exclude from designating , and the  
10 process set forth pursuant to sections 3 and 4 of P.L. , c. (C.  
11 and C. ) (pending before the Legislature as this bill) shall  
12 confirm was correctly excluded, as vacant land:

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

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

28 (c) any vacant contiguous parcels of land in private ownership  
29 of a size which would accommodate fewer than five housing units  
30 **【if current standards of the council were applied】** based on  
31 appropriate standards pertaining to housing density;

32 (d) historic and architecturally important sites listed on the State  
33 Register of Historic Places or National Register of Historic Places  
34 prior to the **【submission of the petition of substantive certification】**  
35 date of filing a housing element and fair share plan pursuant to  
36 section 3, or initiation of an action pursuant to section 4 of P.L. ,  
37 c. (C. or C. ) (pending before the Legislature as this  
38 bill);

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

41 (f) sites designated for active recreation that are designated for  
42 recreational purposes in the municipal master plan; and

43 (g) environmentally sensitive lands where development is  
44 prohibited by any State or federal agency.

45 No municipality shall be required to utilize for affordable  
46 housing purposes land that is excluded from being designated as  
47 vacant land. (cf: P.L.2008, c.46, s.39)

48

1        24. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to

1 read as follows:

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

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

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

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

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

38 (5) Donation or use of municipally owned land or land  
39 condemned by the municipality for purposes of providing **【low and**  
40 **moderate income】** low- and moderate-income housing;

41 (6) Tax abatements for purposes of providing **【low and**  
42 **moderate income】** low- and moderate-income housing;

43 (7) Utilization of funds obtained from any State or federal  
44 subsidy toward the construction of **【low and moderate income】**  
45 low- and moderate-income housing;

- 1       (8) Utilization of municipally generated funds toward the  
2 construction of **low and moderate income** low- and moderate-  
3 income housing; and
- 4       (9) The purchase of privately owned real property used for  
5 residential purposes at the value of all liens secured by the property,  
6 excluding any tax liens, notwithstanding that the total amount of  
7 debt secured by liens exceeds the appraised value of the property,  
8 pursuant to regulations promulgated by the Commissioner of  
9 Community Affairs pursuant to subsection b. of section 41 of  
10 P.L.2000, c.126 (C.52:27D-311.2).
- 11       b. The municipality may provide for a phasing schedule for the  
12 achievement of its fair share of **low and moderate income** low-  
13 and moderate-income housing.
- 14       c. (Deleted by amendment, P.L.2008, c.46)
- 15       d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall  
16 require a municipality to raise or expend municipal revenues in  
17 order to provide **low and moderate income** low- and moderate-  
18 income housing.
- 19       e. When a municipality's housing element includes the  
20 provision of rental housing units in a community residence for the  
21 developmentally disabled , for the mentally ill, or for persons with  
22 head injuries, as those terms are defined in section 2 of P.L.1977,  
23 c.448 (C.30:11B-2), or in transitional housing, which will be  
24 affordable to persons of **low and moderate income** low- and  
25 moderate-income, and for which adequate measures to retain such  
26 affordability pursuant to paragraph (3) of subsection a. of this  
27 section are included in the housing element, those housing units  
28 shall be fully credited **as permitted under the rules of the council**  
29 towards the fulfillment of the municipality's fair share of **low and**  
30 **moderate income** low- and moderate-income housing. A  
31 municipality shall not credit transitional housing units towards more  
32 than 10 percent of the municipality's fair share obligation.
- 33       f. It having been determined by the Legislature that the  
34 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is  
35 a public purpose, a municipality or municipalities may utilize public  
36 monies to make donations, grants or loans of public funds for the  
37 rehabilitation of deficient housing units and the provision of new or  
38 substantially rehabilitated housing for **low and moderate income**  
39 low- and moderate-income persons, providing that any private  
40 advantage is incidental.
- 41       g. A municipality **which** that has received **substantive**  
42 **certification from the council** approval of its housing element and  
43 fair share plan for the current round, and **which** that has actually  
44 effected the construction of the affordable housing units it is  
45 obligated to provide, may amend its affordable housing element or  
46 zoning ordinances without **the approval of the council** losing  
47 immunity from builder's remedy litigation.

- 1 h. Whenever affordable housing units are proposed to be  
2 provided through an inclusionary development, a municipality shall  
3 provide, through its zoning powers, incentives to the developer,  
4 which shall include increased densities and reduced costs **】, in**  
5 **accordance with the regulations of the council and this subsection】.**
- 6 i. **【The council, upon the application of a】** A municipality and  
7 a developer **【,】** may **【approve】** request a modification of a  
8 compliance certification involving reduced affordable housing set-  
9 asides or increased densities to ensure the economic feasibility of an  
10 inclusionary development , if any such application demonstrates  
11 how any shortfall in meeting the municipal fair share obligation will  
12 then be addressed. Such a request may be granted only if the  
13 municipality and developer have demonstrated that the project has  
14 been impacted by market conditions beyond their reasonable  
15 control.
- 16 j. A municipality may enter into an agreement with a  
17 developer or residential development owner to provide a preference  
18 for affordable housing to **【low and moderate income】** low- and  
19 moderate-income veterans who served in time of war or other  
20 emergency, as defined in section 1 of P.L.1963, c.171 (C.54:4-  
21 8.10), of up to 50 percent of the affordable units in that particular  
22 project. This preference shall be established in the applicant  
23 selection process for available affordable units so that applicants  
24 who are veterans who served in time of war or other emergency, as  
25 referenced in this subsection, and who apply within 90 days of the  
26 initial marketing period shall receive preference for the rental of the  
27 agreed-upon percentage of affordable units. After the first 90 days  
28 of the initial 120-day marketing period, if any of those units subject  
29 to the preference remain available, then applicants from the general  
30 public shall be considered for occupancy. Following the initial  
31 120-day marketing period, previously qualified applicants and  
32 future qualified applicants who are veterans who served in time of  
33 war or other emergency, as referenced in this subsection, shall be  
34 placed on a special waiting list as well as the general waiting list.  
35 The veterans on the special waiting list shall be given preference for  
36 affordable units, as the units become available, whenever the  
37 percentage of preference-occupied units falls below the agreed upon  
38 percentage. Any agreement to provide affordable housing  
39 preferences for veterans pursuant to this subsection shall not affect  
40 a municipality's ability to receive credit for the unit **【from the**  
41 **council, or its successor】.**
- 42 k. In the fourth round, and in subsequent rounds of affordable  
43 housing obligations, a municipality shall be able to receive one  
44 credit against its affordable housing obligation for each unit of low-  
45 or moderate-income housing, and shall not receive bonus credit for  
46 any particular type of low- or moderate-income housing, unless  
47 authority to obtain bonus credit is expressly provided pursuant to

1 this section, or other sections of the "Fair Housing Act," P.L.1985,  
2 c.222 (C.52:27D-301 et al.). A municipality shall not receive more  
3 than one type of bonus credit for any unit, and a municipality shall  
4 not be permitted to satisfy more than 25 percent of its prospective  
5 need obligation in the fourth round or any subsequent round  
6 through the use of bonus credits. This subsection shall not be  
7 construed to limit the ability of a municipality to receive a unit of  
8 credit for a low- or moderate-income housing unit that is subject to  
9 affordability controls that are scheduled to expire, but are extended  
10 in accordance with the Uniform Housing Affordability Controls  
11 promulgated by the New Jersey Housing and Mortgage Finance  
12 Agency, to the extent that this affordability control extension would  
13 otherwise generate this credit. As a part of a fair share plan and  
14 housing element adopted pursuant to subsection f. of section 3 of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill), a  
16 municipality shall:

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

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

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

36 (4) receive one unit of credit and one-half bonus credit for a unit  
37 of age-restricted housing, provided that a bonus credit for age-  
38 restricted housing shall not be applied to more than 15 percent of  
39 the units of age-restricted housing constructed in compliance with  
40 the Uniform Housing Affordability Controls promulgated by the  
41 New Jersey Housing and Mortgage Finance Agency in a  
42 municipality that count towards the municipality's affordable  
43 housing obligation for any single 10-year round of affordable  
44 housing obligations;

45 (5) receive one unit of credit and one-half bonus credit for each  
46 unit of low- or moderate-income family housing with at least three  
47 bedrooms above the minimum number required by the bedroom  
48 distribution in a given development;

1       (6) receive one unit of credit and one-half bonus credit for a unit  
2 of low- or moderate-income housing constructed on land that is or  
3 was previously developed and utilized for retail, office, or  
4 commercial space;

5       (7) receive one unit of credit and one-half bonus credit for each  
6 existing low- or moderate-income rental housing unit for which  
7 affordability controls are extended for a new term of affordability,  
8 in compliance with the Uniform Housing Affordability Controls  
9 promulgated by the New Jersey Housing and Mortgage Finance  
10 Agency, and the municipality contributes funding towards the costs  
11 necessary for this preservation;

12       (8) receive one unit of credit and one-half bonus credit for each  
13 unit of low- or moderate-income housing in a 100 percent  
14 affordable housing project toward which the municipality either  
15 contributes property without which the project would not be  
16 feasible, or makes contributions from the municipal affordable  
17 housing trust fund that cover no less than 10 percent of the project  
18 cost; and

19       (9) receive one unit of credit and one-half bonus credit for each  
20 unit of very low-income housing for families above the 13 percent  
21 of units required to be reserved for very low-income housing  
22 pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).

23       l. A municipality may not satisfy more than 25 percent of the  
24 affordable housing units, exclusive of any bonus credits, to address  
25 its prospective need affordable housing obligation through the  
26 creation of age-restricted housing. A municipality shall satisfy a  
27 minimum of 50 percent of the actual affordable housing units,  
28 exclusive of any bonus credits, created to address its prospective  
29 need affordable housing obligation through the creation of housing  
30 available to families with children and otherwise in compliance  
31 with the requirements and controls established pursuant to section  
32 21 of P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy  
33 a minimum of 25 percent of the actual affordable housing units,  
34 exclusive of any bonus credits, to address its prospective need  
35 affordable housing obligation, through rental housing, including at  
36 least half of that number available to families with children. All  
37 units referred to in this section shall otherwise be in compliance  
38 with the requirements and controls established pursuant to section  
39 21 of P.L.1985, c.222 (C.52:27D-321).

40       m. All parties shall be entitled to rely upon regulations on  
41 municipal credits, adjustments, and compliance mechanisms  
42 adopted by the Council on Affordable Housing unless those  
43 regulations are contradicted by statute, including but not limited to  
44 P.L. c. (C. ) (pending before the Legislature as this bill), or  
45 binding court decisions.

46       (cf: P.L.2013, c.6, s.1)

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

3       6. **【The council】** A municipality may take such measures as are  
4 necessary to assure compliance with the adaptability requirements  
5 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),  
6 including the inspection of those units which are newly constructed  
7 and receive housing credit as provided under section 1 of P.L.2005,  
8 c.350 (C.52:27D-311a) for adaptability, as part of the monitoring  
9 which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).  
10 No housing unit subject to the provisions of section 5 of P.L.2005,  
11 c.350 (C.52:27D-123.15) and to the provisions of the barrier free  
12 subcode adopted by the Commissioner of Community Affairs  
13 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
14 c.217 (C.52:27D-119 et seq.) shall be eligible for inclusion in a  
15 municipal fair share plan unless the unit complies with the  
16 requirements set forth thereunder. If any units for which credit was  
17 granted in accordance with the provisions of P.L.2005, c.350  
18 (C.52:27D-311a et al.) are found not to conform to the requirements  
19 of P.L.2005, c.350 (C.52:27D-311a et al.), **【the council may】** any  
20 party representing the interests of households with disabilities may  
21 seek a modification to the approval of the municipal fair share plan  
22 to require the municipality to amend its fair share plan within 90  
23 days of 【receiving notice from the council】 such a finding, to  
24 address its fair share obligation pursuant to P.L.1985, c.222  
25 (C.52:27D-301 et al.). In the event that the municipality fails to  
26 amend its fair share plan within 90 days of **【receiving such notice,**  
27 **the council may revoke substantive certification】** such a finding, the  
28 municipality shall lose immunity to a builder's remedy for the  
29 portion of its obligation that is found not to conform to the  
30 requirements of P.L.2005, c.350 (C.52:27D-311a et al.).  
31 (cf: P.L.2005, c.350, s.6)

32  
33       26. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to  
34 read as follows:

35       20. There is established in the Department of Community  
36 Affairs a separate trust fund, to be used for the exclusive purposes  
37 as provided in this section, and which shall be known as the "New  
38 Jersey Affordable Housing Trust Fund." The fund shall be a non-  
39 lapsing, revolving trust fund, and all monies deposited or received  
40 for purposes of the fund shall be accounted for separately, by source  
41 and amount, and remain in the fund until appropriated for such  
42 purposes. The fund shall be the repository of all State funds  
43 appropriated for affordable housing purposes, including, but not  
44 limited to, the proceeds from the receipts of the additional fee  
45 collected pursuant to paragraph (2) of subsection a. of section 3 of  
46 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the  
47 Statewide non-residential development fees collected pursuant to



1 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or  
2 reverting from municipal development trust funds, or other monies  
3 as may be dedicated, earmarked, or appropriated by the Legislature  
4 for the purposes of the fund. All references in any law, order, rule,  
5 regulation, contract, loan, document, or otherwise, to the  
6 "Neighborhood Preservation Nonlapsing Revolving Fund" shall  
7 mean the "New Jersey Affordable Housing Trust Fund." The  
8 department shall be permitted to utilize annually up to 7.5 percent  
9 of the monies available in the fund for the payment of any  
10 necessary administrative costs related to the administration of the  
11 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any  
12 costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et  
13 al.).

14 a. Except as permitted pursuant to subsection g. of this section,  
15 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the  
16 commissioner shall award grants or loans from this fund for  
17 housing projects and programs in municipalities whose housing  
18 elements have **【received substantive certification from the council,】**  
19 obtained compliance certification pursuant to section 3 of P.L. , c.  
20 (C. ) (pending before the Legislature as this bill), or in  
21 municipalities receiving State aid pursuant to P.L.1978, c.14  
22 (C.52:27D-178 et seq.) **【**, in municipalities subject to a builder's  
23 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328),  
24 or in receiving municipalities in cases where the council has  
25 approved a regional contribution agreement and a project plan  
26 developed by the receiving municipality**】**.

27 Of those monies deposited into the "New Jersey Affordable  
28 Housing Trust Fund" that are derived from municipal development  
29 fee trust funds, or from available collections of Statewide non-  
30 residential development fees, a priority for funding shall be  
31 established for projects in municipalities that have **【petitioned the**  
32 **council for substantive】** received compliance certification.

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

36 b. The commissioner shall establish rules and regulations  
37 governing the qualifications of applicants, the application  
38 procedures, and the criteria for awarding grants and loans and the  
39 standards for establishing the amount, terms, and conditions of each  
40 grant or loan.

41 c. For any period which the **【council】** commissioner may  
42 approve, the commissioner may assist affordable housing programs  
43 **【which】** that are **【not】** located in municipalities **【whose housing**  
44 **elements have been granted substantive certification or which are**  
45 **not in furtherance of a regional contribution agreement】** that have a  
46 pending request for compliance certification; provided that the  
47 affordable housing program will meet all or part of a municipal

1 **【low and moderate income】** low- and moderate-income housing  
2 obligation.

3 d. Amounts deposited in the "New Jersey Affordable Housing  
4 Trust Fund" shall be targeted to regions based on the region's  
5 percentage of the State's **【low and moderate income】** low- and  
6 moderate-income housing need as determined **【by the council】**  
7 pursuant to the low- and moderate-income household growth over  
8 the prior 10 years, as calculated pursuant to section 6 of P.L. , c.  
9 (C. ) (pending before the Legislature as this bill). Amounts in  
10 the fund shall be applied for the following purposes in designated  
11 neighborhoods:

12 (1) Rehabilitation of substandard housing units occupied or to  
13 be occupied by **【low and moderate income】** low- and moderate-  
14 income households;

15 (2) Creation of accessory **【apartments】** dwelling units to be  
16 occupied by **【low and moderate income】** low- and moderate-  
17 income households;

18 (3) Conversion of non-residential space to residential purposes;  
19 provided a substantial percentage of the resulting housing units are  
20 to be occupied by **【low and moderate income】** low- and moderate-  
21 income households;

22 (4) Acquisition of real property, demolition and removal of  
23 buildings, or construction of new housing that will be occupied by  
24 **【low and moderate income】** low- and moderate-income households,  
25 or any combination thereof;

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

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

40 (7) Other housing programs for **【low and moderate income】**  
41 low- and moderate-income housing, including, without limitation,  
42 (a) infrastructure projects directly facilitating the construction of  
43 **【low and moderate income】** low- and moderate-income housing not  
44 to exceed a reasonable percentage of the construction costs of the  
45 **【low and moderate income】** low- and moderate-income housing to  
46 be provided and (b) alteration of dwelling units occupied or to be  
47 occupied by households of **【low or moderate income】** low- or

1 moderate-income and the common areas of the premises in which  
2 they are located in order to make them accessible to persons with  
3 disabilities.

4 e. Any grant or loan agreement entered into pursuant to this  
5 section shall incorporate contractual guarantees and procedures by  
6 which the division **【will】** shall ensure that any unit of housing  
7 provided for **【low and moderate income】** low- and moderate-  
8 income households shall continue to be occupied by **【low and**  
9 **moderate income】** low- and moderate-income households for **【at**  
10 **least 20 years】** a period that conforms to the requirements of  
11 subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321)  
12 following the award of the loan or grant, except that the division  
13 may approve a guarantee for a period of less **【than 20 years】**  
14 duration where necessary to ensure project feasibility.

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

33 g. In addition to other grants or loans awarded pursuant to this  
34 section, and without regard to any limitations on such grants or  
35 loans for any other purposes herein imposed, the commissioner  
36 shall annually allocate such amounts as may be necessary in the  
37 commissioner's discretion, and in accordance with section 3 of  
38 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants  
39 under the program created pursuant to P.L.2004, c.140 (C.52:27D-  
40 287.1 et al.). Such rental assistance grants shall be deemed  
41 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-  
42 301 et al.), in order to meet the housing needs of certain **【low**  
43 **income】** low-income households who may not be eligible to occupy  
44 other housing produced pursuant to P.L.1985, c.222 (C.52:27D-301  
45 et al.).

46 h. The department and the State Treasurer shall submit the  
47 "New Jersey Affordable Housing Trust Fund" for an audit annually

1 by the State Auditor or State Comptroller, at the discretion of the  
2 Treasurer. In addition, the department shall prepare an annual  
3 report for each fiscal year, and submit it by November 30th of each  
4 year to the Governor and the Legislature, and the Joint Committee  
5 on Housing Affordability, or its successor, and post the information  
6 to its **【web site】** Internet website, of all activity of the fund,  
7 including details of the grants and loans by number of units, number  
8 and income ranges of recipients of grants or loans, location of the  
9 housing renovated or constructed using monies from the fund, the  
10 number of units upon which affordability controls were placed, and  
11 the length of those controls. The report also shall include details  
12 pertaining to those monies allocated from the fund for use by the  
13 State rental assistance program pursuant to section 3 of P.L.2004,  
14 c.140 (C.52:27D-287.3) and subsection g. of this section.

15 i. The commissioner may award or grant the amount of any  
16 appropriation deposited in the "New Jersey Affordable Housing  
17 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-  
18 320.1) to municipalities pursuant to the provisions of section 39 of  
19 P.L.2009, c.90 (C.40:55D-8.8).  
20 (cf: P.L.2017, c.131, s.200)

21  
22 27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to  
23 read as follows:

24 21. The agency shall establish affordable housing programs to  
25 assist municipalities in meeting the obligation of developing  
26 communities to provide **【low and moderate income】** low- and  
27 moderate-income housing.

28 a. Of the bond authority allocated to it under section 24 of  
29 P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a  
30 reasonable period of time established by its board, no less than  
31 **【25%】** 25 percent to be used in conjunction with housing to be  
32 constructed or rehabilitated with assistance under **【this act】**  
33 P.L.1985, c.222 (C.52:27D-301 et al.).

34 b. The agency shall to the extent of available funds, award  
35 assistance to affordable housing programs located in municipalities  
36 whose housing elements have **【received substantive】** obtained  
37 compliance certification **【from the council】** , or which have been  
38 subject to a builder's remedy **【or which are in furtherance of a**  
39 **regional contribution agreement approved by the council】**. During  
40 **【the first 12 months from the effective date of this act and for】** any  
41 **【additional】** period which the **【council】** agency may approve, the  
42 agency may assist affordable housing programs **【which are not**  
43 **located in municipalities whose housing elements have been granted**  
44 **substantive certification or which are not in furtherance of a**  
45 **regional contribution agreement】** that have a pending request for  
46 compliance certification; provided the affordable housing program

- 1 will meet all or in part a municipal **low and moderate income**  
2 low- and moderate-income housing obligation.
- 3 c. Assistance provided pursuant to this section may take the  
4 form of grants or awards to municipalities, prospective home  
5 purchasers, housing sponsors as defined in P.L.1983, c.530  
6 (C.55:14K-1 et seq.), or as contributions to the issuance of  
7 mortgage revenue bonds or multi-family housing development  
8 bonds which have the effect of achieving the goal of producing  
9 affordable housing.
- 10 d. Affordable housing programs which may be financed or  
11 assisted under this provision may include, but are not limited to:
- 12 (1) Assistance for home purchase and improvement including  
13 interest rate assistance, down payment and closing cost assistance,  
14 and direct grants for principal reduction;
- 15 (2) Rental programs including loans or grants for developments  
16 containing **low and moderate income** low- and moderate-income  
17 housing, moderate rehabilitation of existing rental housing,  
18 congregate care and retirement facilities;
- 19 (3) Financial assistance for the conversion of nonresidential  
20 space to residences;
- 21 (4) Other housing programs for **low and moderate income**  
22 low- and moderate-income housing, including infrastructure  
23 projects directly facilitating the construction of **low and moderate**  
24 **income** low- and moderate-income housing; and
- 25 (5) Grants or loans to municipalities, housing sponsors and  
26 community organizations to encourage development of innovative  
27 approaches to affordable housing, including:
- 28 (a) Such advisory, consultative, training and educational  
29 services as will assist in the planning, construction, rehabilitation  
30 and operation of housing; and
- 31 (b) Encouraging research in and demonstration projects to  
32 develop new and better techniques and methods for increasing the  
33 supply, types and financing of housing and housing projects in the  
34 State.
- 35 e. The agency shall establish procedures and guidelines  
36 governing the qualifications of applicants, the application  
37 procedures and the criteria for awarding grants and loans for  
38 affordable housing programs and the standards for establishing the  
39 amount, terms and conditions of each grant or loan.
- 40 f. **In consultation with the council, the** The agency , in  
41 consultation with the department, shall establish requirements and  
42 controls to **insure** ensure the maintenance of housing assisted  
43 under **this act** P.L.1985, c.222 (C.52:27D-301 et al.) as affordable  
44 to **low and moderate income** low- and moderate-income  
45 households for a period of not less than 40 years for rental units and  
46 20 years for for-sale units; provided that the agency **may** establish  
47 a shorter period upon a determination that the economic feasibility

1 of the program is jeopardized by the requirement and the public  
2 purpose served by the program outweighs the shorter period **】** may  
3 update or amend any controls previously adopted by the agency, in  
4 consultation with the Council on Affordable Housing, prior to the  
5 effective date of P.L. , c. (C. ) (pending before the  
6 Legislature as this bill), provided that the requirements and controls  
7 shall, at a minimum, be consistent with the controls as in effect  
8 immediately prior to the effective date of P.L. , c. (C. )  
9 (pending before the Legislature as this bill), including, but not  
10 limited to, any requirements concerning bedroom distributions,  
11 affordability averages, and affirmative marketing. The controls  
12 may include, among others, requirements for recapture of assistance  
13 provided pursuant to **【this act】** P.L.1985, c.222 (C.52:27D-301 et  
14 al.) or restrictions on return on equity in the event of failure to meet  
15 the requirements of the program. With respect to rental housing  
16 financed by the agency pursuant to **【this act】** P.L.1985, c.222  
17 (C.52:27D-301 et al.) or otherwise which promotes the provision or  
18 maintenance of **【low and moderate income】** low- and moderate-  
19 income housing, the agency may waive restrictions on return on  
20 equity required pursuant to P.L.1983, c.530 (C.55:14K-1 et seq.)  
21 which is gained through the sale of the property or of any interest in  
22 the property or sale of any interest in the housing sponsor. The  
23 agency shall promulgate updated regulations no later than nine  
24 months following the effective date of P.L. , c. (C. )  
25 (pending before the Legislature as this bill). All parties may  
26 continue to rely on regulations previously adopted by the agency  
27 pursuant to the authority provided by this section as in effect  
28 immediately prior to the effective date of P.L. , c. (C. )  
29 (pending before the Legislature as this bill) until new rules and  
30 regulations are adopted by the agency. Notwithstanding the  
31 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
32 (C.52:14B-1 et seq.) to the contrary, the agency, after consultation  
33 with department, may adopt, immediately, upon filing with the  
34 Office of Administrative Law, said regulations, which shall be  
35 effective for a period not to exceed one year from the date of the  
36 filing. The agency shall thereafter amend, adopt, or readopt the  
37 regulations in accordance with the requirements of P.L.1968, c.410  
38 (C.52:14B-1 et seq.).

39 g. The agency may establish affordable housing programs  
40 through the use or establishment of subsidiary corporations or  
41 development corporations as provided in P.L.1983, c.530  
42 (C.55:14K-1 et seq.). The subsidiary corporations or development  
43 corporations shall be eligible to receive funds provided under **【this**  
44 **act】** P.L.1985, c.222 (C.52:27D-301 et al.) for any permitted  
45 purpose.

46 h. The agency shall provide assistance, through its bonding  
47 powers or in any other manner within its powers, to the grant and

1 loan program established pursuant to section 20 of P.L.1985, c.222  
2 (C.52:27D-320).

3 i. (1) The department shall promulgate processes and standards  
4 for the certification of administrative agents and municipal housing  
5 liaisons in the State, as well as standards for measuring  
6 performance of and enforcing compliance by administrative agents  
7 and municipal housing liaisons in implementing the affordable  
8 housing requirements and controls established pursuant to  
9 subsection f. of this section.

10 (2) Administrative agents shall be responsible for implementing  
11 the requirements and controls set by the regulations promulgated  
12 pursuant to subsection (f) of this section. The department may  
13 bring via summary proceeding any findings of violation of the  
14 responsibilities set forth in this section before a county level  
15 housing judge, to docket the violation and issue corrective orders  
16 and levy fines.

17 (3) Municipal housing liaisons shall be responsible for  
18 monitoring administrative agents within their municipality's  
19 jurisdiction to ensure compliance with the requirements and  
20 controls set by regulation under subsection f. of this section.

21 (4) Municipal housing liaisons, the department, and interested  
22 parties may bring a challenge before a county level housing judge to  
23 determine whether properties subject to the regulations set forth by  
24 this section are out of compliance with the regulations. A finding  
25 of deliberate noncompliance may result in the department removing  
26 the administrative agent's certification.

27 (5) A County level housing judge may issue fines and order  
28 corrective actions for violations and may consider patterns of  
29 violations in determining whether a municipality is meeting its  
30 obligations under the compliance certification established by  
31 section 3 of P.L. , c. (C. ) (pending before the Legislature  
32 as this bill).

33 (6) Notwithstanding the provisions of the "Administrative  
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the  
35 contrary, the department may adopt, immediately, upon filing with  
36 the Office of Administrative Law, regulations to implement the  
37 provisions of this subsection, which shall be effective for a period  
38 not to exceed one year from the date of the filing. The department  
39 shall thereafter amend, adopt, or readopt the regulations in  
40 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1  
41 et seq.).

42 (cf: P.L.2004, c.140, s.5)

43  
44 28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended  
45 to read as follows:

46 19. Notwithstanding any rules of the New Jersey Housing and  
47 Mortgage Finance Agency to the contrary, the allocation of **low**  
48 **income** low-income tax credits shall be made by the agency to the

1 full extent such credits are permitted to be allocated under federal  
2 law, including allocations of **[4]** four percent or **[9]** nine percent  
3 federal **[low income]** low-income tax credits, and including  
4 allocations allowable for partial credits. The affordable portion of  
5 any mixed income or mixed use development that is part of a fair  
6 share housing plan **[approved by the council, or]** that has obtained  
7 compliance certification, including a court-approved judgment of  
8 repose or compliance, including, but not limited to, a development  
9 that has received a density bonus, shall be permitted to receive  
10 allocations of **[low income]** low-income tax credits, provided that  
11 the applicant can conclusively demonstrate that the market rate  
12 residential or commercial units are unable to internally subsidize  
13 the affordable units, and the affordable units are developed  
14 contemporaneously with the commercial or market rate residential  
15 units.

16 (cf: P.L.2008, c.46, s.19)

17  
18 29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to  
19 read as follows:

20 7. **[The** council shall coordinate and review the housing  
21 elements as filed pursuant to section 11 of P.L.1985, c.222  
22 (C.52:27D-311), and the housing activities under section 20 of  
23 P.L.1985, c.222 (C.52:27D-320), at least once every three years, to**]**  
24 Housing elements and fair share plans adopted pursuant to section 3  
25 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
26 shall ensure that at least 13 percent of the housing units made  
27 available for occupancy by low-income and **[moderate income]**  
28 moderate-income households to address a municipality's  
29 prospective need obligation will be reserved for occupancy by very  
30 low income households, as that term is defined pursuant to section 4  
31 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units  
32 made available for families with children. The 13 percent shall  
33 count towards the minimum 50 percent of the housing units  
34 required to be made available for occupancy by low-income  
35 households to address a municipality's prospective need obligation.  
36 Nothing in this section shall require that a specific percentage of the  
37 units in any specific project be reserved as very **[low income]** low-  
38 income housing; provided, however, that a municipality shall not  
39 receive bonus credits for the provision of housing units reserved for  
40 occupancy by very **[low income]** low-income households unless  
41 the 13 percent target has been exceeded within that municipality **[.**  
42 The council shall coordinate all efforts to meet the goal of this  
43 section in a manner that will result in a balanced number of housing  
44 units being reserved for very low income households throughout all  
45 housing regions. For the purposes of this section, housing activities  
46 under section 20 of P.L.1985, c.222 (C.52:27D-320) shall include  
47 any project-based assistance provided from the "New Jersey



1 Affordable Housing Trust Fund" pursuant to P.L.2004, c.140  
2 (C.52:27D-287.1 et al.), regardless of whether the housing activity  
3 is counted toward the municipal obligation under the "Fair Housing  
4 Act," P.L.1985, c.222 (C.52:27D-301 et al.)**】**, and that the agency  
5 shall update the regulations adopted pursuant to section 21 of  
6 P.L.1985, c.222 (C.52:27D-321) to replace any requirements for  
7 very low-income housing inconsistent with the percentages and  
8 definitions established pursuant to P.L. , c. (C. ) (pending  
9 before the Legislature as this bill) with the percentage and  
10 definition specified in this section.  
11 (cf: P.L.2008, c.46, s.7)

12  
13 30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to  
14 read as follows:

15 8. a. **【The council may authorize a】** (1) A municipality that is  
16 in the process of seeking compliance certification, has 【petitioned  
17 for substantive】 obtained compliance certification, or that has been  
18 so authorized by a court of competent jurisdiction, and which has  
19 adopted a municipal development fee ordinance shall be authorized  
20 to impose and collect development fees from developers of  
21 residential property, in accordance with rules promulgated by the  
22 **【council】 department.** Each amount collected shall be deposited  
23 and shall be accounted for separately, by payer and date of deposit.

24 (2) No later than 90 days following the enactment of P.L. , c.  
25 (C. ) (pending before the Legislature as this bill), any  
26 municipality that is or has been authorized to impose and collect  
27 development fees from developers of residential property, or  
28 payments in lieu of constructing affordable housing, shall provide  
29 the Department of Community Affairs with a detailed accounting of  
30 all such fees that have been collected and expended since the  
31 inception of the municipal authorization to collect the fees.

32 (3) Beginning with the year after the enactment of P.L. , c.  
33 (C. ) (pending before the Legislature as this bill), by January  
34 15, every municipality that is or has been authorized to impose and  
35 collect development fees from developers of residential property, or  
36 payments in lieu of constructing affordable housing, shall provide  
37 the Department of Community Affairs with a detailed accounting of  
38 all such fees that have been collected and expended the previous  
39 year.

40 (4) A municipality may not spend or commit to spend any  
41 affordable housing development fees, including Statewide non-  
42 residential fees collected and deposited into the municipal  
43 affordable housing trust fund, without first obtaining the 【council's】  
44 approval of the expenditure as part of its compliance certification or  
45 by the department. A municipality shall include in its housing  
46 element and fair share plan adopted pursuant to section 3 of P.L. ,  
47 c. (C. ) (pending before the Legislature as this bill) a

1 spending plan for current funds in the municipal affordable housing  
2 trust fund and projected funds through the current round. Review  
3 of that spending plan for consistency with applicable law and the  
4 municipality's Housing Element and Fair Share Plan shall be part of  
5 the process specified in section 3 of P.L. , c. (C. ) (pending  
6 before the Legislature as this bill). The **【council】** department shall  
7 promulgate updated regulations no later than nine months following  
8 the effective date of P.L. , c. (C. ) (pending before the  
9 Legislature as this bill) regarding the establishment, administration,  
10 reporting, and enforcement of the expenditure of affordable housing  
11 development fees by municipalities, which shall include  
12 establishing an expedited process for approving spending plan  
13 expenditures for emergent opportunities to create affordable  
14 housing after a municipality has obtained compliance certification  
15 and procedures for monitoring the collection and expenditure of  
16 trust funds. The department shall develop and publish on the  
17 department's Internet website a detailed summary of the municipal  
18 affordable housing trust fund expenditures for each municipality,  
19 and shall update each summary on an annual basis. As part of the  
20 regulations adopted pursuant to this section and section 10 of  
21 P.L.2008, c.46 (C.52:27D-329.4), the department shall adopt  
22 reporting requirements applicable to municipal affordable housing  
23 trust funds to facilitate fulfillment of the department's obligations  
24 pursuant to this section. Municipalities may continue to rely on  
25 regulations on development fees and spending plans previously  
26 adopted by the council until new rules and regulations are adopted  
27 by the department. The **【council】** department shall have  
28 **【exclusive】** jurisdiction regarding the enforcement of these  
29 regulations, provided that any municipality which is not in  
30 compliance with the regulations adopted by the **【council】**  
31 department may be subject to forfeiture of any or all funds  
32 remaining within its municipal trust fund. Any funds so forfeited  
33 shall be deposited into the "New Jersey Affordable Housing Trust  
34 Fund" established pursuant to section 20 of P.L.1985, c.222  
35 (C.52:27D-320).

36 b. A municipality shall deposit all fees collected, whether or  
37 not such collections were derived from fees imposed upon non-  
38 residential or residential construction into a trust fund dedicated to  
39 those purposes as required under this section, and such additional  
40 purposes as may be approved by the **【council】** department.

41 c. (1) A municipality may only spend development fees for an  
42 activity approved by the **【council】** department to address the  
43 municipal fair share obligation, or approved as part of compliance  
44 certification.

45 (2) Municipal development trust funds shall not be expended  
46 unless the municipality has immunity from builder's remedy  
47 litigation at the time of the expenditure, and shall not be expended:

1     (a) to reimburse municipalities for activities which occurred  
2     prior to the authorization of a municipality to collect development  
3     fees; or

4     (b) (i) on administrative costs, attorney fees or court costs to  
5     obtain a judgment of repose; (ii) to contest a determination of the  
6     municipality's fair share obligation; or (iii) on costs of any  
7     challenger in connection to a challenge to the municipality's  
8     obligation, housing element, or fair share plan.

9     (3) A municipality shall set aside a portion of its development  
10    fee trust fund for the purpose of providing affordability assistance  
11    to **[low and moderate income]** low- and moderate-income  
12    households in affordable units included in a municipal fair share  
13    plan, in accordance with rules of the **[council]** department.

14    (a) Affordability assistance programs may include down  
15    payment assistance, security deposit assistance, low interest loans,  
16    common maintenance expenses for units located in condominiums,  
17    rental assistance, and any other program authorized by the  
18    **[council]** department.

19    (b) Affordability assistance to households earning 30 percent or  
20    less of median income may include buying down the cost of **[low**  
21    **income]** low-income units in a municipal fair share plan to make  
22    them affordable to households earning 30 percent or less of median  
23    income. The use of development fees in this manner shall not  
24    entitle a municipality to bonus credits except as may **[be provided**  
25    **by the rules of the council]** otherwise be allowed by applicable  
26    precedent.

27    (4) A municipality may contract with a private or public entity  
28    to administer any part of its housing element and fair share plan,  
29    including the requirement for affordability assistance, or any  
30    program or activity for which the municipality expends  
31    development fee proceeds, in accordance with rules of the  
32    **[council]** department.

33    (5) Not more than 20 percent of the revenues collected from  
34    development fees shall be expended on administration, in  
35    accordance with rules of the **[council]** department. Such  
36    administration may include expending a portion of its affordable  
37    housing trust fund on actions and efforts reasonably related to the  
38    determination of its fair share obligation and the development of its  
39    housing element and fair share plan pursuant to paragraphs (1) and  
40    (2) of subsection f. of section 3 of P.L. , c. (C. ) (pending  
41    before the Legislature as this bill), and for expenses that are  
42    reasonably necessary for compliance with the processes of the  
43    program, including but not limited to, the costs to the municipality  
44    of resolving a challenge under the program.

45    d. The **[council]** department shall establish a time by which all  
46    development fees collected within a calendar year shall be  
47    expended; provided, however, that all fees shall be committed for

1 expenditure within four years from the date of collection. A  
2 municipality that fails to commit to expend the balance required in  
3 the development fee trust fund by the time set forth in this section  
4 shall be required by the council to transfer the remaining unspent  
5 balance at the end of the four-year period to the "New Jersey  
6 Affordable Housing Trust Fund," established pursuant to section 20  
7 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46  
8 (C.52:27D-329.1 et al.), to be used in the housing region of the  
9 transferring municipality for the authorized purposes of that fund.

10 e. Notwithstanding any provision of this section, or regulations  
11 of the **【council】 department**, a municipality shall not collect a  
12 development fee from a developer whenever that developer is  
13 providing for the construction of affordable units, either on-site or  
14 elsewhere within the municipality.

15 This section shall not apply to the collection of a Statewide  
16 development fee imposed upon non-residential development  
17 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
18 **【et seq.】 through C.40:55D-8.7**) by the State Treasurer, when such  
19 collection is not authorized to be retained by a municipality.  
20 (cf: P.L.2008, c.46, s.8)

21  
22 31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended  
23 to read as follows:

24 10. a. The **【council】 department** shall maintain on its Internet  
25 website, and also publish on **【a regular】 an annual** basis, an up-to-  
26 date municipal status report **【concerning the petitions for**  
27 substantive certification of each municipality that has submitted to  
28 the council's jurisdiction, and shall collect and publish**】 based on its**  
29 collection and publication of information concerning the number  
30 affordable of housing units actually constructed, construction starts,  
31 certificates of occupancy granted, **【rental units maintained, and the**  
32 number of housing units transferred or sold within the previous 12-  
33 month period**】 the start and expiration dates of deed restrictions,**  
34 and residential and non-residential development fees collected and  
35 expended, including purposes and amounts of such expenditures,  
36 along with the current balance in the municipality's affordable  
37 housing trust funds. With respect to units actually constructed, the  
38 information shall specify the characteristics of the housing,  
39 including housing type, tenure, affordability level, number of  
40 bedrooms, date and expiration of affordability controls, and whether  
41 occupancy is reserved for families, senior citizens, or other special  
42 populations. **【No later than 60 months after the effective date of**  
43 P.L.2008, c.46 (C.52:27D-329.1 et al.), the council shall require  
44 each municipality, as a condition of substantive certification, to  
45 provide, in a standardized electronic media format as determined by  
46 the council, the details of the fair share plan as adopted by the

1 municipality and approved by the council. The council shall  
2 publish and maintain such approved plans on its website.】

3 b. (1) No later than 90 days following the enactment of P.L. \_\_\_\_,  
4 c. (C. \_\_\_\_ ) (pending before the Legislature as this bill), each  
5 municipality shall provide the department with the information  
6 necessary to comply with this section.

7 (2) Beginning with the year after the enactment of P.L. \_\_\_\_, c.  
8 (C. \_\_\_\_ ) (pending before the Legislature as this bill), by January  
9 15, each municipality shall provide the department with the  
10 information necessary to comply with this section.

11 c. The department may adopt, pursuant to the "Administrative  
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
13 regulations as may be necessary to effectuate the provisions of this  
14 section, including rules and regulations to ensure that municipalities  
15 and developers report any information as may be necessary for the  
16 department to fulfill its obligations pursuant to this section.

17 (cf: P.L.2008, c.46, s.10)

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

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

40 b. Subject to the provisions of subsection d. of this section, a  
41 developer of a project consisting of newly-constructed residential  
42 units being financed in whole or in part with State funds, including,  
43 but not limited to, transit villages designated by the Department of  
44 Transportation and units constructed on State-owned property, shall  
45 be required to reserve at least 20 percent of the residential units  
46 constructed for occupancy by 【low or moderate income】 low- or  
47 moderate-income households, as those terms are defined in section

1 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as  
2 required under the rules of the [council, unless the municipality in  
3 which the property is located has received substantive certification  
4 from the council and such a reservation is not required under the  
5 approved affordable housing plan, or the municipality has been  
6 given a judgment of repose or a judgment of compliance by the  
7 court, and such a reservation is not required under the approved  
8 affordable housing plan] agency.

9 c. [(1) The Legislature recognizes that regional planning  
10 entities are appropriately positioned to take a broader role in the  
11 planning and provision of affordable housing based on regional  
12 planning considerations. In recognition of the value of sound  
13 regional planning, including the desire to foster economic growth,  
14 create a variety and choice of housing near public transportation,  
15 protect critical environmental resources, including farmland and  
16 open space preservation, and maximize the use of existing  
17 infrastructure, there is created a new program to foster regional  
18 planning entities.

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

33 (3) In addition to the entities identified in subsection a. of this  
34 section, the Casino Reinvestment Development Authority, in  
35 conjunction with the Atlantic County Planning Board, shall identify  
36 and coordinate regional affordable housing opportunities directly  
37 attributable to Atlantic City casino development, which may be  
38 provided anywhere within Atlantic County, subject to the  
39 restrictions of paragraph (4) of this subsection.

40 (4) The coordination of affordable housing opportunities by  
41 regional entities as identified in this section shall not include  
42 activities which would provide housing units to be located in those  
43 municipalities that are eligible to receive aid under the "Special  
44 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or  
45 are coextensive with a school district which qualified for  
46 designation as a "special needs district" pursuant to the "Quality  
47 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at  
48 any time in the last 10 years have been qualified to receive

1 assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall  
2 within the jurisdiction of any of the regional entities specified in  
3 subsection a. of this section.】 (Deleted by amendment,  
4 P.L. , c. ) (pending before the Legislature as this bill)

5 d. Notwithstanding the provisions of subsection b. of this  
6 section, or any other law or regulation to the contrary, for purposes  
7 of mixed use projects or qualified residential projects in which a  
8 business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-  
9 207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90  
10 (C.34:1B-209.3), or both, an "eligible municipality," as defined in  
11 section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of  
12 deciding the percentage of newly-constructed residential units  
13 within the project, up to 20 percent of the total, required to be  
14 reserved for occupancy by **【low or moderate income】** low- or  
15 moderate-income households. For a mixed use project or a  
16 qualified residential project that has received preliminary or final  
17 site plan approval prior to the effective date of P.L.2011, c.89, the  
18 percentage shall be deemed to be the percentage, if any, of units  
19 required to be reserved for **【low or moderate income】** low- or  
20 moderate-income households in accordance with the terms and  
21 conditions of such approval.

22 (cf: P.L.2011, c.89, s.5)

23  
24 33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to  
25 read as follows:

26 3. As used in this act:

27 "Affordable Home Ownership Opportunities Bonds" means any  
28 bonds of the New Jersey Housing and Mortgage Finance Agency  
29 that provide funds to facilitate the provisions of this act.

30 "Agency" means the New Jersey Housing and Mortgage Finance  
31 Agency.

32 "Annual income" means total income, from all sources, during  
33 the last full calendar year preceding the filing of an application for a  
34 loan pursuant to this act.

35 "Bonds" means bonds, notes or any other form of evidence of  
36 indebtedness of the agency, bearing either a fixed rate or a variable  
37 rate of interest, issued by the agency.

38 "Eligible project" means a project for the creation of low or  
39 moderate income housing which meets the standards of eligibility  
40 for loans under the program created by this act.

41 "Eligible purchaser" means a purchaser of a dwelling unit in an  
42 eligible project to whom a loan may be made under the program  
43 pursuant to section 5 of this act.

44 "Fund" means the Affordable Home Ownership Opportunities  
45 Fund established by section 5 of this act.

46 "Housing region" means a housing region as defined in  
47 subsection b. of section 4 of the "Fair Housing Act," P.L.1985,  
48 c.222 (C.52:27D-304) and determined **【by the Council on**

1 Affordable Housing pursuant to section 7 of that act, P.L.1985,  
2 c.222 (C.52:27D-307) **】** pursuant to subsection b. of section 6 of  
3 P.L. , c. (C. ) (pending before the Legislature as this bill).

4 "Local enforcement authority" means any officer or agency of  
5 local government responsible for the implementation or  
6 enforcement of land-use and building regulations established by or  
7 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
8 c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law,"  
9 P.L.1975, c.291 (C.40:55D-1 et seq.).

10 "Low income" means a gross annual household income equal to  
11 50% or less of the median gross annual household income for  
12 households of the same size within the relevant housing region.

13 "Moderate income" means a gross annual household income  
14 equal to not more than 80%, but more than 50% of the median gross  
15 annual household income for households of the same size within the  
16 relevant housing region.

17 "Program" means the Affordable Home Ownership Opportunities  
18 Program created by this act.

19 "Qualified nonprofit organization" means any corporation or  
20 association of persons organized under Title 15A of the New Jersey  
21 Statutes, having for its principal purpose, or as a purpose ancillary  
22 to its principal purpose, the improvement of realistic opportunities  
23 for low income and moderate income housing, as defined pursuant  
24 to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.),  
25 being within the description of section 501(c)(3) of the United  
26 States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been  
27 determined by the agency to be a bona fide organization not under  
28 the effective control of any for-profit organization or governmental  
29 entity, and appearing capable, by virtue of past activities,  
30 qualifications of staff or board, or other features, of furthering the  
31 purposes of this act.

32 "Substantial rehabilitation" means repair, reconstruction or  
33 renovation which (1) costs in excess of 60% of the fair market value  
34 of a rehabilitated dwelling after such repair, reconstruction or  
35 renovation, or (2) renders a previously vacant and uninhabitable  
36 dwelling safe, sanitary and decent for residential purposes, or (3)  
37 converts to safe, sanitary and decent residential use a structure  
38 previously in non-residential use.

39 (cf: P.L.1995, c.343, s.3)

40

41 34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to  
42 read as follows:

43 7. A project of new construction or substantial rehabilitation by  
44 a nonprofit organization shall be eligible for a loan under this act if  
45 (1) the homes to be constructed or substantially rehabilitated under  
46 the project are located within an identifiable neighborhood in which  
47 median family income does not exceed the current standard of  
48 "moderate income" pursuant to the contemporaneous standards **【**of



1 the Council on Affordable Housing】 established pursuant to the  
2 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the  
3 homes to be constructed or substantially rehabilitated under the  
4 project are sufficient in number and located on the same or  
5 contiguous parcels of land or within such proximity to each other as  
6 to render the cost per unit of housing practicable for acquisition by  
7 lower-income purchasers; and (3) each home constructed or  
8 substantially rehabilitated within the project will conform to all  
9 requirements of the State Uniform Construction Code, except as to  
10 the waiver of any fee or other requirement pursuant to subsection b.  
11 of section 9 of this act.  
12 (cf: P.L.1995, c.343, s.7)

13  
14 35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to  
15 read as follows:

16 3. As used in this act:

17 "Agency" means the New Jersey Housing and Mortgage Finance  
18 Agency.

19 "Annual income" means total income, from all sources, during  
20 the last full calendar year preceding the filing of an application for a  
21 loan pursuant to this act.

22 "Bonds" means bonds, notes or any other form of evidence of  
23 indebtedness of the agency, bearing either a fixed rate or a variable  
24 rate of interest, issued by the agency.

25 "Eligible project" means a project undertaken by a qualified  
26 housing sponsor to create housing for shared occupancy by seniors  
27 or persons with disability of low or moderate income, whether for  
28 home ownership or rental, which meets the standards of eligibility  
29 for loans under the program created by section 4 of P.L.1998, c.128  
30 (C.55:14K-75).

31 "Eligible purchaser" means a purchaser of a dwelling unit in an  
32 eligible project who fulfills the definition of a senior or person with  
33 disability pursuant to this section, is of low or moderate income and  
34 to whom a loan may be made under the program pursuant to section  
35 4 of P.L.1998, c.128 (C.55:14K-75).

36 "Fund" means the Senior and Disabled Cooperative Housing  
37 Incentive Fund established by section 6 of P.L.1998, c.128  
38 (C.55:14K-77).

39 "Housing region" means a housing region as defined in  
40 subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and  
41 determined 【by the Council on Affordable Housing pursuant to  
42 section 7 of P.L.1985, c.222 (C.52:27D-307)】 pursuant to  
43 subsection b. of section 6 of P.L. , c. (C. ) (pending before  
44 the Legislature as this bill).

45 "Low income" means a gross annual household income equal to  
46 50% or less of the median gross annual household income for  
47 households of the same size within the relevant housing region.

1 "Moderate income" means a gross annual household income  
2 equal to not more than 80%, but more than 50% of the median gross  
3 annual household income for households of the same size within the  
4 relevant housing region.

5 "Person with disability" means any person who is 18 years of age  
6 or older and who fulfills the definition of having a "disability"  
7 pursuant to section 3 of the "Americans with Disabilities Act of  
8 1990," 42 U.S.C. s.12102).

9 "Program" means the New Jersey Senior and Disabled  
10 Cooperative Housing Finance Incentive Program created by  
11 P.L.1998, c.128 (C.55:14K-72 et seq.).

12 "Qualified housing sponsor" means any corporation or  
13 association of persons organized under the New Jersey Statutes, or  
14 any other corporation having for one of its purposes the  
15 improvement of realistic opportunities for low income and moderate  
16 income housing, as defined pursuant to the "Fair Housing Act,"  
17 P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by  
18 virtue of past activities, qualifications of staff or board, or other  
19 features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-  
20 72 et seq.).

21 "Retrofitting" means renovating or remodeling an existing  
22 residential or non-residential structure to allow for cooperative  
23 living.

24 "Senior" means an individual who is 55 years of age or older.

25 "Substantial rehabilitation" means repair, reconstruction or  
26 renovation which (1) costs in excess of 60% of the fair market value  
27 of a rehabilitated dwelling after such repair, reconstruction or  
28 renovation, or (2) renders a previously vacant and uninhabitable  
29 dwelling safe, sanitary and decent for residential purposes or (3)  
30 converts to safe, sanitary and decent residential use a structure  
31 previously in non-residential use.

32 (cf: P.L.1998, c.128, s.3)

33

34 36. (New section) a. (1) Notwithstanding the provisions of the  
35 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
36 seq.) to the contrary, the Commissioner of Community Affairs  
37 shall, in consultation with the Administrative Director of the Courts  
38 and the Executive Director of the New Jersey Housing and  
39 Mortgage Finance Agency, adopt, immediately upon filing with the  
40 Office of Administrative Law, no later than nine months after the  
41 effective date of P.L. , c. (C. ) (pending before the  
42 Legislature as this bill), such transitional rules and regulations as  
43 necessary for the implementation of P.L. , c. (C. ) (pending  
44 before the Legislature as this bill), including for the identification  
45 of any vestigial duties of the Council on Affordable Housing and  
46 for the transfer of those duties within the Department of Community  
47 Affairs to the extent that those duties are not otherwise assumed,  
48 pursuant to P.L. , c. (C. ) (pending before the Legislature as

1 this bill), by municipalities or the Affordable Housing Dispute  
2 Resolution Program.

3 (2) The department, in consultation with the agency, shall  
4 thereafter amend, adopt, or readopt the regulations in accordance  
5 with the requirements of the "Administrative Procedure Act,"  
6 P.L.1968, c.410 (C.52:14B-1 et seq.).

7 b. The Executive Director of the New Jersey Housing and  
8 Mortgage Finance Agency shall adopt, pursuant to the  
9 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
10 seq.), no later than nine months after the effective date of P.L. , c.  
11 (C. ) (pending before the Legislature as this bill), rules and  
12 regulations to update the Uniform Housing Affordability Controls  
13 as required pursuant to the "Fair Housing Act," P.L.1985, c.222  
14 (C.52:27D-301 et al.). As part of updating the Uniform Housing  
15 Affordability Controls, the agency shall set rules establishing that,  
16 for the purpose of low- and moderate-income rental units, a 40-year  
17 minimum deed restriction shall be required. For the purpose of for-  
18 sale units, a 20-year minimum deed restriction shall be required.

19  
20 37. The following sections are repealed:

21 Section 5 of P.L.1985 c.222 (C.52:27D-305);  
22 Section 6 of P.L.1985, c.222 (C.52:27D-306);  
23 Section 7 of P.L.1985, c.222 (C.52:27D-307);  
24 Section 1 of P.L.1991, c.479 (C.52:27D-307.1);  
25 Section 2 of P.L.1991, c.479 (C.52:27D-307.2);  
26 Section 3 of P.L.1991, c.479 (C.52:27D-307.3);  
27 Section 4 of P.L.1991, c.479 (C.52:27D-307.4);  
28 Section 5 of P.L.1991, c.479 (C.52:27D-307.5);  
29 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);  
30 Section 8 of P.L.1985, c.222 (C.52:27D-308);  
31 Section 9 of P.L.1985, c.222 (C.52:27D-309);  
32 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);  
33 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);  
34 Section 14 of P.L.1985, c.222 (C.52:27D-314);  
35 Section 15 of P.L.1985, c.222 (C.52:27D-315);  
36 Section 16 of P.L.1985, c.222 (C.52:27D-316);  
37 Section 17 of P.L.1985, c.222 (C.52:27D-317);  
38 Section 18 of P.L.1985, c.222 (C.52:27D-318);  
39 Section 19 of P.L.1985 c.222 (C.52:27D-319);  
40 Section 22 of P.L.1985, c.222 (C.52:27D-322);  
41 Section 26 of P.L.1985, c.222 (C.52:27D-326);  
42 Section 28 of P.L.1985, c.222 (C.52:27D-328); and  
43 Section 9 of P.L.2008, c.46 (C.52:27D-329.3).

44  
45 38. a. There is appropriated to the Affordable Housing Dispute  
46 Resolution Program, established pursuant to subsection a. of section  
47 5 of P.L. , c. (C. ) (pending before the Legislature as this  
48 bill), from the General Fund \$12,000,000 for the purposes of

1 carrying out its responsibilities for the fourth round of affordable  
2 housing obligations, as established pursuant to section 5 of  
3 P.L. , c. (C. ) (pending before the Legislature as this bill).

4 b. There is appropriated to the Department of Community  
5 Affairs, from the General Fund, \$4,000,000 for the purposes of  
6 carrying out responsibilities allocated to it pursuant to P.L. , c.  
7 (C. ) (pending before the Legislature as this bill).

8  
9 39. This act shall take effect immediately, and shall apply to  
10 each new round of affordable housing obligations that begins  
11 following enactment.

#### 12 13 14 STATEMENT

15  
16 This bill would abolish the Council on Affordable Housing  
17 (COAH), initially established by the "Fair Housing Act," and would  
18 establish a process to enable a municipality to determine its own  
19 present and prospective fair share affordable housing obligation  
20 based on the formulas established in the bill, as calculated the  
21 Department of Community Affairs (DCA). In advance of the  
22 fourth, 10-year round of affordable housing obligations, beginning  
23 on July 1, 2025, the bill requires DCA to complete these  
24 calculations, and provide for their publication, on or before August  
25 1, 2024.

26 The bill permits a municipality to diverge from DCA's  
27 calculations in determining its obligation as long as it adheres to the  
28 methodology established by the bill. In advance of the fourth  
29 round, the bill requires a municipality to adopt its obligation by  
30 binding resolution, on or before January 31, 2025, in order to be  
31 assured of protection from a builder's remedy lawsuit, as defined in  
32 the bill, through which a municipality may otherwise be compelled  
33 to permit development, when the fourth round begins. If the  
34 municipality meets this deadline, then the municipality's  
35 determination of its obligation would be established by default,  
36 beginning on March 1, 2025, as the municipality's obligation for  
37 the fourth round. However, if a challenge is filed with the  
38 "Affordable Housing Dispute Resolution Program" ("program"),  
39 established in the bill, on or before February 28, 2025, the program  
40 would be required to facilitate a resolution of the dispute prior to  
41 April 1, 2025.

42 The bill requires a municipality to establish a "housing element"  
43 to encompass its obligation, and a fair share plan to meet its  
44 obligation, in advance of the fourth round, and propose necessary  
45 changes to associated ordinances, on or before June 30, 2025, in  
46 order to be assured of protection from a builder's remedy lawsuit.

47 A municipality would be required to submit its adopted fair share  
48 plan and housing element to the program. The bill permits an

1 interested party to initiate a challenge to a municipal fair share plan  
2 and housing element, if submitted through the program on or before  
3 August 31, 2025. The program would facilitate communication  
4 over the challenge, and provide the municipality until December 31,  
5 2025 to commit to revising its fair share plan and housing element  
6 in response to the challenge, or provide an explanation as to why it  
7 will not make all or the requested changes, or both. The bill  
8 requires municipalities to adopt associated changes to municipal  
9 ordinances on or before March 15, 2026. If a municipality fails to  
10 meet these deadlines, then the immunity of the municipality from  
11 builder's remedy litigation would end unless the program  
12 determines that the municipality's immunity shall be extended. If a  
13 municipality fails to adhere to any of these deadlines due to  
14 circumstances beyond the municipality's control, the bill directs the  
15 program to permit a grace period for the municipality to come into  
16 compliance with the timeline, the length of which, and effect of  
17 which on later deadlines, would be determined on a case-by-case  
18 basis.

19 After providing immunity, the bill also authorizes the program to  
20 subsequently terminate immunity under certain circumstances if it  
21 becomes apparent that the municipality is not determined to come  
22 into constitutional compliance. The municipality would still be  
23 permitted to seek immunity from a builder's remedy by initiating an  
24 action in Superior Court. A court would not grant a builder's  
25 remedy to a plaintiff in exclusionary zoning litigation during certain  
26 timeframes. The deadlines for subsequent 10-year rounds of  
27 affordable housing obligations would conform to the dates  
28 established in the bill for the fourth round.

29 In any challenge to a municipality's determination of its  
30 affordable housing obligation, or to its fair share plan and housing  
31 element, the bill requires the program to apply an objective  
32 assessment standard to determine whether or not the municipality's  
33 obligation determination, or its fair share plan and housing element,  
34 fails to comply with the requirements of the bill. Further, the  
35 challenger would be required to provide the basis for its challenge  
36 based on applicable law, and the program would have the power to  
37 dismiss challenges that do not provide such a basis.

38 All parties would be required to bear their own fees and costs for  
39 proceedings within the program. A determination by the program  
40 as to municipal obligations or compliance certification would be  
41 considered a final decision, subject to appellate review.

42 The Chief Justice of the Supreme Court would appoint an odd  
43 number of at least three and no more than seven members to serve  
44 as program leaders for the program established by the bill,  
45 consisting of retired and on recall judges, or other qualified experts.  
46 The members and employees of the program would be considered  
47 State officers and employees for the purposes of the "New Jersey  
48 Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.).

1 The Administrative Director of the Courts would also establish  
2 procedures for the purpose of efficiently resolving circumstances in  
3 which the program is unable to address a dispute over compliance  
4 certification within the time limitations established in the bill. As a  
5 part of these procedures, in order to facilitate an appropriate level of  
6 localized control of affordable housing decisions, for each vicinage,  
7 the bill directs the Chief Justice of the Supreme Court to designate a  
8 Superior Court judge who sits within the vicinage, or a retired judge  
9 who, during his or her tenure as a judge, served within the vicinage,  
10 to serve as county level housing judge to resolve disputes over the  
11 compliance, of fair share plans and housing elements of  
12 municipalities within their county, with the "Fair Housing Act,"  
13 when those disputes are not be resolved within the deadlines  
14 established in the bill. The Administrative Director of the Courts  
15 would adopt and apply a Code of Ethics for the program and county  
16 level housing judges modeled on the Code of Judicial Conduct of  
17 the American Bar Association, adopted by the State Supreme Court,  
18 and may establish additional more restrictive ethical standards in  
19 order to meet the specific needs of the program and of county level  
20 housing judges.

21 Each municipality's determination of its fair share obligation  
22 would be made through the guidance of preliminary calculations  
23 made by DCA. No later than August 1 of the year prior to the year  
24 when a new round of housing obligations begins, the bill requires  
25 DCA to calculate regional need and municipal present and  
26 prospective obligations in accordance with formulas established in  
27 the bill. DCA's calculations would be made publicly available, and  
28 provided to each municipality for use in determining their present  
29 and prospective obligations.

30 Municipal fair share obligations would be determined by  
31 applying the methods provided in the bill, along with the methods  
32 used by the Superior Court for the third round, to the extent that  
33 applicable methodologies are not explicitly articulated in the bill.  
34 Municipal present need obligations would be determined by  
35 estimating the existing deficient housing currently occupied by low-  
36 and moderate- income households within the municipality.

37 Regional prospective need would next be determined, upon  
38 which to base the municipal obligation, by estimating the regional  
39 growth of low- and moderate-income households during the  
40 housing round at issue. The bill would simplify the regional need  
41 estimation from the processes used in previous rounds in order to  
42 ease the administrative burden that has been associated with this  
43 process. First, projected household change for a 10-year round in a  
44 region would be estimated by establishing the household change  
45 experienced in the region between the most recent federal decennial  
46 census, the second-most recent federal decennial census. Although  
47 this relies on historical data, recent household change in a region is  
48 relevant to estimating future household change and associated

1 housing need. This household change would be divided by 2.5 to  
2 estimate the number of low- and moderate-income homes needed to  
3 address population change in the region, thereby determining the  
4 regional prospective need for the 10-year round. If household  
5 change is zero or negative, the number of low- and moderate-  
6 income homes needed to address low- and moderate-income  
7 household change in the region and the regional prospective would  
8 be zero.

9 After determining regional prospective need, each municipality's  
10 fair share prospective obligation of that regional prospective need  
11 would be determined. To do this, DCA would first determine  
12 whether a municipality is a qualified urban aid municipality, and if  
13 so, the municipality would not have a prospective need obligation.

14 If the municipality is not a qualified urban aid municipality,  
15 three factors necessary for the prospective fair share determination  
16 would be calculated. First, the equalized nonresidential valuation  
17 factor, representing the municipality's share of the regional change  
18 in the value of nonresidential property, would be calculated. In  
19 prior rounds, this calculation, concerning nonresidential  
20 (commercial and industrial) property values, has been adopted as a  
21 representation of a municipality's employment potential. Data  
22 available from the Division of Local Government Services in DCA  
23 would be used for this calculation. Next, an income capacity factor  
24 would be determined, using a formula comparable to one used in  
25 prior rounds to estimate the municipality's ability to absorb low-  
26 and moderate-income households. The municipality's land capacity  
27 factor would then be determined, representing the municipality's  
28 relative share of developable and redevelopable land, available to  
29 accommodate development, using data made available by the  
30 Department of Environmental Protection or the Division of  
31 Taxation in the Department of Treasury. The average of these three  
32 factors would be determined and multiplied by the regional  
33 prospective need to determine the municipality's gross prospective  
34 need.

35 Finally, the bill would require, where appropriate, adjustments  
36 for secondary sources of housing supply and demand by first  
37 calculating demolitions of low- and moderate-income housing, and  
38 housing creation through residential conversions. To do this, a  
39 municipality's share of conversions would be subtracted from the  
40 sum of each municipality's allocated share of gross prospective  
41 need and demolitions of low- and moderate-income housing. After  
42 applying these secondary sources, as appropriate, the municipality's  
43 prospective fair share obligation for the 10-year round would be  
44 established.

45 A municipality would be permitted to make adjustments for a  
46 lack of available land resources as part of the determination of a  
47 municipality's fair share of affordable housing when, for example  
48 certain municipal lands are devoted for conservation purposes.

1     However, the bill would require a municipality that receives such a  
2     vacant land adjustment to its fair share obligation to identify parcels  
3     for redevelopment to address at least 25 percent of the prospective  
4     need obligation that has been adjusted, and adopt zoning that allows  
5     for the adjusted obligation, or demonstrate why this is not possible.

6     A municipality would ultimately be permitted to reduce its  
7     prospective need if necessary to prevent establishing a prospective  
8     need obligation that exceeds 1,000 units in total or 20 percent of the  
9     estimated occupied housing stock at the beginning of the 10-year  
10    round, whichever limitation results in a lower number.

11    The bill requires that a municipality is required to satisfy a  
12    minimum of 50 percent of the actual affordable housing units,  
13    exclusive of any bonus credits, created to address its prospective  
14    need affordable housing obligation through the creation of housing  
15    available to families with children. The bill amends existing  
16    statutory language to ensure that affordable housing is constructed  
17    that is accessible to persons with disabilities.

18    The bill permits a municipality to be credited for as much as 10  
19    percent of its affordable housing obligation through transitional  
20    housing, and defines "transitional housing" as temporary housing,  
21    including but not limited to, single room occupancy housing or  
22    shared living and supportive living arrangements, that provides  
23    access to on-site or off-site supportive services for very low-income  
24    households who have recently been homeless or lack stable  
25    housing.

26    The bill would establish limitations on the use of municipal  
27    affordable housing trust fund moneys for administrative costs,  
28    attorney fees, court costs to obtain immunity from a builder's  
29    remedy, to contest the municipality's fair share obligation, or use of  
30    the trust fund moneys while a municipality does not have immunity  
31    from builder's remedy litigation. The bill would authorize a  
32    municipality to expend a portion of its affordable housing trust fund  
33    on actions and efforts reasonably related to or necessary for certain  
34    processes of the program, as provided in the bill. The bill would  
35    require each municipality authorized to retain and expend non-  
36    residential development fees to periodically provide DCA with an  
37    accounting of all such fees that have been collected and expended.

38    The bill would prohibit a municipality from receiving bonus  
39    credit for any particular type of low- or moderate-income housing,  
40    unless authority to obtain bonus credit is expressly provided by the  
41    "Fair Housing Act," as amended and supplemented by the bill. The  
42    bill expressly prohibits a municipality from receiving more than one  
43    type of bonus credit for any unit, or from satisfying more than 25  
44    percent of its prospective need obligation through the use of bonus  
45    credits. The bill expressly authorizes bonus credits in the amounts  
46    provided in the bill for: (1) housing for individuals with special  
47    needs or permanent supportive housing; (2) ownership units created  
48    in partnership sponsorship with a non-profit housing developer; (3)



1 housing located in a Garden State Growth Zone or certain transit-  
2 oriented locations; (4) certain age-restricted housing units; (5)  
3 family housing with at least three bedrooms above the minimum  
4 number required by the bedroom distribution in a given  
5 development; (6) housing constructed on certain land previously  
6 used for retail, office, or commercial space; (7) certain existing  
7 rental housing for which affordability controls are extended through  
8 municipal contributions; (8) certain 100 percent affordable  
9 developments built through municipal contributions of land or  
10 funding; and (9) certain housing for very low-income households.  
11 The bill also clarifies that all parties would be entitled to rely upon  
12 regulations on municipal credits, adjustments, and compliance  
13 mechanisms previously adopted by COAH unless those regulations  
14 are contradicted by statute, including but not limited to this bill, or  
15 binding court decisions.

16 The bill would require DCA to maintain certain affordable  
17 housing-related information on its website, including: (1) the start  
18 and expiration dates of deed restrictions; (2) residential and non-  
19 residential development fees collected and expended, including  
20 purposes and amounts of such expenditures; and (3) the current  
21 balance in the municipality's affordable housing trust funds. The  
22 bill would also direct municipalities to provide the information to  
23 DCA necessary to comply with this requirement.

24 The bill would amend various parts of the statutory law to  
25 remove references to COAH, and to transfer rulemaking authority,  
26 to the extent necessary, from COAH to DCA and the New Jersey  
27 Housing and Mortgage Finance Agency (HMFA). The bill directs  
28 HMFA to update the Uniform Housing Affordability Controls  
29 within nine months following the effective date of the bill. With  
30 certain exceptions, for the purpose of affordable rental units, a 40-  
31 year minimum deed restriction would be required, and in the case of  
32 for-sale units, a 20-year minimum deed restriction would be  
33 required.

34 The bill would appropriate \$12 million to the program, and \$4  
35 million to DCA, from the General Fund, for the purposes of  
36 carrying out their respective responsibilities for the fourth round of  
37 affordable housing obligations.

38 The bill would take effect immediately, and would apply to each  
39 new round of affordable housing obligations beginning after  
40 enactment of the bill.

[First Reprint]  
**SENATE, No. 50**

**STATE OF NEW JERSEY**  
**221st LEGISLATURE**

INTRODUCED JANUARY 9, 2024

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Somerset and Union)**

**Co-Sponsored by:**

**Senators Beach, Burgess, Timberlake, Ruiz and McKnight**

**SYNOPSIS**

Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.

**CURRENT VERSION OF TEXT**

As reported by the Senate Community and Urban Affairs Committee on January 25, 2024, with amendments.



**(Sponsorship Updated As Of: 3/4/2024)**

1 **AN ACT** concerning affordable housing, including administration  
2 and municipal obligations, amending, supplementing, and  
3 repealing various parts of the statutory law, and making an  
4 appropriation.

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

8  
9 1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to  
10 read as follows:

11 2. The Legislature finds that:

12 a. The New Jersey Supreme Court, through its rulings in  
13 **【South】** Southern Burlington County NAACP v. Mount Laurel, 67  
14 N.J. 151 (1975) and **【South】** Southern Burlington County NAACP  
15 v. Mount Laurel, 92 N.J. 158 (1983), has determined that every  
16 municipality in a growth area has a constitutional obligation to  
17 provide through its land use regulations a realistic opportunity for a  
18 fair share of its region's present and prospective needs for housing  
19 for **【low and moderate income】** low- and moderate-income  
20 families.

21 b. In the second Mount Laurel ruling, the Supreme Court stated  
22 that the determination of the methods for satisfying this  
23 constitutional obligation "is better left to the Legislature," that the  
24 court has "always preferred legislative to judicial action in their  
25 field," and that the judicial role in upholding the Mount Laurel  
26 doctrine "could decrease as a result of legislative and executive  
27 action."

28 c. The interest of all citizens, including **【low and moderate**  
29 **income】** low- and moderate-income families in need of affordable  
30 housing, and the needs of the workforce, would be best served by a  
31 comprehensive planning and implementation response to this  
32 constitutional obligation.

33 d. There are a number of essential ingredients to a  
34 comprehensive planning and implementation response, including  
35 the establishment of reasonable fair share housing guidelines and  
36 standards, the initial determination of fair share by officials at the  
37 municipal level and the preparation of a municipal housing element,  
38 State review of the local fair share study and housing element, and  
39 continuous State funding for **【low and moderate income】** low- and  
40 moderate-income housing to replace the federal housing subsidy  
41 programs which have been almost completely eliminated.

42 e. The State can maximize the number of **【low and moderate**  
43 **income】** low- and moderate-income units provided in New Jersey  
44 by allowing its municipalities to adopt appropriate phasing

**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:

<sup>1</sup>Senate SCU committee amendments adopted January 25, 2024.

1 schedules for meeting their fair share, so long as the municipalities  
2 permit a timely achievement of an appropriate fair share of the  
3 regional need for **low and moderate income** low- and moderate-  
4 income housing as required by the Mt. Laurel I and II opinions and  
5 other relevant court decisions.

6 f. The State can also maximize the number of **low and**  
7 **moderate income** low- and moderate-income units by creating new  
8 affordable housing and by rehabilitating existing, but substandard,  
9 housing in the State. Because the Legislature has determined,  
10 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.), that it is no  
11 longer appropriate or in harmony with the Mount Laurel doctrine to  
12 permit the transfer of the fair share obligations among  
13 municipalities within a housing region, it is necessary and  
14 appropriate to create a new program to create new affordable  
15 housing and to foster the rehabilitation of existing, but substandard,  
16 housing.

17 g. Since the urban areas are vitally important to the State,  
18 construction, conversion and rehabilitation of housing in our urban  
19 centers should be encouraged. However, the provision of housing  
20 in urban areas must be balanced with the need to provide housing  
21 throughout the State for the free mobility of citizens.

22 h. The Supreme Court of New Jersey in its Mount Laurel  
23 decisions demands that municipal land use regulations affirmatively  
24 afford a **reasonable** realistic opportunity for a variety and choice  
25 of housing including low and moderate cost housing, to meet the  
26 needs of people desiring to live there. While provision for the  
27 actual construction of that housing by municipalities is not required,  
28 they are encouraged but not mandated to expend their own  
29 resources to help provide **low and moderate income** low- and  
30 moderate-income housing.

31 i. **Certain amendments to the enabling act of the Council on**  
32 **Affordable Housing are necessary to provide guidance to the**  
33 **council to ensure consistency with the legislative intent, while at the**  
34 **same time clarifying the limitations of the council in its rulemaking.**  
35 **Although the court has remarked in several decisions that the**  
36 **Legislature has granted the council considerable deference in its**  
37 **rulemaking, the Legislature retains its power and obligation to**  
38 **clarify and amend the enabling act from which the council derives**  
39 **its rulemaking power, from time to time, in order to better guide the**  
40 **council.】** (Deleted by amendment, P.L. , c. ) (pending before the  
41 Legislature as this bill)

42 j. The Legislature finds that the use of regional contribution  
43 agreements, which permits municipalities to transfer a certain  
44 portion of their fair share housing obligation outside of the  
45 municipal borders, should no longer be utilized as a mechanism for  
46 the creation of affordable housing **by the council**.

1     k. The Legislature finds that the role of the Council on  
2     Affordable Housing, as intended in the original enactment of the  
3     "Fair Housing Act," has not developed in practice as was intended  
4     in the legislation.

5     l. The council's inability to function ultimately led the Supreme  
6     Court in 2015 to order the temporary dissolution of the requirement  
7     that administrative remedies be exhausted prior to resolving  
8     affordable housing disputes before the court, and allowed the courts  
9     to resume their role as the forum of first resort for evaluating  
10    municipal compliance with Mount Laurel obligations pursuant to  
11    guidelines laid out by the Supreme Court's order.

12    m. The Legislature finds that the council's inability to function  
13    led to a "gap period" that frustrated the intent of the Legislature and  
14    compliance with constitutional and statutory obligations, and that it  
15    is necessary to establish definitive deadlines for municipal action  
16    and any challenges to those actions to avoid such a "gap period"  
17    from being repeated in the future.

18    n. The Legislature finds that although the court-led system that  
19    has developed since 2015 has resulted in a significant number of  
20    settlement agreements and increased production of affordable  
21    housing, the system could operate more expeditiously to produce  
22    affordable housing, and at a lower cost to all parties, if appropriate  
23    standards are established by the Legislature to be applied  
24    throughout the State including more clarity on calculation on fair  
25    share affordable housing obligations using transparent and  
26    established data sources to eliminate the lengthy and costly  
27    processes of determining those obligations that have characterized  
28    both the Council on Affordable Housing and court-led system.

29    o. The Legislature determines that, considering the unique  
30    history of the "Fair Housing Act," the Council on Affordable  
31    Housing shall be abolished, and that, pursuant to the formulas and  
32    process established pursuant to sections 6 and 7 of P.L. , c. (C.  
33    and C. ) (pending before the Legislature as this bill), a  
34    municipality shall be authorized to seek approval of its fair share  
35    affordable housing obligation, adopted pursuant to binding  
36    resolution and then filed with the court, with the guidance of  
37    calculations published by the Department of Community Affairs,  
38    but that advocates for the low- and moderate-income households of  
39    the State shall be provided with an opportunity to contest the  
40    municipal determination.

41    p. The Legislature finds that the population of persons aged 65  
42    years and older in the State has grown from approximately 13  
43    percent in 1990, to 17 percent in 2021, and that such growth, in  
44    conjunction with expected future growth, makes it appropriate for  
45    the Legislature to continue to allow up to 25 percent of the units  
46    towards a municipality's prospective affordable housing obligation  
47    to be satisfied through the creation of age-restricted housing.

48    (cf: P.L.2008, c.46, s.4)

- 1        2. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to  
2 read as follows:
- 3        4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):
- 4        a. "Council" means the Council on Affordable Housing  
5 established in P.L.1985, c.222 (C.52:27D-301 et al.), **【**which shall  
6 have primary jurisdiction for the administration of housing  
7 obligations in accordance with sound regional planning  
8 considerations in this State**】** abolished pursuant to section 3 of  
9 P.L. , c. (C. ) (pending before the Legislature as this bill).
- 10       b. "Housing region" means a geographic area **【**of not less than  
11 two nor more than four contiguous, whole counties which exhibit  
12 significant social, economic and income similarities, and which  
13 constitute to the greatest extent practicable the primary metropolitan  
14 statistical areas as last defined by the United States Census Bureau  
15 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.)**】**  
16 established pursuant to subsection b. of section 6  
17 of P.L. , c. (C. ) (pending before the Legislature as this  
18 bill).
- 19       c. **【**"Low income" "Low-income housing" means housing  
20 affordable according to federal Department of Housing and Urban  
21 Development or other recognized standards for home ownership  
22 and rental costs and occupied or reserved for occupancy by  
23 households with a gross household income equal to 50 percent or  
24 less of the median gross household income for households of the  
25 same size within the housing region in which the housing is located.
- 26       d. **【**"Moderate income" "Moderate-income housing" means  
27 housing affordable according to federal Department of Housing and  
28 Urban Development or other recognized standards for home  
29 ownership and rental costs and occupied or reserved for occupancy  
30 by households with a gross household income equal to more than 50  
31 **【**%**】** percent but less than 80 percent of the median gross household  
32 income for households of the same size within the housing region in  
33 which the housing is located.
- 34       e. **【**"Resolution of participation" means a resolution adopted by  
35 a municipality in which the municipality chooses to prepare a fair  
36 share plan and housing element in accordance with P.L.1985, c.222  
37 (C.52:27D-301 et al.)**】** (Deleted by amendment, P.L. , c. )  
38 (pending before the Legislature as this bill)
- 39       f. "Inclusionary development" means a residential housing  
40 development in which a substantial percentage of the housing units  
41 are provided for a reasonable income range of **【**low and moderate  
42 income**】** low- and moderate-income households.
- 43       g. "Conversion" means the conversion of existing commercial,  
44 industrial, or residential structures for **【**low and moderate income**】**  
45 low- and moderate-income housing purposes where a substantial  
46 percentage of the housing units are provided for a reasonable

- 1 income range of **low and moderate income** low- and moderate-  
2 income households.
- 3 h. "Development" means any development for which  
4 permission may be required pursuant to the "Municipal Land Use  
5 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 6 i. "Agency" means the New Jersey Housing and Mortgage  
7 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et  
8 seq.).
- 9 j. "Prospective need" means a projection of housing needs  
10 based on development and growth which is reasonably likely to  
11 occur in a region or a municipality, as the case may be, as a result  
12 of actual determination of public and private entities. **[In**  
13 **determining prospective need, consideration shall be given to**  
14 **approvals of development applications, real property transfers, and**  
15 **economic projections prepared by the State Planning Commission**  
16 **established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-**  
17 **196 et seq.)]** Prospective need shall be determined by the  
18 methodology set forth pursuant to sections 6 and 7 of P.L. , c.  
19 (C. and C. ) (pending before the Legislature as this bill)  
20 for the fourth round and all future rounds of housing obligations.
- 21 k. "Person with a disability" means a person with a physical  
22 disability, infirmity, malformation, or disfigurement which is  
23 caused by bodily injury, birth defect, aging, or illness including  
24 epilepsy and other seizure disorders, and which shall include, but  
25 not be limited to, any degree of paralysis, amputation, lack of  
26 physical coordination, blindness or visual impairment, deafness or  
27 hearing impairment, the inability to speak or a speech impairment,  
28 or physical reliance on a service animal, wheelchair, or other  
29 remedial appliance or device.
- 30 l. "Adaptable" means constructed in compliance with the  
31 technical design standards of the barrier free subcode adopted by  
32 the Commissioner of Community Affairs pursuant to the "State  
33 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119  
34 et seq.) and in accordance with the provisions of section 5 of  
35 P.L.2005, c.350 (C.52:27D-123.15).
- 36 m. "Very **low income** low-income housing" means housing  
37 affordable according to federal Department of Housing and Urban  
38 Development or other recognized standards for home ownership  
39 and rental costs and occupied or reserved for occupancy by  
40 households with a gross household income equal to 30 percent or  
41 less of the median gross household income for households of the  
42 same size within the housing region in which the housing is located.
- 43 n. "Accessory dwelling unit" means a residential dwelling unit  
44 that provides complete independent living facilities with a private  
45 entrance for one or more persons, consisting of provisions for  
46 living, sleeping, eating, sanitation, and cooking, including a stove  
47 and refrigerator, and is located within a proposed or existing  
48 primary dwelling, within an existing or proposed structure that is

1 accessory to a dwelling on the same lot, constructed in whole or  
2 part as an extension to a proposed or existing primary dwelling, or  
3 constructed as a separate detached structure on the same lot as the  
4 existing or proposed primary dwelling.

5 o. "Builder's remedy" means court imposed site-specific relief  
6 for a litigant who seeks to build affordable housing for which the  
7 court requires a municipality to utilize zoning techniques such as  
8 mandatory set-asides or density bonuses, including techniques  
9 which provide for the economic viability of a residential  
10 development by including housing that is not for low- and  
11 moderate-income households.

12 p. "Commissioner" means the Commissioner of Community  
13 Affairs.

14 q. "Compliance certification" means the certification obtained  
15 by a municipality pursuant to section 3 of P.L. , c. (C. )  
16 (pending before the Legislature as this bill), that protects the  
17 municipality from a builder's remedy during the current round of  
18 present and prospective need and through July 1 of the year the next  
19 round begins, which is also known as a "judgment of compliance"  
20 or "judgment of repose." The term "compliance certification" shall  
21 include a judgment of repose granted in an action filed pursuant to  
22 section 13 of P.L.1985, c.222 (C.52:27D-313).

23 r. "County level housing judge" means a judge appointed  
24 pursuant to section 5 of P.L. , c. (C. ) (pending before the  
25 Legislature as this bill), to resolve disputes over the compliance of  
26 municipal fair share affordable housing obligations and municipal  
27 fair share plans and housing elements, with the "Fair Housing Act,"  
28 P.L.1985, c.222 (C.52:27D-301 et al.

29 s. "Deficient housing unit" means housing that: (1) is over fifty  
30 years old and overcrowded; (2) lacks complete plumbing; or (3)  
31 lacks complete kitchen facilities.

32 t. "Department" means the Department of Community Affairs.

33 u. "Fair share plan" means the plan or proposal that is in a form  
34 which may readily be adopted, with accompanying ordinances and  
35 resolutions, pursuant to subsection f. of section 3 of  
36 P.L. , c. (C. ) (pending before the Legislature as this bill),  
37 by which a municipality proposes to satisfy its obligation to create a  
38 realistic opportunity to meet its fair share of low- and moderate-  
39 income housing needs of its region and which details the  
40 affirmative measures the municipality proposes to undertake to  
41 achieve its fair share of low- and moderate-income housing, as  
42 provided in the municipal housing element, and addresses the  
43 development regulations necessary to implement the housing  
44 element, including, but not limited to, inclusionary requirements  
45 and development fees, and the elimination of unnecessary housing  
46 cost-generating features from the municipal land use ordinances and  
47 regulations.



1       v. "Housing element" means that portion of a municipality's  
2 master plan consisting of reports, statements, proposals, maps,  
3 diagrams, and text designed to meet the municipality's fair share of  
4 its region's present and prospective housing needs, particularly with  
5 regard to low- and moderate-income housing, and which shall  
6 contain the municipal present and prospective obligation for  
7 affordable housing, determined pursuant to subsection f. of section  
8 3 of P.L. , c. (C. ) (pending before the Legislature as this  
9 bill).

10       w. "Program" means the Affordable Housing Dispute Resolution  
11 Program, established pursuant to section 5 of P.L. , c. (C. )  
12 (pending before the Legislature as this bill).

13       x. "Transitional housing" means temporary housing that:

14       (1) includes, but is not limited to, single-room occupancy  
15 housing or shared living and supportive living arrangements;

16       (2) provides access to on-site or off-site supportive services for  
17 very low-income households who have recently been homeless or  
18 lack stable housing;

19       (3) is licensed by the department; and

20       (4) allows households to remain for a minimum of six months.

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

22  
23       3. (New section) a. The Council on Affordable Housing,  
24 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-  
25 301 et al.), is abolished. Each municipality shall determine its  
26 municipal present and prospective obligations in accordance with  
27 the formulas established in sections 6 and 7 of P.L. , c. (C.  
28 and C. ) (pending before the Legislature as this bill) and may  
29 take into consideration the calculations in the report published by  
30 the department in accordance with this section.

31       b. Following the expiration of the third round of affordable  
32 housing obligations on July 1, 2025, a municipality shall have  
33 immunity from a builder's remedy if the municipality complies with  
34 the deadlines established in P.L. , c. (C. ) (pending before  
35 the Legislature as this bill) for both determining present and  
36 prospective obligations, and for adopting a housing element and fair  
37 share plan to meet those obligations.

38       c. Prior to the beginning of each new 10-year round of housing  
39 obligations beginning with the fourth round on July 1, 2025, the  
40 Department of Community Affairs shall conduct a calculation of  
41 regional need and municipal present and prospective obligations in  
42 accordance with the formulas established in sections 6 and 7 of  
43 P.L. , c. (C. and C. ) (pending before the Legislature as  
44 this bill).

45       d. For the fourth round of affordable housing obligations, the  
46 department shall prepare and submit a report to the Governor, and,  
47 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the  
48 Legislature providing a report on the calculations of regional need

1 and municipal obligations for each region of the State <sup>1</sup>【on or  
2 before August】 within the earlier of seven months following the  
3 effective date of P.L. , c. (C. ) (pending before the  
4 Legislature as this bill) or December<sup>1</sup> 1, 2024. The department  
5 shall provide the report to each municipality in the State at the same  
6 time that it submits the report to the Governor and Legislature and  
7 shall also publish such report on the department’s Internet website.  
8 For the fifth round, and each subsequent new round of housing  
9 obligations, the department shall prepare and submit a report to  
10 each municipality in the State, the Governor, and, pursuant to  
11 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature on  
12 these calculations on or before August 1 of the year prior to the start  
13 of the new round and shall also publish such report on the  
14 department’s Internet website. For each 10-year round of housing  
15 obligations, a municipality may take into consideration the  
16 calculations in the report prepared by the department pursuant to  
17 this subsection in determining its present and prospective  
18 obligations.

19 e. Nothing in the provisions of subsections c., d., or f. of this  
20 section shall be interpreted to render any calculation in a report by  
21 the department published pursuant to this section binding on any  
22 municipality or other entity, nor to render any failure by the  
23 department to timely conduct the calculations or publish a report  
24 required by this section to alter the deadlines or process set forth in  
25 this section. The ultimate determination of a municipality’s present  
26 and prospective need shall be through the process as set forth  
27 below.

28 f. (1) (a) With consideration of the calculations contained in  
29 the relevant report published by the department pursuant to this  
30 section, for each 10-year round of affordable housing obligations  
31 beginning with the fourth round, a municipality shall determine its  
32 present and prospective fair share obligation for affordable housing  
33 in accordance with the formulas established in sections 6 and 7 of  
34 P.L. , c. (C. and C. ) (pending before the Legislature as  
35 this bill) by resolution, which shall describe the basis for the  
36 municipality’s determination and bind the municipality to adopt a  
37 housing element and fair share plan pursuant to paragraph (2) of  
38 this subsection based on this determination as may be adjusted by  
39 the program as set forth in this subsection.

40 (b) For the fourth round of affordable housing obligations, this  
41 determination of present and prospective fair share obligation shall  
42 be made by binding resolution no later than January 31, 2025.  
43 After adoption of this binding resolution, the municipality shall file  
44 an action regarding the resolution with the program no later than 48  
45 hours following adoption. The resolution, along with the date of  
46 filing with the program, shall be published on the program’s  
47 publicly accessible Internet website. The municipality shall also  
48 publish the resolution on its publicly accessible Internet website, if

1 the municipality maintains one. If the municipality does not meet  
2 this deadline, it immediately shall lose immunity from builder's  
3 remedy litigation until such time as the municipality is determined  
4 to have come into compliance with the "Fair Housing Act,"  
5 P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel  
6 doctrine. A determination of the municipality's present and  
7 prospective obligation may be established before a county level  
8 housing judge as part of any resulting declaratory judgment action  
9 pursuant to section 13 of P.L.1985, c.222 (C.52:27D-313), as  
10 amended by P.L. , c. (C. ) (pending before the Legislature  
11 as this bill), or through builder's remedy litigation. If the  
12 municipality meets this January 31 deadline, then the municipality's  
13 determination of its obligation shall be established by default  
14 beginning on March 1, 2025, as the municipality's obligation for  
15 the fourth round, unless challenged by an interested party on or  
16 before February 28, 2025. An interested party may file a challenge  
17 with the program, after adoption of the binding resolution and prior  
18 to March 1, 2025, alleging that the municipality's determination of  
19 its present and prospective obligation does not comply with the  
20 requirements of sections 6 and 7 of P.L. , c.  
21 (C. and C. ) (pending before the Legislature as this bill).  
22 For the fifth round, and each subsequent new round of housing  
23 obligations, the deadlines established in this subparagraph shall be  
24 on the last day of January, the last day of February, and the first day  
25 of March, respectively, of the year of the start of each new round.

26 (c) The Administrative Director of the Courts shall establish  
27 procedures for the program to consider a challenge and resolve a  
28 dispute initiated by an interested party pursuant to subparagraph (b)  
29 of this paragraph. To resolve a challenge, the program shall apply  
30 an objective assessment standard to determine whether or not the  
31 municipality's calculation of its obligation is compliant with the  
32 requirements of sections 6 and 7 of P.L. , c.  
33 (C. and C. ) (pending before the Legislature as this bill).  
34 Any challenge must state with particularity how the municipal  
35 calculation fails to comply with sections 6 and 7 of P.L. , c. (C.  
36 and C. ) (pending before the Legislature as this bill) and  
37 include the challenger's own calculation of the fair share  
38 obligations in compliance with sections 6 and 7 of P.L. , c. (C.  
39 and C. ) (pending before the Legislature as this bill). The  
40 program shall establish procedures to summarily dismiss any  
41 objection or challenge that does not meet these minimum standards.  
42 For the purpose of efficiency, the program shall, in its own  
43 discretion, permit multiple challenges to the same municipal  
44 determination to be consolidated. The program's approach to  
45 resolving a dispute may include: (i) a finding that the municipality's  
46 determination of its present and prospective need obligation did not  
47 facially comply with the requirements of sections 6 and 7 of P.L. ,  
48 c. (C. and C. ) (pending before the Legislature as this

1 bill) and thus the municipality's immunity shall be revoked; (ii) an  
2 adjustment of the municipality's determination of its present and  
3 prospective need obligation to comply with the requirements of  
4 sections 6 and 7 of P.L. , c. (C. and C. ) (pending  
5 before the Legislature as this bill) without revoking immunity; or  
6 (iii) a rejection of a challenge and affirm the municipality's  
7 determination. The decision shall be provided to the municipality  
8 and all parties that have filed challenges no later than March 31 of  
9 the year when the current round is expiring and the new round is  
10 beginning and concurrently posted on the program's Internet  
11 website. The Administrative Director of the Courts shall establish  
12 procedures for any further appellate review of such determinations,  
13 and may establish an expedited process for consolidated review of  
14 any such challenges by the Supreme Court, provided that any party  
15 seeking appellate review shall not change the deadlines established  
16 for municipal filing of a housing element and fair share plan, and  
17 implementing ordinances.

18 (2) (a) A municipality shall adopt a housing element and fair  
19 share plan as provided for by the "Fair Housing Act," P.L.1985,  
20 c.222 (C.52:27D-301 et al.), and propose drafts of the appropriate  
21 zoning and other ordinances and resolutions to implement its  
22 present and prospective obligation established in paragraph (1) of  
23 this subsection on or before June 30, 2025. After adoption of the  
24 housing element and fair share plan, and the proposal of drafts of  
25 the appropriate zoning and other ordinances and resolutions, the  
26 municipality shall within 48 hours of adoption or by June 30, 2025,  
27 whichever is sooner, file the same with the program as part of the  
28 action initiated pursuant to subparagraph (b) of paragraph (1) of this  
29 subsection through the program's Internet website. Any  
30 municipality that does not do so by June 30, 2025, shall not retain  
31 immunity from builder's remedy litigation until such time as the  
32 municipality is determined to have come into compliance with the  
33 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the  
34 Mount Laurel doctrine and shall be subject to review through the  
35 declaratory judgment process as established in paragraph (3) of this  
36 subsection. As part of its housing element and fair share plan, the  
37 municipality shall include an assessment of the degree to which the  
38 municipality has met its fair share obligation from the prior rounds  
39 of affordable housing obligations as established by prior court  
40 approval, or approval by the council, and determine to what extent  
41 this obligation is unfulfilled or whether the municipality has credits  
42 in excess of its prior round obligations. If a prior round obligation  
43 remains unfulfilled, or a municipality never received an approval  
44 from court or the council for any prior round, the municipality shall  
45 address such unfulfilled prior round obligation in its housing  
46 element and fair share plan. Units included as part of the  
47 municipality's unfulfilled prior round obligation shall not count  
48 towards the cap on units in the municipality's prospective need

1 obligation. In addressing prior round obligations, the municipality  
2 shall retain any sites that, in furtherance of the prior round  
3 obligation, are the subject of a contractual agreement with a  
4 developer, or for which the developer has filed a complete  
5 application seeking subdivision or site plan approval prior to the  
6 date by which the housing element and fair share plan are required  
7 to be submitted, and shall demonstrate how any sites that were not  
8 built in the prior rounds continue to present a realistic opportunity,  
9 which may include proposing changes to the zoning on the site to  
10 make its development more likely, and which may also include the  
11 dedication of municipal affordable housing trust fund dollars or  
12 other monetary or in-kind resources. The municipality shall only  
13 plan to replace any sites planned for development as provided by a  
14 prior court approval, settlement agreement, or approval by the  
15 council, with alternative development plans, if it is determined that  
16 the previously planned sites no longer present a realistic  
17 opportunity, and the sites in the alternative development plan  
18 provide at least an equivalent number of affordable units and are  
19 otherwise in compliance with the "Fair Housing Act," P.L.1985,  
20 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. If a  
21 municipality proposes to replace a site for which a complete  
22 application seeking subdivision or site plan approval has not been  
23 filed prior to date by which the housing element and fair share plan  
24 is required to be submitted, there shall be a rebuttable presumption  
25 in any challenge filed to the municipality's plan that any site for  
26 which a zoning designation was adopted creating a realistic  
27 opportunity for the development of a site prior to July 1, 2020, or  
28 July 1 of every 10th year thereafter, as applicable, may be replaced  
29 with one or more alternative sites that provide a realistic  
30 opportunity for at least the same number of affordable units and is  
31 otherwise in compliance with the "Fair Housing Act," P.L.1985,  
32 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine. To the  
33 extent a municipality has credits, including bonus credits, from  
34 units created during a prior round that are otherwise permitted to be  
35 allocated toward the municipality's unfulfilled prior round  
36 obligation or present or prospective need obligation in an upcoming  
37 round, the municipality shall be entitled to rely on the rules,  
38 including rules for bonus credits, applicable for the round during  
39 which those credits were accumulated. If a municipality has credits  
40 in excess of its prior round obligations, and such excess credits  
41 represent housing that will continue to be deed-restricted and  
42 affordable through the current round, the municipality may include  
43 such housing, and applicable bonus credits, towards addressing the  
44 municipality's new calculation of prospective need. Consistent  
45 with subsection k. of section 11 of P.L.1985, c.222 (C.52:27D-311),  
46 the total number of bonus credits shall in no circumstance exceed  
47 25 percent of the municipality's prospective obligation in any  
48 round. The municipality may in its plan lower its prospective need

1 obligation to the extent necessary to prevent establishing a  
2 prospective need obligation that requires the municipality to  
3 provide a realistic opportunity for more than 1,000 housing units,  
4 after the application of any excess credits, or to prevent a  
5 prospective need obligation that exceeds 20 percent of the total  
6 number of households in a municipality according to the most  
7 recent federal decennial census, not including any prior round  
8 obligation. If a municipality is subject to both a 1,000 unit cap or  
9 20 percent cap it may apply whichever cap results in a lower  
10 prospective need obligation. For the fifth round, and for each  
11 subsequent new round of housing obligations, the deadlines in this  
12 paragraph shall be June 30 for the adoption of the housing element  
13 and fair share plan, and the proposal of drafts of the appropriate  
14 zoning and other ordinances and resolutions to implement its  
15 present and prospective obligation, of the year of the start of the  
16 new round.

17 (b) Following the filing, in an action, of an adopted housing  
18 element and fair share plan pursuant to subparagraph (a) of this  
19 paragraph, an interested party may file a response on or before  
20 August 31, 2025 alleging that the municipality's fair share plan and  
21 housing element are not in compliance with the "Fair Housing Act,"  
22 P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine.  
23 Such allegation shall not include a claim that a site on real property  
24 proposed by the interested party is a better site than a site in the  
25 plan, but rather shall be based on whether the housing element and  
26 fair share plan as proposed is compliant with the "Fair Housing  
27 Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel  
28 doctrine. To resolve a challenge, the program shall apply an  
29 objective assessment standard to determine whether or not the  
30 municipality's housing element and fair share plan is compliant  
31 with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.)  
32 and the Mount Laurel doctrine. Any interested party that files a  
33 challenge shall specify with particularity which sites or elements of  
34 the municipal fair share plan do not comply with the "Fair Housing  
35 Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel  
36 doctrine, and the basis for alleging such non-compliance. The  
37 program shall establish procedures to summarily dismiss any  
38 objection or challenge that does not meet these minimum standards.  
39 For the purpose of efficiency, the program shall, in its own  
40 discretion, permit multiple challenges to the same municipal  
41 housing element and fair share plan to be consolidated. If a  
42 municipality's fair share plan and housing element is not challenged  
43 on or before August 31, 2025, then the program shall review the fair  
44 share plan and housing element for consistency and to determine  
45 whether it is compliant with the "Fair Housing Act," P.L.1985,  
46 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine, and  
47 issue a compliance certification unless these objective standards are  
48 not met. The program shall facilitate communication between the

1 municipality and any interested parties for a challenge, and provide  
2 the municipality until December 31, 2025 to commit to revising its  
3 fair share plan and housing element in compliance with the changes  
4 requested in the challenge, or provide an explanation as to why it  
5 will not make all of the requested changes, or both. Upon  
6 resolution of a challenge, the program shall issue compliance  
7 certification, conditioned on the municipality's commitment, as  
8 necessary, to revise its fair share plan and housing element in  
9 accordance with the resolution of the challenge. The program may  
10 also terminate immunity if it finds that the municipality is not  
11 determined to come into constitutional compliance at any point in  
12 the process. If by December 31, 2025, the municipality and any  
13 interested party that filed a response have resolved the issues raised  
14 in the response through agreement or withdrawal of the filing, then  
15 the program shall review the fair share plan and housing element for  
16 consistency and to determine whether it is compliant with the "Fair  
17 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount  
18 Laurel doctrine, and issue a compliance certification unless these  
19 objective standards are not met. For the fifth round, and each  
20 subsequent new round of housing obligations, the deadline  
21 established in this subparagraph for an interested party to file a  
22 challenge shall be August 31, and for the municipality to revise its  
23 housing element and fair share plan in response, shall be December  
24 31, of the year of the beginning of the new round.

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

38 (d) The program may permit a municipality that still has a  
39 remaining dispute by interested parties to retain immunity from  
40 builder's remedy litigation into the year following the year in which  
41 a new round begins if the program, or county level housing judge,  
42 determines that the municipality has been unable to resolve the  
43 issues disputed despite being determined to come into constitutional  
44 compliance. The Administrative Director of the Courts shall  
45 develop procedures to enable a county level housing judge to  
46 resolve this dispute over the issuance of compliance certification  
47 through a summary proceeding in Superior Court following the year  
48 in which the new round begins. A judge shall be permitted to serve

1 as a county level housing judge for more than one county in the  
2 same vicinage. The pendency of such a dispute shall not stay the  
3 deadline for adoption of implementing ordinances and resolutions  
4 pursuant to this paragraph.

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

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

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



1 share plan and housing element through actions, omissions, or both,  
2 of a municipality or its subordinate boards.

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

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

11 (e) A municipality shall not be deemed out of compliance with  
12 the deadlines of P.L. , c. (C. ) (pending before the  
13 Legislature as this bill), or lose immunity from builder's remedy  
14 litigation, due to a failure by the program to promptly maintain and  
15 update its Internet website, or other operational failure of the  
16 program.

17  
18 4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to  
19 read as follows:

20 13. a. **[A]** If a municipality [which] has [filed a housing  
21 element may, at any time during a two-year period following the  
22 filing of the housing element, petition the council for a substantive  
23 certification of its element and ordinances or] adopted a housing  
24 element and fair share plan pursuant to section 3 of  
25 P.L. , c. (C. ) (pending before the Legislature as this bill),  
26 but has failed to satisfy the June 30 deadline established pursuant to  
27 paragraph (2) of subsection f. of section 3 of P.L. , c. (C. )  
28 (pending before the Legislature as this bill), for any round of  
29 affordable housing obligations, the municipality may request and be  
30 provided with a grace period pursuant to paragraph (3) of  
31 subsection f. of section 3 of P.L. , c. (C. ) (pending before  
32 the Legislature as this bill), if authorized by the program or county  
33 level housing judge, as determined by the rules of court. If a  
34 municipality that has not satisfied this June 30 deadline is not  
35 provided with a grace period, the municipality may institute an  
36 action for declaratory judgment granting it repose in the Superior  
37 Court ], but in no event shall a grant of substantive certification  
38 extend beyond a 10-year period starting on the date the municipality  
39 files its housing element with the council] for the 10-year period  
40 constituting the current round of fair share obligations. The  
41 municipality shall publish notice of its [petition] filing of a  
42 declaratory judgment action in a newspaper of general circulation  
43 within the municipality and county and shall make available to the  
44 public information on the element and ordinances by submitting  
45 such information to the program to be published on the Internet  
46 website of the program in accordance with [such procedures as the  
47 council shall establish. The council shall also establish a procedure

1 for providing public notice of each petition which it receives】  
2 section 3 of P.L. , c. (C. ) (pending before the Legislature  
3 as this bill).

4 b. 【Notwithstanding the provisions of subsection a. of this  
5 section, a municipality which filed a housing element prior to the  
6 effective date of P.L.1990, c.121, shall be permitted to petition for  
7 substantive certification at any time within two years following that  
8 filing, or within one year following the effective date of P.L.1990,  
9 c.121, whichever shall result in permitting the municipality the  
10 longer period of time within which to petition.】 (Deleted by  
11 amendment, P.L. , c. ) (pending before the Legislature as this  
12 bill)

13 【The Council shall establish procedures for】 c. (1) A  
14 municipality or other interested party may file an action through the  
15 program seeking a realistic opportunity review 【at the midpoint of  
16 the certification period and shall provide for notice to the public】 at  
17 the midpoint of the certification period and shall provide for notice  
18 to the public, including a realistic opportunity review of any  
19 inclusionary development site in the housing element and fair share  
20 plan that has not received preliminary site plan approval prior to the  
21 midpoint of the 10-year round. If such an action is initiated by a  
22 municipality, the municipality shall propose one or more alternative  
23 sites with an accompanying development plan or plans that provide  
24 a realistic opportunity for the same number of affordable units and  
25 is otherwise in compliance with the "Fair Housing Act," P.L.1985,  
26 c.222 (C.52:27D-301 et al.) and the Mount Laurel doctrine,  
27 provided that if the facts demonstrate that the municipality or its  
28 subordinate boards have prevented the site from receiving site plan  
29 approval, then the program shall reject the municipality's challenge.

30 (2) Any party may file a request for information from the  
31 program regarding the progress of development at any inclusionary  
32 development site in the housing element and fair share plan of a  
33 municipality, or at any alternative site proposed by the  
34 municipality. The program may respond to a request independently  
35 or in coordination with the department.

36 (cf: P.L.2001, c.435, s.5)

37  
38 5. (New section) a. There is established an Affordable Housing  
39 Dispute Resolution Program that shall have the purpose of  
40 efficiently resolving disputes involving the "Fair Housing Act,"  
41 P.L.1985, c.222 (C.52:27D-301 et al.), to consist of an odd number  
42 of members, of at least three and no more than seven members who  
43 shall lead the administration of the program. The <sup>1</sup>【Chief Justice of  
44 the Supreme Court】 Administrative Director of the Courts<sup>1</sup> shall  
45 update the assignment of designated Mount Laurel judges to  
46 indicate which current or retired and on recall judges of the  
47 Superior Court shall serve as members, within <sup>1</sup>【40】 60<sup>1</sup> days

1 following the effective date of P.L. , c. (C. ) (pending  
2 before the Legislature as this bill). The <sup>1</sup>【Chief Justice of the  
3 Supreme Court】 Administrative Director of the Courts<sup>1</sup> may  
4 appoint other qualified experts as members if sufficient current and  
5 retired judges are unavailable. The <sup>1</sup>【Chief Justice of the Supreme  
6 Court】 Administrative Director of the Courts<sup>1</sup> shall take into  
7 consideration in making such appointments experience in the  
8 employment of alternative dispute resolution methods and in  
9 relevant subject matter.

10 b. The <sup>1</sup>【Chief Justice of the Supreme Court】 Administrative  
11 Director of the Courts<sup>1</sup> shall designate a member to serve as chair.  
12 The <sup>1</sup>【Chief Justice of the Supreme Court】 Administrative Director  
13 of the Courts<sup>1</sup> shall make new appointments as needs arise for new  
14 appointments.

15 c. The program, in its discretion and in accordance with Rules of  
16 Court, may consult or employ the services of one or more special  
17 masters or staff to assist it in rendering determinations, resolving  
18 disputes, and facilitating communication as required by  
19 subparagraph (b) of paragraph (2) of subsection f. of section 3 of  
20 P.L. , c. (C. ) (pending before the Legislature as this bill).  
21 In addition, the program may incorporate any existing or newly  
22 established court mediation or alternative dispute resolution process  
23 to assist the program in resolving disputes and facilitating  
24 communication among municipalities and interested parties.

25 d. The Administrative Director of the Courts shall establish a  
26 filing system via an Internet website in which the public is able to  
27 access, without cost, filings made pursuant to P.L. , c. (C. )  
28 (pending before the Legislature as this bill) and such other related  
29 filings as the Administrative Director of the Courts may include on  
30 the filing system.

31 e. The Administrative Director of the Courts may assign  
32 additional responsibilities to the program for resolving disputes  
33 arising out of or related to the "Fair Housing Act," P.L.1985, c.222  
34 (C.52:27D-301 et al.).

35 f. The Administrative Director of the Courts shall establish  
36 procedures for the purpose of efficiently resolving disputes  
37 involving the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
38 et al.), for circumstances in which the program is unable to address  
39 the dispute within the time limitations established pursuant to  
40 section 3 of P.L. , c. (C. ) (pending before the Legislature  
41 as this bill). As a part of the procedures established pursuant to this  
42 section, in order to facilitate an appropriate level of localized  
43 control of affordable housing decisions, for each vicinage, the Chief  
44 Justice of the Supreme Court shall designate a Superior Court judge  
45 who sits within the vicinage, or a retired judge who, during the  
46 judge's tenure as a judge, served within the vicinage, to serve as  
47 county level housing judge to resolve disputes over the compliance,

1 of fair share plans and housing elements of municipalities within  
2 their designated county or counties, with the "Fair Housing Act,"  
3 P.L.1985, c.222 (C.52:27D-301 et al.), as well as disputes that arise  
4 with respect to ongoing compliance or noncompliance with  
5 obligations created by fair share plans, housing elements, and the  
6 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A  
7 judge shall be permitted to serve as a county level housing judge for  
8 more than one county in the same vicinage.

9 g. The Administrative Director of the Courts shall promulgate,  
10 maintain, and apply a Code of Ethics that is modeled upon the Code  
11 of Judicial Conduct of the American Bar Association, as amended  
12 and adopted by the Supreme Court of New Jersey, and may  
13 establish additional, more restrictive ethical standards in order to  
14 meet the specific needs of the program, and of county level housing  
15 judges.

16  
17 6. (New section) a. Municipal present need for each 10-year  
18 round of affordable housing obligations shall be determined by  
19 estimating the deficient housing units occupied by low- and  
20 moderate-income households in the region, following a  
21 methodology similar to the methodology used to determine third  
22 round municipal present need, through the use of most recent  
23 datasets made available through the federal decennial census and  
24 the American Community Survey.

25 b. For the purpose of determining regional need for the 10-year  
26 round of low- and moderate-income housing obligations, running  
27 from July 1, 2025 through June 30, 2035, and each 10-year round  
28 thereafter:

29 (1) The regions of the State shall be comprised as follows:

30 (a) Region 1 shall consist of the counties of Bergen, Hudson,  
31 Passaic, and Sussex;

32 (b) Region 2 shall consist of the counties of Essex, Morris,  
33 Union, and Warren;

34 (c) Region 3 shall consist of the counties of Hunterdon,  
35 Middlesex, and Somerset;

36 (d) Region 4 shall consist of the counties of Mercer, Monmouth,  
37 and Ocean;

38 (e) Region 5 shall consist of the counties of Burlington,  
39 Camden, and Gloucester; and

40 (f) Region 6 shall consist of the counties of Atlantic, Cape May,  
41 Cumberland, and Salem.

42 (2) Regional prospective need for a 10-year round of low- and  
43 moderate-income housing obligations shall be determined through  
44 the calculation provided in this subsection. Projected household  
45 change for a 10-year round in a region shall be estimated by  
46 establishing the household change experienced in the region  
47 between the most recent federal decennial census, and the second-  
48 most recent federal decennial census. This household change, if

1 positive, shall be divided by 2.5 to estimate the number of low- and  
2 moderate-income homes needed to address low- and moderate-  
3 income household change in the region, and to determine the  
4 regional prospective need for a 10-year round of low- and  
5 moderate-income housing obligations. If household change is zero  
6 or negative, the number of low- and moderate-income homes  
7 needed to address low- and moderate-income household change in  
8 the region and the regional prospective need shall be zero.

9  
10 7. (New section) a. The present and prospective fair share  
11 obligation for low- and moderate-income housing for each  
12 municipality in the State shall be determined as described in this  
13 section. In addition, the March 8, 2018 unpublished decision of the  
14 Superior Court, Law Division, Mercer County, In re Application of  
15 Municipality of Princeton shall be referenced as to datasets and  
16 methodologies that are not explicitly addressed by this section.  
17 These determinations of municipal present and prospective need  
18 shall be based on a determination of the present and prospective  
19 regional need for low- and moderate-income housing, established  
20 pursuant to section 6 of P.L. , c. (C. ) (pending before the  
21 Legislature as this bill). These calculations of municipal present  
22 and prospective need shall use necessary datasets that are updated  
23 to the greatest extent practicable.

24 b. A municipality's present need obligation shall be determined  
25 by estimating the existing deficient housing units currently  
26 occupied by low- and moderate-income households within the  
27 municipality, following a methodology comparable to the  
28 methodology used to determine third round present need, through  
29 the use of datasets made available through the federal decennial  
30 census and the American Community Survey.

31 c. A municipality's prospective fair share obligation of the  
32 regional prospective need for the upcoming 10-year round shall be  
33 determined in accordance with this subsection:

34 (1) If a municipality is a qualified urban aid municipality, the  
35 municipality shall be exempt from responsibility for any fair share  
36 prospective need obligation for the upcoming 10-year round. For  
37 the purposes of this section, a municipality is a qualified urban aid  
38 municipality if the municipality, as of July 1 of the year prior to the  
39 beginning of a new round, is designated by the department, pursuant  
40 to P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid, and  
41 the municipality meets at least one of the following criteria:

42 (a) The ratio of substandard existing deficient housing units  
43 currently occupied by low- and moderate-income households within  
44 the municipality, compared to all existing housing in the  
45 municipality, is greater than the equivalent ratio in the region;

46 (b) The municipality has a population density greater than  
47 10,000 persons per square mile of land area; or

- 1       (c) The municipality has a population density of more than  
2 6,000, but less than 10,000 persons per square mile of land area,  
3 and less than five percent vacant parcels not used as farmland, as  
4 measured by the average of:
- 5       (i) The number of vacant land parcels in the municipality as a  
6 percentage of the total number of parcels in the municipality; and  
7       (ii) The valuation of vacant land in the municipality as a  
8 percentage of total valuations in the municipality.
- 9       (2) A municipality's equalized nonresidential valuation factor  
10 shall be determined. To determine this factor, the changes in  
11 nonresidential property valuations in the municipality, since the  
12 beginning of the round preceding the round being calculated, shall  
13 be calculated using data published by the Division of Local  
14 Government Services in the department. The change in the  
15 municipality's nonresidential valuations shall be divided by the  
16 regional total change in nonresidential valuations to determine the  
17 municipality's share of the regional change as the equalized  
18 nonresidential valuation factor.
- 19       (3) A municipality's income capacity factor shall be determined.  
20 This factor shall be determined by calculating the average of the  
21 following measures:
- 22       (a) The municipal share of the regional sum of the differences  
23 between the median municipal household income, according to the  
24 most recent American Community Survey Five-Year Estimates, and  
25 an income floor of \$100 below the lowest median household  
26 income in the region; and
- 27       (b) The municipal share of the regional sum of the differences  
28 between the median municipal household incomes and an income  
29 floor of \$100 below the lowest median household income in the  
30 region, weighted by the number of the households in the  
31 municipality.
- 32       (4) A municipality's land capacity factor shall be determined.  
33 This factor shall be determined by estimating the area of  
34 developable and redevelopable land in the municipality's  
35 boundaries, and regional boundaries, that may accommodate  
36 development through the use of the "land use / land cover data"  
37 most recently published by the Department of Environmental  
38 Protection, and weighing such land based on the planning area type  
39 in which such land is located. After the weighing factors are  
40 applied, the sum of the total developable and redevelopable land  
41 area that may accommodate development in the municipality, and in  
42 the region shall be determined. The municipality's share of its  
43 region's developable and redevelopable land shall be its land  
44 capacity factor. Developable and redevelopable land that may  
45 accommodate development shall be weighted based on the planning  
46 area type in which such land is located, as designated pursuant to  
47 P.L.1985, c.398 (C.52:18A-196 et seq.), P.L.1979, c.111

1 (C.13:18A-1 et seq.), or P.L.2004, c.120 (C.13:20-1 et seq.), as  
2 follows:

3 (a) Planning Area 1 (Metropolitan) shall have a weighting factor  
4 of 1.0;

5 (b) Planning Area 2 (Suburban) shall have a weighting factor of  
6 1.0;

7 (c) Planning Area 3 (Fringe) shall have a weighting factor of  
8 0.5;

9 (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;

10 (e) Planning Area 5 (Environmentally Sensitive) shall have a  
11 weighting factor of 0.0;

12 (f) Centers in Planning Areas 1 and 2 shall have a weighting  
13 factor of 1.0;

14 (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting  
15 factor of 0.5;

16 (h) Pinelands Regional Growth Area shall have a weighting  
17 factor of 0.5;

18 (i) Pinelands Town shall have a weighting factor of 0.5;

19 (j) All other Pinelands shall have a weighting factor of 0.0;

20 (k) Meadowlands shall have a weighting factor of 1.0;

21 (l) Meadowlands Center shall have a weighting factor of 1.0;

22 (m) Highlands Preservation Area shall have a weighting factor  
23 of 0.0;

24 (n) Highlands Planning Area Existing Community Zone, opted  
25 in municipality by May 1, 2022 shall have a weighting factor of 1.0;

26 (o) Highlands Planning Area, State-designated sewer service  
27 area, municipality not opted in by May 1, 2022, shall have a  
28 weighting factor of 1.0; and

29 (p) All other Highlands Planning Areas shall have a weighting  
30 factor of 0.0.

31 (5) The equalized nonresidential valuation factor, income  
32 capacity factor, and land capacity factor, determined in paragraphs  
33 (2), (3), and (4) of this subsection, shall be averaged to yield the  
34 municipality's average allocation factor for distributing gross  
35 regional prospective need to the municipality. The regional  
36 prospective need shall then be multiplied by the municipality's  
37 average allocation factor to determine the municipality's gross  
38 prospective need for the 10-year round.

39 (6) Secondary sources of supply and demand shall be adjusted  
40 for by first calculating demolitions of low- and moderate-income  
41 housing, and housing creation through low- and moderate-income  
42 residential conversions. A municipality's share of low- and  
43 moderate-income conversions shall then be subtracted from the sum  
44 of each municipality's allocated share of gross prospective need and  
45 demolitions of low- and moderate-income housing.

46  
47 8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read  
48 as follows:

1       4. a. Upon failure to perform any obligation of a residential  
2 mortgage by the residential mortgage debtor and before any  
3 residential mortgage lender may accelerate the maturity of any  
4 residential mortgage obligation and commence any foreclosure or  
5 other legal action to take possession of the residential property  
6 which is the subject of the mortgage, the residential mortgage  
7 lender shall give a notice of intention, which shall include a notice  
8 of the right to cure the default as provided in section 5 of P.L.1995,  
9 c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in  
10 advance of such action as provided in this section, to the residential  
11 mortgage debtor, and, if the mortgage is secured by a residence for  
12 which a restriction on affordability was recorded in the county in  
13 which the property is located, the clerk of the municipality in which  
14 the subject property is located, the municipal housing liaison, if one  
15 has been appointed by the municipality **【**pursuant to the regulations  
16 of the Council on Affordable Housing, and the Commissioner of  
17 Community Affairs**】**. For the purposes of this section, "restriction  
18 on affordability" means any conditions recorded with a mortgage or  
19 a deed which would limit the sale of such property to income  
20 qualified households pursuant to the rules adopted to effectuate the  
21 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

22       b. Notice of intention to take action as specified in subsection  
23 a. of this section shall be in writing, provided to the Department of  
24 Community Affairs in accordance with subsection a. of section 2 of  
25 P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or  
26 certified mail, return receipt requested, at the debtor's last known  
27 address, and, if different, to the address of the property which is the  
28 subject of the residential mortgage. The notice is deemed to have  
29 been effectuated on the date the notice is delivered in person or  
30 mailed to the party.

31       c. The written notice shall clearly and conspicuously state in a  
32 manner calculated to make the debtor aware of the situation:

33       (1) the particular obligation or real estate security interest;  
34       (2) the nature of the default claimed;  
35       (3) the right of the debtor to cure the default as provided in  
36 section 5 of P.L.1995, c.244 (C.2A:50-57);

37       (4) what performance, including what sum of money, if any, and  
38 interest, shall be tendered to cure the default as of the date specified  
39 under paragraph (5) of this subsection c.;

40       (5) the date by which the debtor shall cure the default to avoid  
41 initiation of foreclosure proceedings, which date shall not be less  
42 than 30 days after the date the notice is effective, and the name and  
43 address and phone number of a person to whom the payment or  
44 tender shall be made;

45       (6) that if the debtor does not cure the default by the date  
46 specified under paragraph (5) of this subsection c., the lender may  
47 take steps to terminate the debtor's ownership in the property by  
48 commencing a foreclosure suit in a court of competent jurisdiction;



1 (7) that if the lender takes the steps indicated pursuant to  
2 paragraph (6) of this subsection c., a debtor shall still have the right  
3 to cure the default pursuant to section 5 of P.L.1995, c.244  
4 (C.2A:50-57), but that the debtor shall be responsible for the  
5 lender's court costs and attorneys' fees in an amount not to exceed  
6 that amount permitted pursuant to the Rules Governing the Courts  
7 of the State of New Jersey;

8 (8) the right, if any, of the debtor to transfer the real estate to  
9 another person subject to the security interest and that the transferee  
10 may have the right to cure the default as provided in P.L.1995,  
11 c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;

12 (9) that the debtor is advised to seek counsel from an attorney of  
13 the debtor's own choosing concerning the debtor's residential  
14 mortgage default situation, and that, if the debtor is unable to obtain  
15 an attorney, the debtor may communicate with the New Jersey Bar  
16 Association or Lawyer Referral Service in the county in which the  
17 residential property securing the mortgage loan is located; and that,  
18 if the debtor is unable to afford an attorney, the debtor may  
19 communicate with the Legal Services Office in the county in which  
20 the property is located;

21 (10) the possible availability of financial assistance for curing a  
22 default from programs operated by the State or federal government  
23 or nonprofit organizations, if any, as identified by the  
24 Commissioner of Banking and Insurance and, if the property is  
25 subject to restrictions on affordability, the address and phone  
26 number of the municipal affordable housing liaison and of the New  
27 Jersey Housing and Mortgage Finance Agency. This requirement  
28 shall be satisfied by attaching a list of such programs promulgated  
29 by the commissioner;

30 (11) the name and address of the lender and the telephone  
31 number of a representative of the lender whom the debtor may  
32 contact if the debtor disagrees with the lender's assertion that a  
33 default has occurred or the correctness of the mortgage lender's  
34 calculation of the amount required to cure the default;

35 (12) that if the lender takes the steps indicated pursuant to  
36 paragraph (6) of this subsection, the debtor has the option to  
37 participate in the Foreclosure Mediation Program following the  
38 filing of a mortgage foreclosure complaint by initiating mediation  
39 pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019,  
40 c.64 (C.2A:50-77). Notice of the option to participate in the  
41 Foreclosure Mediation Program shall adhere to the requirements of  
42 section 3 of P.L.2019, c.64 (C.2A:50-76) and any court rules,  
43 procedures, or guidelines adopted by the Supreme Court;

44 (13) that the debtor is entitled to housing counseling, at no cost  
45 to the debtor, through the Foreclosure Mediation Program  
46 established by the New Jersey Judiciary, including information on  
47 how to contact the program;

1       (14) that if the property which is the subject of the mortgage has  
2 more than one dwelling unit but less than five, one of which is  
3 occupied by the debtor or a member of the debtor's immediate  
4 family as the debtor's or member's residence at the time the loan is  
5 originated, and is not properly maintained and meets the necessary  
6 conditions for receivership eligibility, established pursuant to  
7 section 4 of the "Multifamily Housing Preservation and  
8 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
9 mortgage lender shall file an order to show cause to appoint a  
10 receiver; and

11       (15) that the lender is either licensed in accordance with the  
12 "New Jersey Residential Mortgage Lending Act," sections 1  
13 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89)  
14 or exempt from licensure under the act in accordance with  
15 applicable law.

16       d. The notice of intention to foreclose required to be provided  
17 pursuant to this section shall not be required if the debtor has  
18 voluntarily surrendered the property which is the subject of the  
19 residential mortgage.

20       e. The duty of the lender under this section to serve notice of  
21 intention to foreclose is independent of any other duty to give  
22 notice under the common law, principles of equity, State or federal  
23 statute, or rule of court and of any other right or remedy the debtor  
24 may have as a result of the failure to give such notice.

25       f. Compliance with this section and subsection a. of section 2  
26 of P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the  
27 pleadings of any legal action referred to in this section. If the  
28 plaintiff in any complaint seeking foreclosure of a residential  
29 mortgage alleges that the property subject to the residential  
30 mortgage has been abandoned or voluntarily surrendered, the  
31 plaintiff shall plead the specific facts upon which this allegation is  
32 based.

33       g. If more than 180 days have elapsed since the date the notice  
34 required pursuant to this section is sent, and any foreclosure or  
35 other legal action to take possession of the residential property  
36 which is the subject of the mortgage has not yet been commenced,  
37 the lender shall send a new written notice at least 30 days, but not  
38 more than 180 days, in advance of that action.

39       h. If the property which is the subject of the notice of intention  
40 to foreclose has more than one dwelling unit but less than five, one  
41 of which is occupied by the debtor or a member of the debtor's  
42 immediate family as the debtor's or member's residence at the time  
43 the loan is originated, and is not properly maintained and meets the  
44 necessary conditions for receivership eligibility, established  
45 pursuant to section 4 of the "Multifamily Housing Preservation and  
46 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential

1 mortgage lender shall file an order to show cause to appoint a  
2 receiver.

3 (cf: P.L.2019, c.134, s.4)

4

5 9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as  
6 follows:

7 2. The New Jersey Council on Physical Fitness and Sports,  
8 established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is  
9 authorized to provide grants to assist low-income families in  
10 purchasing the protective eyewear. As used in this section, a "low-  
11 income family" means a family which qualifies for low-income  
12 housing under the standards promulgated by the **【Council on**  
13 **Affordable Housing】** New Jersey Housing and Mortgage Finance  
14 Agency pursuant to the "Fair Housing Act," P.L.1985, c.222  
15 (C.52:27D-301 et al.).

16 (cf: P.L.2005, c.306, s.2)

17

18 10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to  
19 read as follows:

20 25. a. The **【Council on Affordable Housing** shall take into  
21 consideration the **】** regional master plan **【prior to making any】** shall  
22 be taken into account as part of the determination of obligations  
23 pursuant to the method in section 7 of P.L. , c. (C. )  
24 (pending before the Legislature as this bill) regarding the allocation  
25 of the prospective fair share of the housing need **【in any**  
26 **municipality in the Highlands Region】** under the "Fair Housing  
27 Act," P.L.1985, c.222 (C.52:27D-301 et al.) for **【the】** any fair share  
28 period subsequent to **【1999】** the effective date of  
29 P.L. , c. (C. ) (pending before the Legislature as this bill) if  
30 a municipality is in the Highlands Region.

31 b. Nothing in **【this act】** P.L.2004, c.120 (C.13:20-1 et al.) shall  
32 affect protections provided through a grant of substantive  
33 certification or a judgment of repose granted prior to **【the date of**  
34 **enactment of this act】** August 10, 2004.

35 (cf: P.L.2004, c.120, s.25)

36

37 11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to  
38 read as follows:

39 5. The requirements of this act shall not apply to:

40 a. Depository institutions; but subsidiaries and service  
41 corporations of these institutions shall not be exempt. A depository  
42 institution may register with the department for the purpose of  
43 sponsoring individuals, licensed as mortgage loan originators  
44 subject to subparagraph (b) of paragraph (1) of subsection c. of  
45 section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such  
46 registered entity obtains and maintains bond coverage for mortgage  
47 loan originators consistent with section 13 of P.L.2009, c.53

1 (C.17:11C-63). A depository institution registered with the  
2 department in accordance with this subsection a. shall otherwise  
3 remain exempt from the licensing requirements of P.L.2009, c.53  
4 (C.17:11C-51 et seq.).

5 b. A registered mortgage loan originator that is registered  
6 under the federal "Secure and Fair Enforcement for Mortgage  
7 Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101  
8 et seq.).

9 c. A licensed attorney who negotiates the terms of a residential  
10 mortgage loan on behalf of a client as an ancillary matter to the  
11 attorney's representation of the client, unless the attorney is  
12 compensated by a residential mortgage lender, residential mortgage  
13 broker, or mortgage loan originator.

14 d. A person licensed as a real estate broker or salesperson  
15 pursuant to R.S.45:15-1 et seq., and not engaged in the business of a  
16 residential mortgage lender or residential mortgage broker. Any  
17 person holding a license under this act as a residential mortgage  
18 lender or broker shall be exempt from the licensing and other  
19 requirements of R.S.45:15-1 et seq. in the performance of those  
20 functions authorized by this act.

21 e. Any employer, other than a residential mortgage lender, who  
22 provides residential mortgage loans to his employees as a benefit of  
23 employment which are at an interest rate which is not in excess of  
24 the usury rate in existence at the time the loan is made, as  
25 established in accordance with the law of this State, and on which  
26 the borrower has not agreed to pay, directly or indirectly, any  
27 charge, cost, expense or any fee whatsoever, other than that interest.

28 f. The State of New Jersey or a municipality, or any agency or  
29 instrumentality thereof, which, in accordance with a housing  
30 element that has previously received substantive certification from  
31 the Council on Affordable Housing, or a judgment of repose or  
32 other court approval, pursuant to the "Fair Housing Act," P.L.1985,  
33 c.222 (C.52:27D-301 et al.), or in fulfillment of a regional  
34 contribution agreement with a municipality that has received a  
35 certification, employs or proposes to employ municipally generated  
36 funds, funds obtained through any State or federal subsidy, or funds  
37 acquired by the municipality under a regional contribution  
38 agreement, to finance the provision of affordable housing by  
39 extending loans or advances, the repayment of which is secured by  
40 a lien, subordinate to any prior lien, upon the property that is to be  
41 rehabilitated.

42 g. Any individual who offers or negotiates terms of a  
43 residential mortgage loan:

- 44 (1) with or on behalf of an immediate family member; or  
45 (2) secured by a dwelling that serves as the individual's  
46 residence.

47 h. Any person who, during a calendar year takes three or fewer  
48 residential mortgage loan applications or offers or negotiates the

1 terms of three or fewer residential mortgage loans or makes three or  
2 fewer residential mortgage loans related to manufactured housing  
3 structures which are:

4 (1) titled by the New Jersey Motor Vehicle Commission;

5 (2) located in a mobile home park as defined in subsection e. of  
6 section 3 of P.L.1983, c.400 (C.54:4-1.4); and

7 (3) exempt from taxation as real property pursuant to subsection  
8 b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

9 i. A bona fide not for profit entity and any individuals directly  
10 employed by that entity, so long as the entity maintains its tax  
11 exempt status under Section 501(c)(3) of the Internal Revenue Code  
12 of 1986 and otherwise meets the definition of "bona fide not for  
13 profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as  
14 periodically determined by the department in accordance with rules  
15 established by the commissioner.

16 (cf: P.L.2018, c.108, s.3)

17  
18 12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to  
19 read as follows:

20 2. a. A person who violates a requirement of this act shall be  
21 warned of the violation by the enforcing official. The parent or  
22 legal guardian of that person also may be fined a maximum of \$25  
23 for the person's first offense and a maximum of \$100 for a  
24 subsequent offense if it can be shown that the parent or guardian  
25 failed to exercise reasonable supervision or control over the  
26 person's conduct. Penalties provided in this section for a failure to  
27 wear a helmet may be waived if an offender or his parent or legal  
28 guardian presents suitable proof that an approved helmet was  
29 owned at the time of the violation or has been purchased since the  
30 violation occurred.

31 b. All money collected as fines under subsection a. of this  
32 section and subsection a. of section 2 of P.L.1997, c.411 (C.39:4-  
33 10.6) shall be deposited in a nonlapsing revolving fund to be known  
34 as the "Bicycle and Skating Safety Fund." Interest earned on  
35 money deposited in the fund shall accrue to the fund. Money in the  
36 fund shall be utilized by the director to provide educational  
37 programs devoted to bicycle, roller skating and skateboarding  
38 safety. If the director determines that sufficient money is available  
39 in the fund, he also may use, in a manner prescribed by rule and  
40 regulation, the money to assist **[low income]** low-income families  
41 in purchasing approved bicycle helmets. For the purposes of this  
42 subsection, **["low income family"]** "low-income family" means a  
43 family which qualifies for **[low income]** low-income housing under  
44 the standards promulgated by the **[Council on Affordable Housing]**  
45 New Jersey Housing and Mortgage Finance Agency pursuant to the  
46 provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).

47 (cf: P.L.1997, c.411, s.11)

1       13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to  
2 read as follows:

3       33. The Legislature finds and declares:

4       a. The collection of development fees from builders of  
5 residential and non-residential properties has been authorized by the  
6 court through the powers **【delegated to the Council on Affordable**  
7 **Housing】** established pursuant to the "Fair Housing Act," P.L.1985,  
8 c.222 (C.52:27D-301 et al.). Due to the Legislature's determination  
9 that the role of the Council on Affordable Housing has not  
10 developed in practice as intended, the Legislature further  
11 determines that authority relating to rulemaking on the collection of  
12 residential and non-residential development fees is appropriately  
13 delegated to the Department of Community Affairs, given the  
14 department's existing roles related to local government finance and  
15 the funding and financing of affordable housing throughout the  
16 State.

17       b. New Jersey's land resources are becoming more scarce, while  
18 its redevelopment needs are increasing. In order to balance the  
19 needs of developing and redeveloping communities, a reasonable  
20 method of providing for the housing needs of **【low and moderate**  
21 **income】** low-, moderate-, and 【middle income】 middle-income  
22 households, without mandating the inclusion of housing in every  
23 non-residential project, must be established.

24       c. A Statewide non-residential development fee program, which  
25 permits municipalities **【under the council's jurisdiction】** that have  
26 obtained or are in the process of seeking compliance certification to  
27 retain these fees for use in the municipality will provide a fair and  
28 balanced funding method to address the State's affordable housing  
29 needs, while providing an incentive to all municipalities to **【seek**  
30 **substantive】** obtain compliance certification 【from the council】.

31       d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),  
32 organizations are directed to invest in the Casino Reinvestment  
33 Development Authority to ensure that the development of housing  
34 for families of **【low and moderate income】** low- and moderate-  
35 income shall be provided. The Casino Reinvestment Development  
36 Authority **【, in consultation with the council,】** shall work to  
37 effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301  
38 et al.).

39       e. **【The "Statewide Non-Residential Development Fee Act,"**  
40 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through  
41 C.40:55D-8.7), prohibits municipalities from imposing their own  
42 fees to fund affordable housing on non-residential development, and  
43 P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this  
44 underlying policy.**】** Deleted by amendment P.L. , c. (pending  
45 before the Legislature as this bill)

46       f. The negative impact of a State policy that over-relies on a  
47 municipal fee structure and of State programs that require a

1 municipality to impose fees and charges on developers must be  
2 balanced against any public good expected from such regulation. It  
3 is undisputable that the charging of fees at high levels dissuades  
4 commerce from locating within a State or municipality or locality  
5 and halts non-residential and residential development, and these ill  
6 effects directly increase the overall costs of housing, and could  
7 impede the constitutional obligation to provide for a realistic  
8 opportunity for housing for families at all income levels.

9 (cf: P.L.2009, c.90, s.36)

10  
11 14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to  
12 read as follows:

13 34. As used in sections 32 through 38 of P.L.2008, c.46  
14 (C.40:55D-8.1 through C.40:55D-8.7):

15 "Construction" means new construction and additions, but does  
16 not include alterations, reconstruction, renovations, and repairs as  
17 those terms are defined under the State Uniform Construction Code  
18 promulgated pursuant to the "State Uniform Construction Code  
19 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

20 "Commissioner" means the Commissioner of Community  
21 Affairs.

22 **["Council" means the Council on Affordable Housing,**  
23 **established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).]**

24 "Department" means the Department of Community Affairs.

25 "Developer" means the legal or beneficial owner or owners of a  
26 lot or of any land proposed to be included in a proposed  
27 development, including the holder of an option or contract to  
28 purchase, or other person having an enforceable proprietary interest  
29 in such land.

30 "Equalized assessed value" means the assessed value of a  
31 property divided by the current average ratio of assessed to true  
32 value for the municipality in which the property is situated, as  
33 determined in accordance with sections 1, 5, and 6 of P.L.1973,  
34 c.123 (C.54:1-35a through C.54:1-35c).

35 "Mixed use development" means any development which  
36 includes both a non-residential development component and a  
37 residential development component, and shall include developments  
38 for which (1) there is a common developer for both the residential  
39 development component and the non-residential development  
40 component, provided that for purposes of this definition, multiple  
41 persons and entities may be considered a common developer if there  
42 is a contractual relationship among them obligating each entity to  
43 develop at least a portion of the residential or non-residential  
44 development, or both, or otherwise to contribute resources to the  
45 development; and (2) the residential and non-residential  
46 developments are located on the same lot or adjoining lots,  
47 including but not limited to lots separated by a street, a river, or  
48 another geographical feature.

1 "Non-residential development" means: (1) any building or  
2 structure, or portion thereof, including but not limited to any  
3 appurtenant improvements, which is designated to a use group other  
4 than a residential use group according to the State Uniform  
5 Construction Code promulgated to effectuate the "State Uniform  
6 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),  
7 including any subsequent amendments or revisions thereto; (2)  
8 hotels, motels, vacation timeshares, and child-care facilities; and (3)  
9 the entirety of all continuing care facilities within a continuing care  
10 retirement community which is subject to the "Continuing Care  
11 Retirement Community Regulation and Financial Disclosure Act,"  
12 P.L.1986, c.103 (C.52:27D-330 et seq.).

13 "Non-residential development fee" means the fee authorized to  
14 be imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
15 (C.40:55D-8.1 through C.40:55D-8.7).

16 "Relating to the provision of housing" shall be liberally  
17 construed to include the construction, maintenance, or operation of  
18 housing, including but not limited to the provision of services to  
19 such housing and the funding of any of the above.

20 "Spending plan" means a method of allocating funds collected  
21 and to be collected pursuant to an approved municipal development  
22 fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)  
23 for the purpose of meeting the housing needs of low and moderate  
24 income individuals.

25 "Treasurer" means the Treasurer of the State of New Jersey.  
26 (cf: P.L.2008, c.46, s.34)

27  
28 15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to  
29 read as follows:

30 35. a. Beginning on the effective date of P.L.2008, c.46  
31 (C.52:27D-329.1 et al.), a fee is imposed on all construction  
32 resulting in non-residential development, as follows:

33 (1) A fee equal to two and one-half percent of the equalized  
34 assessed value of the land and improvements, for all new non-  
35 residential construction on an unimproved lot or lots; or

36 (2) A fee equal to two and one-half percent of the increase in  
37 equalized assessed value, of the additions to existing structures to  
38 be used for non-residential purposes.

39 b. All non-residential construction of buildings or structures on  
40 property used by churches, synagogues, mosques, and other houses  
41 of worship, and property used for educational purposes, which is  
42 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the  
43 imposition of a non-residential development fee pursuant to this  
44 section, provided that the property continues to maintain its tax  
45 exempt status under that statute for a period of at least three years  
46 from the date of issuance of the certificate of occupancy. In  
47 addition, the following shall be exempt from the imposition of a  
48 non-residential development fee:



1 (1) parking lots and parking structures, regardless of whether the  
2 parking lot or parking structure is constructed in conjunction with a  
3 non-residential development, such as an office building, or whether  
4 the parking lot is developed as an independent non-residential  
5 development;

6 (2) any non-residential development which is an amenity to be  
7 made available to the public, including, but not limited to,  
8 recreational facilities, community centers, and senior centers, which  
9 are developed in conjunction with or funded by a non-residential  
10 developer;

11 (3) non-residential construction resulting from a relocation of or  
12 an on-site improvement to a nonprofit hospital or a nursing home  
13 facility;

14 (4) projects that are located within a specifically delineated  
15 urban transit hub, as defined pursuant to section 2 of P.L.2007,  
16 c.346 (C.34:1B-208);

17 (5) projects that are located within an eligible municipality, as  
18 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a  
19 majority of the project is located within a one-half mile radius of  
20 the midpoint of a platform area for a light rail system; and

21 (6) projects determined by the New Jersey Transit Corporation  
22 to be consistent with a transit village plan developed by a transit  
23 village designated by the Department of Transportation.

24 A developer of a non-residential development exempted from the  
25 non-residential development fee pursuant to this section shall be  
26 subject to it at such time the basis for the exemption set forth in this  
27 subsection no longer applies, and shall make the payment of the  
28 non-residential development fee, in that event, within three years  
29 after that event or after the issuance of the final certificate of  
30 occupancy of the non-residential development whichever is later.

31 For purposes of this subsection, "recreational facilities and  
32 community center" means any indoor or outdoor buildings, spaces,  
33 structures, or improvements intended for active or passive  
34 recreation, including but not limited to ball fields, meeting halls,  
35 and classrooms, accommodating either organized or informal  
36 activity; and "senior center" means any recreational facility or  
37 community center with activities and services oriented towards  
38 serving senior citizens.

39 If a property which was exempted from the collection of a non-  
40 residential development fee thereafter ceases to be exempt from  
41 property taxation, the owner of the property shall remit the fees  
42 required pursuant to this section within 45 days of the termination  
43 of the property tax exemption. Unpaid non-residential development  
44 fees under these circumstances may be enforceable by the  
45 municipality as a lien against the real property of the owner.

46 c. (1) Unless authorized to pay directly to the municipality in  
47 which the non-residential construction is occurring in accordance  
48 with paragraph (2) of this subsection, developers shall pay non-

1 residential development fees imposed pursuant to P.L.2008, c.46  
2 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with  
3 subsection g. of this section in a manner and on such forms as  
4 required by the Treasurer, provided that a certified proof concerning  
5 the payment shall be furnished by the Treasurer, to the  
6 municipality.

7 (2) The **【council】** department shall maintain on its Internet  
8 website a list of each municipality that is authorized to use the  
9 development fees collected pursuant to this section and that has a  
10 confirmed status of compliance with the "Fair Housing Act,"  
11 P.L.1985, c.222 (C.52:27D-301 et al.) , or is in the process of  
12 seeking compliance certification, which compliance shall include a  
13 spending plan **【authorized by the council】** pursuant to section 8 of  
14 P.L.2008, c.46 (C.52:27D-329.2) for all development fees collected.

15 (3) No later than 90 days following the enactment of P.L. , c.  
16 (C. ) (pending before the Legislature as this bill), any  
17 municipality that is or has been authorized to retain and expend  
18 non-residential development fees shall provide the department with  
19 a detailed accounting of all such fees that have been collected and  
20 expended since the inception of the municipal authorization to  
21 collect and retain said fees.

22 (4) Beginning with the year after the enactment of P.L. , c.  
23 (C. ) (pending before the Legislature as this bill), by January  
24 15, every municipality that is or has been authorized to retain and  
25 expend non-residential development fees shall provide the  
26 department with a detailed accounting of all such fees that have  
27 been collected and expended previous year.

28 d. The payment of non-residential development fees required  
29 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
30 through C.40:55D-8.7) shall be made prior to the issuance of a  
31 certificate of occupancy for such development. A final certificate  
32 of occupancy shall not be issued for any non-residential  
33 development until such time as the fee imposed pursuant to this  
34 section has been paid by the developer. A non-residential developer  
35 may deposit with the appropriate entity the development fees as  
36 calculated by the municipality under protest, and the local code  
37 enforcement official shall thereafter issue the certificate of  
38 occupancy provided that the construction is otherwise eligible for a  
39 certificate of occupancy.

40 e. The construction official responsible for the issuance of a  
41 building permit shall notify the local tax assessor of the issuance of  
42 the first building permit for a development which may be subject to  
43 a non-residential development fee. Within 90 days of receipt of that  
44 notice, the municipal tax assessor, based on the plans filed, shall  
45 provide an estimate of the equalized assessed value of the non-  
46 residential development. The construction official responsible for  
47 the issuance of a final certificate of occupancy shall notify the local  
48 assessor of any and all requests for the scheduling of a final

1 inspection on property which may be subject to a non-residential  
2 development fee. Within 10 business days of a request for the  
3 scheduling of a final inspection, the municipal assessor shall  
4 confirm or modify the previously estimated equalized assessed  
5 value of the improvements of the non-residential development in  
6 accordance with the regulations adopted by the Treasurer pursuant  
7 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential  
8 development fee pursuant to sections 32 through 38 of P.L.2008,  
9 c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the  
10 developer of the amount of the non-residential development fee.  
11 Should the municipality fail to determine or notify the developer of  
12 the amount of the non-residential development fee within 10  
13 business days of the request for final inspection, the developer may  
14 estimate the amount due and pay that estimated amount consistent  
15 with the dispute process set forth in subsection b. of section 37 of  
16 P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-  
17 residential development fee, provided the developer is in full  
18 compliance with all other applicable laws, the municipality shall  
19 issue a final certificate of occupancy for the subject property.  
20 Failure of the municipality to comply with the timeframes or  
21 procedures set forth in this subsection may subject it to penalties to  
22 be imposed by the commissioner; any penalties so imposed shall be  
23 deposited into the "New Jersey Affordable Housing Trust Fund"  
24 established pursuant to section 20 of P.L.1985, c.222 as amended  
25 by section 17 of P.L.2008, c.46 (C.52:27D-320).

26 A developer of a mixed use development shall be required to pay  
27 the Statewide non-residential development fee relating to the non-  
28 residential development component of a mixed use development  
29 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

30 Non-residential construction which is connected with the  
31 relocation of the facilities of a for-profit hospital shall be subject to  
32 the fee authorized to be imposed under this section to the extent of  
33 the increase in equalized assessed valuation in accordance with  
34 regulations to be promulgated by the Director of the Division of  
35 Taxation, Department of the Treasury.

36 f. Any municipality that is not in compliance with the  
37 requirements established pursuant to sections 32 through 38 of  
38 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or  
39 regulations of the **【council】** commissioner adopted thereto, may be  
40 subject to forfeiture of any or all funds remaining within its  
41 municipal development trust fund. Any funds so forfeited shall be  
42 deposited into the New Jersey Affordable Housing Trust Fund  
43 established pursuant to section 20 of P.L.1985, c.222 as amended  
44 by section 17 of P.L.2008, c.46 (C.52:27D-320).

45 g. The Treasurer shall credit to the "Urban Housing Assistance  
46 Fund," established pursuant to section 13 of P.L.2008, c.46  
47 (C.52:27D-329.7) annually from the receipts of the fees authorized  
48 to be imposed pursuant to this section an amount equal to \$20

1 million; all receipts in excess of this amount shall be deposited into  
2 the "New Jersey Affordable Housing Trust Fund," established  
3 pursuant to section 20 of P.L.1985, c.222 as amended by section 17  
4 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of  
5 that fund.

6 The Treasurer shall adopt such regulations as necessary to  
7 effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
8 through C.40:55D-8.7), in accordance with the "Administrative  
9 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).  
10 (cf: P.L.2008, c.46, s.35)  
11

12 16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to  
13 read as follows:

14 36. a. The commissioner **】, in consultation with the council,】**  
15 shall promulgate, in accordance with the provisions of the  
16 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
17 seq.), such regulations as are necessary for the prompt and effective  
18 implementation of the provisions and purposes of **【P.L.2008, c.46**  
19 **(C.52:27D-329.1 et al.)】** section 8 of P.L.2008, c.46 (C.52:27D-  
20 329.2), including, but not limited to, provisions for the payment of  
21 any necessary administrative costs related to the assessment of  
22 properties and collection of any development fees by a  
23 municipality.

24 b. **【Notwithstanding the authority granted to the commissioner**  
25 **herein, the council】** The commissioner shall adopt and promulgate,  
26 in accordance with the provisions of the "Administrative Procedure  
27 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are  
28 necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et  
29 al.), including but not limited to, regulations necessary for the  
30 establishment, implementation, review, monitoring, and  
31 enforcement of a municipal affordable housing trust fund and  
32 spending plan.

33 (cf: P.L.2008, c.46, s.36)  
34

35 17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to  
36 read as follows:

37 38. a. Except as expressly provided in P.L.2008, c.46  
38 (C.52:27D-329.1 et al.), including subsection b. of this section, any  
39 provision of a local ordinance which imposes a fee for the  
40 development of affordable housing upon a developer of non-  
41 residential property, including any and all development fee  
42 ordinances adopted in accordance with any regulations of the  
43 **【Council on Affordable Housing】** department, or any provision of  
44 an ordinance which imposes an obligation relating to the provision  
45 of housing affordable to **【low and moderate income】** low- and  
46 moderate-income households, or payment in-lieu of building as a  
47 condition of non-residential development, shall be void and of no

1 effect. A provision of an ordinance which imposes a development  
2 fee which is not prohibited by any provision of P.L.2008, c.46  
3 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

4 b. No affordable housing obligation shall be imposed  
5 concerning a mixed use development that would result in an  
6 affordable housing obligation greater than that which would have  
7 been imposed if the residential portion of the mixed use  
8 development had been developed independently of the non-  
9 residential portion of the mixed use development.

10 c. Whenever the developer of a non-residential development  
11 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or  
12 committed itself to make a financial or other contribution relating to  
13 the provision of housing affordable to low and moderate income  
14 households, the non-residential development fee authorized  
15 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied  
16 through the investment obligations made pursuant to P.L.1977,  
17 c.110 (C.5:12-1 et seq.).

18 (cf: P.L.2008, c.46, s.38)

19

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

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

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

35 b. A developer of a non-residential project that, prior to July  
36 17, 2008, has been referred to a planning board by the State, a  
37 governing body, or other public agency for review pursuant to  
38 section 22 of P.L.1975, c.291 (C.40:55D-31) and that was subject to  
39 the payment of a nonresidential development fee prior to the  
40 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be  
41 entitled to a return of any moneys paid that represent the difference  
42 between moneys committed prior to July 17, 2008 and moneys paid  
43 on or after that date.

44 c. If moneys are required to be returned under subsection a., b.  
45 or d. of this section, a claim shall be submitted, in writing, to the  
46 same entity to which the moneys were paid, within 120 days of the  
47 effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity  
48 to whom the funds were paid shall promptly review all requests for

1 returns, and the fees paid shall be returned to the claimant within 30  
2 days of receipt of the claim for return.

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

11 e. **【**Notwithstanding the provisions of subsections a., b., c., and  
12 d. of this section, if, on the effective date of P.L.2009, c.90  
13 (C.52:27D-489a et al.), a municipality that has returned all or a  
14 portion of non-residential fees in accordance with subsection a. or  
15 b. of this section shall be reimbursed from the funds available  
16 through the appropriation made into the "New Jersey Affordable  
17 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90  
18 (C.52:27D-320.1) within 30 days of the municipality providing  
19 written notice to the Council on Affordable Housing. **】** (Deleted by  
20 amendment, P.L. , c. ) (pending before the Legislature as this  
21 bill)

22 f. A developer of a non-residential project that paid a fee  
23 imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
24 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to June 30, 2010  
25 but prior to the effective date of P.L.2011, c.122, shall be entitled to  
26 the return of those monies paid, provided that said monies have not  
27 already been expended by the municipality on affordable housing  
28 projects, and provided that the provisions of section 37 of P.L.2008,  
29 c.46 (C.40:55D-8.6), as amended by P.L.2011, c.122 do not permit  
30 the imposition of a fee upon the developer of that non-residential  
31 property. If moneys are eligible to be returned under this  
32 subsection, a claim shall be submitted, in writing, to the same entity  
33 to which the moneys were paid, within 120 days of the effective  
34 date of P.L.2011, c.122. The entity to whom the funds were paid  
35 shall promptly review all requests for returns, to ensure  
36 applicability of section 37 of P.L.2008, c.46 (C.40:55D-8.6) and the  
37 fees paid shall be returned to the claimant within 30 days of receipt  
38 of the claim for return.

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

40

41 19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to  
42 read as follows:

43 3. a. There is established in, but not of, the department a Site  
44 Improvement Advisory Board, to devise statewide site improvement  
45 standards pursuant to section 4 of **【this act】** P.L.1993, c.32  
46 (C.40:55D-40.4). The board shall consist of the commissioner or  
47 **【his】** the commissioner's designee, who shall be a non-voting  
48 member of the board, the Director of the Division of **【Housing】**

1 Codes and Standards in the Department of Community Affairs, who  
2 shall be a voting member of the board, the Executive Director of the  
3 New Jersey Housing and Mortgage Finance Agency, or the  
4 executive director's designee, who shall be a voting member of the  
5 board, and **【10】** nine other voting members, to be appointed by the  
6 commissioner. The other members shall include two professional  
7 planners, one of whom serves as a planner for a governmental entity  
8 or whose professional experience is predominantly in the public  
9 sector and who has worked in the public sector for at least the  
10 previous five years and the other of whom serves as a planner in  
11 private practice and has particular expertise in private residential  
12 development and has been involved in private sector planning for at  
13 least the previous five years, and one representative each from:

- 14 (1) The New Jersey Society of Professional Engineers;
- 15 (2) The New Jersey Society of Municipal Engineers;
- 16 (3) The New Jersey Association of County Engineers;
- 17 (4) The New Jersey Federation of Planning Officials;
- 18 (5) **【The Council on Affordable Housing】** (Deleted by  
19 amendment, P.L. , c. (pending before the Legislature as this  
20 bill);
- 21 (6) The New Jersey Builders' Association;
- 22 (7) The New Jersey Institute of Technology;
- 23 (8) The New Jersey State League of Municipalities.

24 b. Among the members to be appointed by the commissioner  
25 who are first appointed, four shall be appointed for terms of two  
26 years each, four shall be appointed for terms of three years each,  
27 and two shall be appointed for terms of four years each. Thereafter,  
28 each appointee shall serve for a term of four years. Vacancies in  
29 the membership shall be filled in the same manner as original  
30 appointments are made, for the unexpired term. The **【commission】**  
31 board shall select a chair from among its members **【a chairman】**.  
32 Members may be removed by the commissioner for cause.

33 c. Board members shall serve without compensation, but may  
34 be entitled to reimbursement, from moneys appropriated or  
35 otherwise made available for the purposes of this act, for expenses  
36 incurred in the performance of their duties.

37 (cf: P.L.1993, c.32, s.3)

38  
39 20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to  
40 read as follows:

41 3. As used in **【this act】** P.L.1992, c.79 (C.40A:12A-1 et seq.):

42 "Bonds" means any bonds, notes, interim certificates, debentures  
43 or other obligations issued by a municipality, county,  
44 redevelopment entity, or housing authority pursuant to P.L.1992,  
45 c.79 (C.40A:12A-1 et al.).

46 "Comparable, affordable replacement housing" means newly-  
47 constructed or substantially rehabilitated housing to be offered to a  
48 household being displaced as a result of a redevelopment project,

1 that is affordable to that household based on its income under the  
2 guidelines established by the **【Council on Affordable Housing in**  
3 **the Department of Community Affairs】** New Jersey Housing and  
4 Mortgage Finance Agency for maximum affordable sales prices or  
5 maximum fair market rents, and that is comparable to the  
6 household's dwelling in the redevelopment area with respect to the  
7 size and amenities of the dwelling unit, the quality of the  
8 neighborhood, and the level of public services and facilities offered  
9 by the municipality in which the redevelopment area is located.

10 "Development" means the division of a parcel of land into two or  
11 more parcels, the construction, reconstruction, conversion,  
12 structural alteration, relocation, or enlargement of any building or  
13 other structure, or of any mining, excavation or landfill, and any use  
14 or change in the use of any building or other structure, or land or  
15 extension of use of land, for which permission may be required  
16 pursuant to the "Municipal Land Use Law," P.L.1975, c.291  
17 (C.40:55D-1 et seq.).

18 "Electric vehicle charging station" means an electric component  
19 assembly or cluster of component assemblies designed specifically  
20 to charge batteries within electric vehicles by permitting the transfer  
21 of electric energy to a battery or other storage device in an electric  
22 vehicle.

23 "Governing body" means the body exercising general legislative  
24 powers in a county or municipality according to the terms and  
25 procedural requirements set forth in the form of government  
26 adopted by the county or municipality.

27 "Housing authority" means a housing authority created or  
28 continued pursuant to this act.

29 "Housing project" means a project, or distinct portion of a  
30 project, which is designed and intended to provide decent, safe and  
31 sanitary dwellings, apartments or other living accommodations for  
32 persons of **【low and moderate income】** low- and moderate-income;  
33 such work or undertaking may include buildings, land, equipment,  
34 facilities and other real or personal property for necessary,  
35 convenient or desirable appurtenances, streets, sewers, water  
36 service, parks, site preparation, gardening, administrative,  
37 community, health, recreational, educational, welfare or other  
38 purposes. The term "housing project" also may be applied to the  
39 planning of the buildings and improvements, the acquisition of  
40 property, the demolition of existing structures, the construction,  
41 reconstruction, alteration and repair of the improvements and all  
42 other work in connection therewith.

43 "Parking authority" means a public corporation created pursuant  
44 to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et  
45 seq.), and authorized to exercise redevelopment powers within the  
46 municipality.

47 "Persons of **【low and moderate income】** low- and moderate-  
48 income" means persons or families who are, in the case of State



1 assisted projects or programs, so defined by the **【Council on**  
2 **Affordable Housing in the Department of Community Affairs】** New  
3 Jersey Housing and Mortgage Finance Agency, or in the case of  
4 federally assisted projects or programs, defined as of **【"low and**  
5 **very low income"】** "low- and very low-income" by the United  
6 States Department of Housing and Urban Development.

7 "Public body" means the State or any county, municipality,  
8 school district, authority or other political subdivision of the State.

9 "Public electric vehicle charging station" means an electric  
10 vehicle charging station located at a publicly available parking  
11 space.

12 "Public housing" means any housing for persons of **【low and**  
13 **moderate income】** low- and moderate-income owned by a  
14 municipality, county, the State or the federal government, or any  
15 agency or instrumentality thereof.

16 "Public hydrogen fueling station" means publicly available  
17 equipment to store and dispense hydrogen fuel to vehicles  
18 according to industry codes and standards.

19 "Publicly assisted housing" means privately owned housing  
20 which receives public assistance or subsidy, which may be grants or  
21 loans for construction, reconstruction, conservation, or  
22 rehabilitation of the housing, or receives operational or maintenance  
23 subsidies either directly or through rental subsidies to tenants, from  
24 a federal, State or local government agency or instrumentality.

25 "Publicly available parking space" means a parking space that is  
26 available to, and accessible by, the public and may include on-street  
27 parking spaces and parking spaces in surface lots or parking  
28 garages, but shall not include: a parking space that is part of, or  
29 associated with, a private residence; or a parking space that is  
30 reserved for the exclusive use of an individual driver or vehicle or  
31 for a group of drivers or vehicles, such as employees, tenants,  
32 visitors, residents of a common interest development, or residents  
33 of an adjacent building.

34 "Real property" means all lands, including improvements and  
35 fixtures thereon, and property of any nature appurtenant thereto or  
36 used in connection therewith, and every estate, interest and right,  
37 legal or equitable, therein, including terms for years and liens by  
38 way of judgment, mortgage or otherwise, and indebtedness secured  
39 by such liens.

40 "Redeveloper" means any person, firm, corporation or public  
41 body that shall enter into or propose to enter into a contract with a  
42 municipality or other redevelopment entity for the redevelopment or  
43 rehabilitation of an area in need of redevelopment, or an area in  
44 need of rehabilitation, or any part thereof, under the provisions of  
45 this act, or for any construction or other work forming part of a  
46 redevelopment or rehabilitation project.

1 "Redevelopment" means clearance, replanning, development and  
2 redevelopment; the conservation and rehabilitation of any structure  
3 or improvement, the construction and provision for construction of  
4 residential, commercial, industrial, public or other structures and  
5 the grant or dedication of spaces as may be appropriate or necessary  
6 in the interest of the general welfare for streets, parks, playgrounds,  
7 or other public purposes, including recreational and other facilities  
8 incidental or appurtenant thereto, in accordance with a  
9 redevelopment plan.

10 "Redevelopment agency" means a redevelopment agency created  
11 pursuant to subsection a. of section 11 of P.L.1992, c.79  
12 (C.40A:12A-11) or established heretofore pursuant to the  
13 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et  
14 al.), repealed by this act, which has been permitted in accordance  
15 with the provisions of **[this act]** P.L.1992, c.79 (C.40A:12A-1 et  
16 seq.) to continue to exercise its redevelopment functions and  
17 powers.

18 "Redevelopment area" or "area in need of redevelopment" means  
19 an area determined to be in need of redevelopment pursuant to  
20 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6)  
21 or determined heretofore to be a "blighted area" pursuant to  
22 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both  
23 determinations as made pursuant to the authority of Article VIII,  
24 Section III, paragraph 1 of the Constitution. A redevelopment area  
25 may include lands, buildings, or improvements which of themselves  
26 are not detrimental to the public health, safety or welfare, but the  
27 inclusion of which is found necessary, with or without change in  
28 their condition, for the effective redevelopment of the area of which  
29 they are a part.

30 "Redevelopment entity" means a municipality or an entity  
31 authorized by the governing body of a municipality pursuant to  
32 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to  
33 implement redevelopment plans and carry out redevelopment  
34 projects in an area in need of redevelopment, or in an area in need  
35 of rehabilitation, or in both.

36 "Redevelopment plan" means a plan adopted by the governing  
37 body of a municipality for the redevelopment or rehabilitation of all  
38 or any part of a redevelopment area, or an area in need of  
39 rehabilitation, which plan shall be sufficiently complete to indicate  
40 its relationship to definite municipal objectives as to appropriate  
41 land uses, public transportation and utilities, recreational and  
42 municipal facilities, and other public improvements; and to indicate  
43 proposed land uses and building requirements in the redevelopment  
44 area or area in need of rehabilitation, or both.

45 "Redevelopment project" means any work or undertaking  
46 pursuant to a redevelopment plan; such undertaking may include  
47 any buildings, land, including demolition, clearance or removal of  
48 buildings from land, equipment, facilities, or other real or personal

1 properties which are necessary, convenient, or desirable  
2 appurtenances, such as but not limited to streets, sewers, utilities,  
3 parks, site preparation, landscaping, and administrative, community,  
4 health, recreational, educational, and welfare facilities, and zero-  
5 emission vehicle fueling and charging infrastructure.

6 "Rehabilitation" means an undertaking, by means of extensive  
7 repair, reconstruction or renovation of existing structures, with or  
8 without the introduction of new construction or the enlargement of  
9 existing structures, in any area that has been determined to be in  
10 need of rehabilitation or redevelopment, to eliminate substandard  
11 structural or housing conditions and arrest the deterioration of that  
12 area.

13 "Rehabilitation area" or "area in need of rehabilitation" means  
14 any area determined to be in need of rehabilitation pursuant to  
15 section 14 of P.L.1992, c.79 (C.40A:12A-14).

16 "Zero-emission vehicle" means a vehicle certified as a zero  
17 emission vehicle pursuant to the California Air Resources Board  
18 zero emission vehicle standards for the applicable model year,  
19 including but not limited to, battery electric-powered vehicles and  
20 hydrogen fuel cell vehicles.

21 "Zero-emission vehicle fueling and charging infrastructure"  
22 means infrastructure to charge or fuel zero-emission vehicles,  
23 including but not limited to, public electric vehicle charging  
24 stations and public hydrogen fueling stations.

25 (cf: P.L.2021, c.168, s.1)

26

27 21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to  
28 read as follows:

29 16. a. In order to carry out the housing purposes of this act, a  
30 municipality, county, or housing authority may exercise the  
31 following powers, in addition to those set forth in section 22 of  
32 P.L.1992, c.79 (C.40A:12A-22):

33 (1) Plan, construct, own, and operate housing projects; maintain,  
34 reconstruct, improve, alter, or repair any housing project or any part  
35 thereof; and for these purposes, receive and accept from the State or  
36 federal government, or any other source, funds or other financial  
37 assistance;

38 (2) Lease or rent any dwelling house, accommodations, lands,  
39 buildings, structures or facilities embraced in any housing project;  
40 and pursuant to the provisions of this act, establish and revise the  
41 rents and charges therefor;

42 (3) Acquire property pursuant to subsection i. of section 22 of  
43 P.L.1992, c.79 (C.40A:12A-22);

44 (4) Acquire, by condemnation, any land or building which is  
45 necessary for the housing project, pursuant to the provisions of the  
46 "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

47 (5) Issue bonds in accordance with the provisions of section 29  
48 of P.L.1992, c.79 (C.40A:12A-29);

1 (6) Cooperate with any other municipality, private, county, State  
2 or federal entity to provide funds to the municipality or other  
3 governmental entity and to homeowners, tenant associations,  
4 nonprofit or private developers to acquire, construct, rehabilitate or  
5 operate publicly assisted housing, and to provide rent subsidies for  
6 persons of **low and moderate income** low- and moderate-income,  
7 including the elderly, pursuant to applicable State or federal  
8 programs;

9 (7) Encourage the use of demand side subsidy programs such as  
10 certificates and vouchers for low-income families and promote the  
11 use of project based certificates which provide subsidies for units in  
12 newly constructed and substantially rehabilitated structures, and of  
13 tenant based certificates which subsidize rent in existing units;

14 (8) Cooperate with any State or federal entity to secure  
15 mortgage assistance for any person of **low or moderate income**  
16 low- or moderate-income;

17 (9) Provide technical assistance and support to nonprofit  
18 organizations and private developers interested in constructing **low**  
19 **and moderate income** low- and moderate-income housing;

20 (10) If it owns and operates public housing units, provide to the  
21 tenants public safety services, including protection against  
22 substance use disorder, and social services, including counseling  
23 and financial management, in cooperation with other agencies;

24 (11) Provide emergency shelters, transitional housing and  
25 supporting services to homeless families and individuals.

26 b. All housing projects, programs and actions undertaken  
27 pursuant to this act shall accord with the housing element of the  
28 master plan of the municipality within which undertaken, and with  
29 any fair share housing plan **filed by** of the municipality **with the**  
30 **Council on Affordable Housing, based upon the council's criteria**  
31 **and guidelines**, adopted pursuant to the "Fair Housing Act,"  
32 P.L.1985, c.222 (C.52:27D-301 et al.) **], whether or not the**  
33 **municipality has petitioned for substantive certification of the**  
34 **plan**.

35 (cf: P.L.2017, c.131, s.176)

36  
37 22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to  
38 read as follows:

39 10. A municipality's housing element shall be designed to  
40 achieve the goal of access to affordable housing to meet present and  
41 prospective housing needs, with particular attention to **low and**  
42 **moderate income** low- and moderate-income housing, and shall  
43 contain at least:

44 a. An inventory of the municipality's housing stock by age,  
45 condition, purchase or rental value, occupancy characteristics, and  
46 type, including the number of units affordable to **low and moderate**  
47 **income** low- and moderate-income households and substandard

1 housing capable of being rehabilitated, and in conducting this  
2 inventory the municipality shall have access, on a confidential basis  
3 for the sole purpose of conducting the inventory, to all necessary  
4 property tax assessment records and information in the assessor's  
5 office, including but not limited to the property record cards;

6 b. A projection of the municipality's housing stock, including  
7 the probable future construction of **low and moderate income**  
8 low- and moderate-income housing, for the next ten years, taking  
9 into account, but not necessarily limited to, construction permits  
10 issued, approvals of applications for development and probable  
11 residential development of lands;

12 c. An analysis of the municipality's demographic  
13 characteristics, including but not necessarily limited to, household  
14 size, income level and age;

15 d. An analysis of the existing and probable future employment  
16 characteristics of the municipality;

17 e. A determination of the municipality's present and prospective  
18 fair share for **low and moderate income** low- and moderate-  
19 income housing and its capacity to accommodate its present and  
20 prospective housing needs, including its fair share for **low and**  
21 **moderate income** low- and moderate-income housing, as  
22 established pursuant to section 3 of P.L. , c. (C. ) (pending  
23 before the Legislature as this bill);

24 f. A consideration of the lands that are most appropriate for  
25 construction of **low and moderate income** low- and moderate-  
26 income housing and of the existing structures most appropriate for  
27 conversion to, or rehabilitation for, **low and moderate income**  
28 low- and moderate-income housing, including a consideration of  
29 lands of developers who have expressed a commitment to provide  
30 **low and moderate income** low- and moderate-income housing;  
31 and

32 g. An analysis of the extent to which municipal ordinances and  
33 other local factors advance or detract from the goal of preserving  
34 multigenerational family continuity as expressed in the  
35 recommendations of the Multigenerational Family Housing  
36 Continuity Commission, adopted pursuant to paragraph (1) of  
37 subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20).  
38 (cf: P.L.2021, c.273, s.2)

39  
40 23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended  
41 to read as follows:

42 1. Any municipality that receives an adjustment of its  
43 prospective need obligations for the fourth round or subsequent  
44 rounds based on a lack of vacant land shall as part of the process of  
45 adopting and implementing its housing element and fair share plan  
46 identify sufficient parcels likely to redevelop during the current  
47 round of obligations to address at least 25 percent of the prospective

1 need obligation that has been adjusted, and adopt realistic zoning  
2 that allows for such adjusted obligation, or demonstrate why the  
3 municipality is unable to do so. When computing a municipal  
4 adjustment regarding available land resources as part of the  
5 determination of a municipality's fair share of affordable housing,  
6 the **【Council on Affordable Housing】** municipality, in filing a  
7 housing element and fair share plan pursuant to subsection f. of  
8 section 3 of P.L. , c. (C. and C. ) (pending before the  
9 Legislature as this bill), shall exclude from designating , and the  
10 process set forth pursuant to sections 3 and 4 of P.L. , c. (C.  
11 and C. ) (pending before the Legislature as this bill) shall  
12 confirm was correctly excluded, as vacant land:

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

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

28 (c) any vacant contiguous parcels of land in private ownership  
29 of a size which would accommodate fewer than five housing units  
30 **【if current standards of the council were applied】** based on  
31 appropriate standards pertaining to housing density;

32 (d) historic and architecturally important sites listed on the State  
33 Register of Historic Places or National Register of Historic Places  
34 prior to the **【submission of the petition of substantive certification】**  
35 date of filing a housing element and fair share plan pursuant to  
36 section 3, or initiation of an action pursuant to section 4 of P.L. ,  
37 c. (C. or C. ) (pending before the Legislature as this  
38 bill);

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

41 (f) sites designated for active recreation that are designated for  
42 recreational purposes in the municipal master plan; and

43 (g) environmentally sensitive lands where development is  
44 prohibited by any State or federal agency.

45 No municipality shall be required to utilize for affordable  
46 housing purposes land that is excluded from being designated as  
47 vacant land. (cf: P.L.2008, c.46, s.39)

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

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

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

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

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

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

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

42       (6) Tax abatements for purposes of providing **low and**  
43 **moderate income** low- and moderate-income housing;

44       (7) Utilization of funds obtained from any State or federal  
45 subsidy toward the construction of **low and moderate income**  
46 low- and moderate-income housing;

1 (8) Utilization of municipally generated funds toward the  
2 construction of **low and moderate income** low- and moderate-  
3 income housing; and

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

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

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

15 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall  
16 require a municipality to raise or expend municipal revenues in  
17 order to provide **low and moderate income** low- and moderate-  
18 income housing.

19 e. When a municipality's housing element includes the  
20 provision of rental housing units in a community residence for the  
21 developmentally disabled , for the mentally ill, or for persons with  
22 head injuries, as those terms are defined in section 2 of P.L.1977,  
23 c.448 (C.30:11B-2), or in transitional housing, which will be  
24 affordable to persons of **low and moderate income** low- and  
25 moderate-income, and for which adequate measures to retain such  
26 affordability pursuant to paragraph (3) of subsection a. of this  
27 section are included in the housing element, those housing units  
28 shall be fully credited **as permitted under the rules of the council**  
29 towards the fulfillment of the municipality's fair share of **low and**  
30 **moderate income** low- and moderate-income housing. A  
31 municipality shall not credit transitional housing units towards more  
32 than 10 percent of the municipality's fair share obligation.

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

41 g. A municipality **which** that has received **substantive**  
42 **certification from the council** approval of its housing element and  
43 fair share plan for the current round, and **which** that has actually  
44 effected the construction of the affordable housing units it is  
45 obligated to provide, may amend its affordable housing element or  
46 zoning ordinances without **the approval of the council** losing  
47 immunity from builder's remedy litigation.



- 1 h. Whenever affordable housing units are proposed to be  
2 provided through an inclusionary development, a municipality shall  
3 provide, through its zoning powers, incentives to the developer,  
4 which shall include increased densities and reduced costs **】, in**  
5 **accordance with the regulations of the council and this subsection】.**
- 6 i. **【The council, upon the application of a】** A municipality and  
7 a developer **【,】** may **【approve】** request a modification of a  
8 compliance certification involving reduced affordable housing set-  
9 asides or increased densities to ensure the economic feasibility of an  
10 inclusionary development , if any such application demonstrates  
11 how any shortfall in meeting the municipal fair share obligation will  
12 then be addressed. Such a request may be granted only if the  
13 municipality and developer have demonstrated that the project has  
14 been impacted by market conditions beyond their reasonable  
15 control.
- 16 j. A municipality may enter into an agreement with a  
17 developer or residential development owner to provide a preference  
18 for affordable housing to **【low and moderate income】** low- and  
19 moderate-income veterans who served in time of war or other  
20 emergency, as defined in section 1 of P.L.1963, c.171 (C.54:4-  
21 8.10), of up to 50 percent of the affordable units in that particular  
22 project. This preference shall be established in the applicant  
23 selection process for available affordable units so that applicants  
24 who are veterans who served in time of war or other emergency, as  
25 referenced in this subsection, and who apply within 90 days of the  
26 initial marketing period shall receive preference for the rental of the  
27 agreed-upon percentage of affordable units. After the first 90 days  
28 of the initial 120-day marketing period, if any of those units subject  
29 to the preference remain available, then applicants from the general  
30 public shall be considered for occupancy. Following the initial  
31 120-day marketing period, previously qualified applicants and  
32 future qualified applicants who are veterans who served in time of  
33 war or other emergency, as referenced in this subsection, shall be  
34 placed on a special waiting list as well as the general waiting list.  
35 The veterans on the special waiting list shall be given preference for  
36 affordable units, as the units become available, whenever the  
37 percentage of preference-occupied units falls below the agreed upon  
38 percentage. Any agreement to provide affordable housing  
39 preferences for veterans pursuant to this subsection shall not affect  
40 a municipality's ability to receive credit for the unit **【from the**  
41 **council, or its successor】.**
- 42 k. In the fourth round, and in subsequent rounds of affordable  
43 housing obligations, a municipality shall be able to receive one  
44 credit against its affordable housing obligation for each unit of low-  
45 or moderate-income housing, and shall not receive bonus credit for  
46 any particular type of low- or moderate-income housing, unless  
47 authority to obtain bonus credit is expressly provided pursuant to

1 this section, or other sections of the "Fair Housing Act," P.L.1985,  
2 c.222 (C.52:27D-301 et al.). A municipality shall not receive more  
3 than one type of bonus credit for any unit, and a municipality shall  
4 not be permitted to satisfy more than 25 percent of its prospective  
5 need obligation in the fourth round or any subsequent round  
6 through the use of bonus credits. This subsection shall not be  
7 construed to limit the ability of a municipality to receive a unit of  
8 credit for a low- or moderate-income housing unit that is subject to  
9 affordability controls that are scheduled to expire, but are extended  
10 in accordance with the Uniform Housing Affordability Controls  
11 promulgated by the New Jersey Housing and Mortgage Finance  
12 Agency, to the extent that this affordability control extension would  
13 otherwise generate this credit. As a part of a fair share plan and  
14 housing element adopted pursuant to subsection f. of section 3 of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill), a  
16 municipality shall:

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

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

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

36 (4) receive one unit of credit and one-half bonus credit for a unit  
37 of age-restricted housing, provided that a bonus credit for age-  
38 restricted housing shall not be applied to more than 15 percent of  
39 the units of age-restricted housing constructed in compliance with  
40 the Uniform Housing Affordability Controls promulgated by the  
41 New Jersey Housing and Mortgage Finance Agency in a  
42 municipality that count towards the municipality's affordable  
43 housing obligation for any single 10-year round of affordable  
44 housing obligations;

45 (5) receive one unit of credit and one-half bonus credit for each  
46 unit of low- or moderate-income family housing with at least three  
47 bedrooms above the minimum number required by the bedroom  
48 distribution in a given development;

1       (6) receive one unit of credit and one-half bonus credit for a unit  
2 of low- or moderate-income housing constructed on land that is or  
3 was previously developed and utilized for retail, office, or  
4 commercial space;

5       (7) receive one unit of credit and one-half bonus credit for each  
6 existing low- or moderate-income rental housing unit for which  
7 affordability controls are extended for a new term of affordability,  
8 in compliance with the Uniform Housing Affordability Controls  
9 promulgated by the New Jersey Housing and Mortgage Finance  
10 Agency, and the municipality contributes funding towards the costs  
11 necessary for this preservation;

12       (8) receive one unit of credit and one-half bonus credit for each  
13 unit of low- or moderate-income housing in a 100 percent  
14 affordable housing project toward which the municipality either  
15 contributes property without which the project would not be  
16 feasible, or makes contributions from the municipal affordable  
17 housing trust fund that cover no less than 10 percent of the project  
18 cost; and

19       (9) receive one unit of credit and one-half bonus credit for each  
20 unit of very low-income housing for families above the 13 percent  
21 of units required to be reserved for very low-income housing  
22 pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).

23       l. A municipality may not satisfy more than 25 percent of the  
24 affordable housing units, exclusive of any bonus credits, to address  
25 its prospective need affordable housing obligation through the  
26 creation of age-restricted housing. A municipality shall satisfy a  
27 minimum of 50 percent of the actual affordable housing units,  
28 exclusive of any bonus credits, created to address its prospective  
29 need affordable housing obligation through the creation of housing  
30 available to families with children and otherwise in compliance  
31 with the requirements and controls established pursuant to section  
32 21 of P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy  
33 a minimum of 25 percent of the actual affordable housing units,  
34 exclusive of any bonus credits, to address its prospective need  
35 affordable housing obligation, through rental housing, including at  
36 least half of that number available to families with children. All  
37 units referred to in this section shall otherwise be in compliance  
38 with the requirements and controls established pursuant to section  
39 21 of P.L.1985, c.222 (C.52:27D-321).

40       m. All parties shall be entitled to rely upon regulations on  
41 municipal credits, adjustments, and compliance mechanisms  
42 adopted by the Council on Affordable Housing unless those  
43 regulations are contradicted by statute, including but not limited to  
44 P.L. c. (C. ) (pending before the Legislature as this bill), or  
45 binding court decisions.

46       (cf: P.L.2013, c.6, s.1)

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

3       6. **【The council】** A municipality may take such measures as are  
4 necessary to assure compliance with the adaptability requirements  
5 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),  
6 including the inspection of those units which are newly constructed  
7 and receive housing credit as provided under section 1 of P.L.2005,  
8 c.350 (C.52:27D-311a) for adaptability, as part of the monitoring  
9 which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).  
10 No housing unit subject to the provisions of section 5 of P.L.2005,  
11 c.350 (C.52:27D-123.15) and to the provisions of the barrier free  
12 subcode adopted by the Commissioner of Community Affairs  
13 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
14 c.217 (C.52:27D-119 et seq.) shall be eligible for inclusion in a  
15 municipal fair share plan unless the unit complies with the  
16 requirements set forth thereunder. If any units for which credit was  
17 granted in accordance with the provisions of P.L.2005, c.350  
18 (C.52:27D-311a et al.) are found not to conform to the requirements  
19 of P.L.2005, c.350 (C.52:27D-311a et al.), **【the council may】** any  
20 party representing the interests of households with disabilities may  
21 seek a modification to the approval of the municipal fair share plan  
22 to require the municipality to amend its fair share plan within 90  
23 days of 【receiving notice from the council】 such a finding, to  
24 address its fair share obligation pursuant to P.L.1985, c.222  
25 (C.52:27D-301 et al.). In the event that the municipality fails to  
26 amend its fair share plan within 90 days of **【receiving such notice,**  
27 **the council may revoke substantive certification】** such a finding, the  
28 municipality shall lose immunity to a builder's remedy for the  
29 portion of its obligation that is found not to conform to the  
30 requirements of P.L.2005, c.350 (C.52:27D-311a et al.).  
31 (cf: P.L.2005, c.350, s.6)

32  
33       26. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to  
34 read as follows:

35       20. There is established in the Department of Community  
36 Affairs a separate trust fund, to be used for the exclusive purposes  
37 as provided in this section, and which shall be known as the "New  
38 Jersey Affordable Housing Trust Fund." The fund shall be a non-  
39 lapsing, revolving trust fund, and all monies deposited or received  
40 for purposes of the fund shall be accounted for separately, by source  
41 and amount, and remain in the fund until appropriated for such  
42 purposes. The fund shall be the repository of all State funds  
43 appropriated for affordable housing purposes, including, but not  
44 limited to, the proceeds from the receipts of the additional fee  
45 collected pursuant to paragraph (2) of subsection a. of section 3 of  
46 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the  
47 Statewide non-residential development fees collected pursuant to  
48 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or

1 reverting from municipal development trust funds, or other monies  
2 as may be dedicated, earmarked, or appropriated by the Legislature  
3 for the purposes of the fund. All references in any law, order, rule,  
4 regulation, contract, loan, document, or otherwise, to the  
5 "Neighborhood Preservation Nonlapsing Revolving Fund" shall  
6 mean the "New Jersey Affordable Housing Trust Fund." The  
7 department shall be permitted to utilize annually up to 7.5 percent  
8 of the monies available in the fund for the payment of any  
9 necessary administrative costs related to the administration of the  
10 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any  
11 costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et  
12 al.).

13 a. Except as permitted pursuant to subsection g. of this section,  
14 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the  
15 commissioner shall award grants or loans from this fund for  
16 housing projects and programs in municipalities whose housing  
17 elements have **【received substantive certification from the council,】**  
18 obtained compliance certification pursuant to section 3 of P.L. , c.  
19 (C. ) (pending before the Legislature as this bill), or in  
20 municipalities receiving State aid pursuant to P.L.1978, c.14  
21 (C.52:27D-178 et seq.) 【, in municipalities subject to a builder's  
22 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328),  
23 or in receiving municipalities in cases where the council has  
24 approved a regional contribution agreement and a project plan  
25 developed by the receiving municipality】.

26 Of those monies deposited into the "New Jersey Affordable  
27 Housing Trust Fund" that are derived from municipal development  
28 fee trust funds, or from available collections of Statewide non-  
29 residential development fees, a priority for funding shall be  
30 established for projects in municipalities that have **【petitioned the**  
31 **council for substantive】** received compliance certification.

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

35 b. The commissioner shall establish rules and regulations  
36 governing the qualifications of applicants, the application  
37 procedures, and the criteria for awarding grants and loans and the  
38 standards for establishing the amount, terms, and conditions of each  
39 grant or loan.

40 c. For any period which the **【council】** commissioner may  
41 approve, the commissioner may assist affordable housing programs  
42 **【which】** that are **【not】** located in municipalities **【whose housing**  
43 **elements have been granted substantive certification or which are**  
44 **not in furtherance of a regional contribution agreement】** that have a  
45 pending request for compliance certification; provided that the  
46 affordable housing program will meet all or part of a municipal

1 **【low and moderate income】** low- and moderate-income housing  
2 obligation.

3 d. Amounts deposited in the "New Jersey Affordable Housing  
4 Trust Fund" shall be targeted to regions based on the region's  
5 percentage of the State's **【low and moderate income】** low- and  
6 moderate-income housing need as determined **【by the council】**  
7 pursuant to the low- and moderate-income household growth over  
8 the prior 10 years, as calculated pursuant to section 6 of P.L. , c.  
9 (C. ) (pending before the Legislature as this bill). Amounts in  
10 the fund shall be applied for the following purposes in designated  
11 neighborhoods:

12 (1) Rehabilitation of substandard housing units occupied or to  
13 be occupied by **【low and moderate income】** low- and moderate-  
14 income households;

15 (2) Creation of accessory **【apartments】** dwelling units to be  
16 occupied by **【low and moderate income】** low- and moderate-  
17 income households;

18 (3) Conversion of non-residential space to residential purposes;  
19 provided a substantial percentage of the resulting housing units are  
20 to be occupied by **【low and moderate income】** low- and moderate-  
21 income households;

22 (4) Acquisition of real property, demolition and removal of  
23 buildings, or construction of new housing that will be occupied by  
24 **【low and moderate income】** low- and moderate-income households,  
25 or any combination thereof;

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

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

40 (7) Other housing programs for **【low and moderate income】**  
41 low- and moderate-income housing, including, without limitation,  
42 (a) infrastructure projects directly facilitating the construction of  
43 **【low and moderate income】** low- and moderate-income housing not  
44 to exceed a reasonable percentage of the construction costs of the  
45 **【low and moderate income】** low- and moderate-income housing to  
46 be provided and (b) alteration of dwelling units occupied or to be  
47 occupied by households of **【low or moderate income】** low- or

1 moderate-income and the common areas of the premises in which  
2 they are located in order to make them accessible to persons with  
3 disabilities.

4 e. Any grant or loan agreement entered into pursuant to this  
5 section shall incorporate contractual guarantees and procedures by  
6 which the division **【will】 shall** ensure that any unit of housing  
7 provided for **【low and moderate income】** low- and moderate-  
8 income households shall continue to be occupied by **【low and**  
9 **moderate income】** low- and moderate-income households for **【at**  
10 **least 20 years】** a period that conforms to the requirements of  
11 subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321)  
12 following the award of the loan or grant, except that the division  
13 may approve a guarantee for a period of less **【than 20 years】**  
14 duration where necessary to ensure project feasibility.

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

33 g. In addition to other grants or loans awarded pursuant to this  
34 section, and without regard to any limitations on such grants or  
35 loans for any other purposes herein imposed, the commissioner  
36 shall annually allocate such amounts as may be necessary in the  
37 commissioner's discretion, and in accordance with section 3 of  
38 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants  
39 under the program created pursuant to P.L.2004, c.140 (C.52:27D-  
40 287.1 et al.). Such rental assistance grants shall be deemed  
41 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-  
42 301 et al.), in order to meet the housing needs of certain **【low**  
43 **income】** low-income households who may not be eligible to occupy  
44 other housing produced pursuant to P.L.1985, c.222 (C.52:27D-301  
45 et al.).

46 h. The department and the State Treasurer shall submit the  
47 "New Jersey Affordable Housing Trust Fund" for an audit annually

1 by the State Auditor or State Comptroller, at the discretion of the  
2 Treasurer. In addition, the department shall prepare an annual  
3 report for each fiscal year, and submit it by November 30th of each  
4 year to the Governor and the Legislature, and the Joint Committee  
5 on Housing Affordability, or its successor, and post the information  
6 to its **【web site】** Internet website, of all activity of the fund,  
7 including details of the grants and loans by number of units, number  
8 and income ranges of recipients of grants or loans, location of the  
9 housing renovated or constructed using monies from the fund, the  
10 number of units upon which affordability controls were placed, and  
11 the length of those controls. The report also shall include details  
12 pertaining to those monies allocated from the fund for use by the  
13 State rental assistance program pursuant to section 3 of P.L.2004,  
14 c.140 (C.52:27D-287.3) and subsection g. of this section.

15 i. The commissioner may award or grant the amount of any  
16 appropriation deposited in the "New Jersey Affordable Housing  
17 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-  
18 320.1) to municipalities pursuant to the provisions of section 39 of  
19 P.L.2009, c.90 (C.40:55D-8.8).  
20 (cf: P.L.2017, c.131, s.200)

21  
22 27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to  
23 read as follows:

24 21. The agency shall establish affordable housing programs to  
25 assist municipalities in meeting the obligation of developing  
26 communities to provide **【low and moderate income】** low- and  
27 moderate-income housing.

28 a. Of the bond authority allocated to it under section 24 of  
29 P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a  
30 reasonable period of time established by its board, no less than  
31 **【25%】** 25 percent to be used in conjunction with housing to be  
32 constructed or rehabilitated with assistance under **【this act】**  
33 P.L.1985, c.222 (C.52:27D-301 et al.).

34 b. The agency shall to the extent of available funds, award  
35 assistance to affordable housing programs located in municipalities  
36 whose housing elements have **【received substantive】** obtained  
37 compliance certification **【from the council】** , or which have been  
38 subject to a builder's remedy **【or which are in furtherance of a**  
39 **regional contribution agreement approved by the council】**. During  
40 **【the first 12 months from the effective date of this act and for】** any  
41 **【additional】** period which the **【council】** agency may approve, the  
42 agency may assist affordable housing programs **【which are not**  
43 **located in municipalities whose housing elements have been granted**  
44 **substantive certification or which are not in furtherance of a**  
45 **regional contribution agreement】** that have a pending request for  
46 compliance certification; provided the affordable housing program



- 1 will meet all or in part a municipal **low and moderate income**  
2 low- and moderate-income housing obligation.
- 3 c. Assistance provided pursuant to this section may take the  
4 form of grants or awards to municipalities, prospective home  
5 purchasers, housing sponsors as defined in P.L.1983, c.530  
6 (C.55:14K-1 et seq.), or as contributions to the issuance of  
7 mortgage revenue bonds or multi-family housing development  
8 bonds which have the effect of achieving the goal of producing  
9 affordable housing.
- 10 d. Affordable housing programs which may be financed or  
11 assisted under this provision may include, but are not limited to:
- 12 (1) Assistance for home purchase and improvement including  
13 interest rate assistance, down payment and closing cost assistance,  
14 and direct grants for principal reduction;
- 15 (2) Rental programs including loans or grants for developments  
16 containing **low and moderate income** low- and moderate-income  
17 housing, moderate rehabilitation of existing rental housing,  
18 congregate care and retirement facilities;
- 19 (3) Financial assistance for the conversion of nonresidential  
20 space to residences;
- 21 (4) Other housing programs for **low and moderate income**  
22 low- and moderate-income housing, including infrastructure  
23 projects directly facilitating the construction of **low and moderate**  
24 **income** low- and moderate-income housing; and
- 25 (5) Grants or loans to municipalities, housing sponsors and  
26 community organizations to encourage development of innovative  
27 approaches to affordable housing, including:
- 28 (a) Such advisory, consultative, training and educational  
29 services as will assist in the planning, construction, rehabilitation  
30 and operation of housing; and
- 31 (b) Encouraging research in and demonstration projects to  
32 develop new and better techniques and methods for increasing the  
33 supply, types and financing of housing and housing projects in the  
34 State.
- 35 e. The agency shall establish procedures and guidelines  
36 governing the qualifications of applicants, the application  
37 procedures and the criteria for awarding grants and loans for  
38 affordable housing programs and the standards for establishing the  
39 amount, terms and conditions of each grant or loan.
- 40 f. **In consultation with the council, the** The agency , in  
41 consultation with the department, shall establish requirements and  
42 controls to **insure** ensure the maintenance of housing assisted  
43 under **this act** P.L.1985, c.222 (C.52:27D-301 et al.) as affordable  
44 to **low and moderate income** low- and moderate-income  
45 households for a period of not less than 40 years for rental units and  
46 20 years for for-sale units; provided that the agency **may establish**  
47 a shorter period upon a determination that the economic feasibility

1 of the program is jeopardized by the requirement and the public  
2 purpose served by the program outweighs the shorter period **】** may  
3 update or amend any controls previously adopted by the agency, in  
4 consultation with the Council on Affordable Housing, prior to the  
5 effective date of P.L. , c. (C. ) (pending before the  
6 Legislature as this bill), provided that the requirements and controls  
7 shall, at a minimum, be consistent with the controls as in effect  
8 immediately prior to the effective date of P.L. , c. (C. )  
9 (pending before the Legislature as this bill), including, but not  
10 limited to, any requirements concerning bedroom distributions,  
11 affordability averages, and affirmative marketing. The controls  
12 may include, among others, requirements for recapture of assistance  
13 provided pursuant to **【this act】** P.L.1985, c.222 (C.52:27D-301 et  
14 al.) or restrictions on return on equity in the event of failure to meet  
15 the requirements of the program. With respect to rental housing  
16 financed by the agency pursuant to **【this act】** P.L.1985, c.222  
17 (C.52:27D-301 et al.) or otherwise which promotes the provision or  
18 maintenance of **【low and moderate income】** low- and moderate-  
19 income housing, the agency may waive restrictions on return on  
20 equity required pursuant to P.L.1983, c.530 (C.55:14K-1 et seq.)  
21 which is gained through the sale of the property or of any interest in  
22 the property or sale of any interest in the housing sponsor. The  
23 agency shall promulgate updated regulations no later than nine  
24 months following the effective date of P.L. , c. (C. )  
25 (pending before the Legislature as this bill). All parties may  
26 continue to rely on regulations previously adopted by the agency  
27 pursuant to the authority provided by this section as in effect  
28 immediately prior to the effective date of P.L. , c. (C. )  
29 (pending before the Legislature as this bill) until new rules and  
30 regulations are adopted by the agency. Notwithstanding the  
31 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
32 (C.52:14B-1 et seq.) to the contrary, the agency, after consultation  
33 with department, may adopt, immediately, upon filing with the  
34 Office of Administrative Law, said regulations, which shall be  
35 effective for a period not to exceed one year from the date of the  
36 filing. The agency shall thereafter amend, adopt, or readopt the  
37 regulations in accordance with the requirements of P.L.1968, c.410  
38 (C.52:14B-1 et seq.).

39 g. The agency may establish affordable housing programs  
40 through the use or establishment of subsidiary corporations or  
41 development corporations as provided in P.L.1983, c.530  
42 (C.55:14K-1 et seq.). The subsidiary corporations or development  
43 corporations shall be eligible to receive funds provided under **【this**  
44 **act】** P.L.1985, c.222 (C.52:27D-301 et al.) for any permitted  
45 purpose.

46 h. The agency shall provide assistance, through its bonding  
47 powers or in any other manner within its powers, to the grant and

1 loan program established pursuant to section 20 of P.L.1985, c.222  
2 (C.52:27D-320).

3 i. (1) The department shall promulgate processes and standards  
4 for the certification of administrative agents and municipal housing  
5 liaisons in the State, as well as standards for measuring  
6 performance of and enforcing compliance by administrative agents  
7 and municipal housing liaisons in implementing the affordable  
8 housing requirements and controls established pursuant to  
9 subsection f. of this section.

10 (2) Administrative agents shall be responsible for implementing  
11 the requirements and controls set by the regulations promulgated  
12 pursuant to subsection (f) of this section. The department may  
13 bring via summary proceeding any findings of violation of the  
14 responsibilities set forth in this section before a county level  
15 housing judge, to docket the violation and issue corrective orders  
16 and levy fines.

17 (3) Municipal housing liaisons shall be responsible for  
18 monitoring administrative agents within their municipality's  
19 jurisdiction to ensure compliance with the requirements and  
20 controls set by regulation under subsection f. of this section.

21 (4) Municipal housing liaisons, the department, and interested  
22 parties may bring a challenge before a county level housing judge to  
23 determine whether properties subject to the regulations set forth by  
24 this section are out of compliance with the regulations. A finding  
25 of deliberate noncompliance may result in the department removing  
26 the administrative agent's certification.

27 (5) A County level housing judge may issue fines and order  
28 corrective actions for violations and may consider patterns of  
29 violations in determining whether a municipality is meeting its  
30 obligations under the compliance certification established by  
31 section 3 of P.L. , c. (C. ) (pending before the Legislature  
32 as this bill).

33 (6) Notwithstanding the provisions of the "Administrative  
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the  
35 contrary, the department may adopt, immediately, upon filing with  
36 the Office of Administrative Law, regulations to implement the  
37 provisions of this subsection, which shall be effective for a period  
38 not to exceed one year from the date of the filing. The department  
39 shall thereafter amend, adopt, or readopt the regulations in  
40 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1  
41 et seq.).

42 (cf: P.L.2004, c.140, s.5)

43  
44 28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended  
45 to read as follows:

46 19. Notwithstanding any rules of the New Jersey Housing and  
47 Mortgage Finance Agency to the contrary, the allocation of **low**  
48 **income** low-income tax credits shall be made by the agency to the

1 full extent such credits are permitted to be allocated under federal  
2 law, including allocations of **[4]** four percent or **[9]** nine percent  
3 federal **[low income]** low-income tax credits, and including  
4 allocations allowable for partial credits. The affordable portion of  
5 any mixed income or mixed use development that is part of a fair  
6 share housing plan **[approved by the council, or]** that has obtained  
7 compliance certification, including a court-approved judgment of  
8 repose or compliance, including, but not limited to, a development  
9 that has received a density bonus, shall be permitted to receive  
10 allocations of **[low income]** low-income tax credits, provided that  
11 the applicant can conclusively demonstrate that the market rate  
12 residential or commercial units are unable to internally subsidize  
13 the affordable units, and the affordable units are developed  
14 contemporaneously with the commercial or market rate residential  
15 units.

16 (cf: P.L.2008, c.46, s.19)

17

18 29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to  
19 read as follows:

20 7. **[The council shall coordinate and review the housing**  
21 **elements as filed pursuant to section 11 of P.L.1985, c.222**  
22 **(C.52:27D-311), and the housing activities under section 20 of**  
23 **P.L.1985, c.222 (C.52:27D-320), at least once every three years, to]**  
24 Housing elements and fair share plans adopted pursuant to section 3  
25 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
26 shall ensure that at least 13 percent of the housing units made  
27 available for occupancy by low-income and **[moderate income]**  
28 moderate-income households to address a municipality's  
29 prospective need obligation will be reserved for occupancy by very  
30 low income households, as that term is defined pursuant to section 4  
31 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units  
32 made available for families with children. The 13 percent shall  
33 count towards the minimum 50 percent of the housing units  
34 required to be made available for occupancy by low-income  
35 households to address a municipality's prospective need obligation.  
36 Nothing in this section shall require that a specific percentage of the  
37 units in any specific project be reserved as very **[low income]** low-  
38 income housing; provided, however, that a municipality shall not  
39 receive bonus credits for the provision of housing units reserved for  
40 occupancy by very **[low income]** low-income households unless  
41 the 13 percent target has been exceeded within that municipality **[.**  
42 The council shall coordinate all efforts to meet the goal of this  
43 section in a manner that will result in a balanced number of housing  
44 units being reserved for very low income households throughout all  
45 housing regions. For the purposes of this section, housing activities  
46 under section 20 of P.L.1985, c.222 (C.52:27D-320) shall include  
47 any project-based assistance provided from the "New Jersey

1 Affordable Housing Trust Fund" pursuant to P.L.2004, c.140  
2 (C.52:27D-287.1 et al.), regardless of whether the housing activity  
3 is counted toward the municipal obligation under the "Fair Housing  
4 Act," P.L.1985, c.222 (C.52:27D-301 et al.)**】**, and that the agency  
5 shall update the regulations adopted pursuant to section 21 of  
6 P.L.1985, c.222 (C.52:27D-321) to replace any requirements for  
7 very low-income housing inconsistent with the percentages and  
8 definitions established pursuant to P.L. , c. (C. ) (pending  
9 before the Legislature as this bill) with the percentage and  
10 definition specified in this section.

11 (cf: P.L.2008, c.46, s.7)

12

13 30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to  
14 read as follows:

15 8. a. **【The council may authorize a】** (1) A municipality that is  
16 in the process of seeking compliance certification, has 【petitioned  
17 for substantive】 obtained compliance certification, or that has been  
18 so authorized by a court of competent jurisdiction, and which has  
19 adopted a municipal development fee ordinance shall be authorized  
20 to impose and collect development fees from developers of  
21 residential property, in accordance with rules promulgated by the  
22 **【council】 department.** Each amount collected shall be deposited  
23 and shall be accounted for separately, by payer and date of deposit.

24 (2) No later than 90 days following the enactment of P.L. , c.  
25 (C. ) (pending before the Legislature as this bill), any  
26 municipality that is or has been authorized to impose and collect  
27 development fees from developers of residential property, or  
28 payments in lieu of constructing affordable housing, shall provide  
29 the Department of Community Affairs with a detailed accounting of  
30 all such fees that have been collected and expended since the  
31 inception of the municipal authorization to collect the fees.

32 (3) Beginning with the year after the enactment of P.L. , c.  
33 (C. ) (pending before the Legislature as this bill), by January  
34 15, every municipality that is or has been authorized to impose and  
35 collect development fees from developers of residential property, or  
36 payments in lieu of constructing affordable housing, shall provide  
37 the Department of Community Affairs with a detailed accounting of  
38 all such fees that have been collected and expended the previous  
39 year.

40 (4) A municipality may not spend or commit to spend any  
41 affordable housing development fees, including Statewide non-  
42 residential fees collected and deposited into the municipal  
43 affordable housing trust fund, without first obtaining the 【council's】  
44 approval of the expenditure as part of its compliance certification or  
45 by the department. A municipality shall include in its housing  
46 element and fair share plan adopted pursuant to section 3 of P.L. ,  
47 c. (C. ) (pending before the Legislature as this bill) a

1 spending plan for current funds in the municipal affordable housing  
2 trust fund and projected funds through the current round. Review  
3 of that spending plan for consistency with applicable law and the  
4 municipality's Housing Element and Fair Share Plan shall be part of  
5 the process specified in section 3 of P.L. , c. (C. ) (pending  
6 before the Legislature as this bill). The **【council】** department shall  
7 promulgate updated regulations no later than nine months following  
8 the effective date of P.L. , c. (C. ) (pending before the  
9 Legislature as this bill) regarding the establishment, administration,  
10 reporting, and enforcement of the expenditure of affordable housing  
11 development fees by municipalities, which shall include  
12 establishing an expedited process for approving spending plan  
13 expenditures for emergent opportunities to create affordable  
14 housing after a municipality has obtained compliance certification  
15 and procedures for monitoring the collection and expenditure of  
16 trust funds. The department shall develop and publish on the  
17 department's Internet website a detailed summary of the municipal  
18 affordable housing trust fund expenditures for each municipality,  
19 and shall update each summary on an annual basis. As part of the  
20 regulations adopted pursuant to this section and section 10 of  
21 P.L.2008, c.46 (C.52:27D-329.4), the department shall adopt  
22 reporting requirements applicable to municipal affordable housing  
23 trust funds to facilitate fulfillment of the department's obligations  
24 pursuant to this section. Municipalities may continue to rely on  
25 regulations on development fees and spending plans previously  
26 adopted by the council until new rules and regulations are adopted  
27 by the department. The **【council】** department shall have  
28 **【exclusive】** jurisdiction regarding the enforcement of these  
29 regulations, provided that any municipality which is not in  
30 compliance with the regulations adopted by the **【council】**  
31 department may be subject to forfeiture of any or all funds  
32 remaining within its municipal trust fund. Any funds so forfeited  
33 shall be deposited into the "New Jersey Affordable Housing Trust  
34 Fund" established pursuant to section 20 of P.L.1985, c.222  
35 (C.52:27D-320).

36 b. A municipality shall deposit all fees collected, whether or  
37 not such collections were derived from fees imposed upon non-  
38 residential or residential construction into a trust fund dedicated to  
39 those purposes as required under this section, and such additional  
40 purposes as may be approved by the **【council】** department.

41 c. (1) A municipality may only spend development fees for an  
42 activity approved by the **【council】** department to address the  
43 municipal fair share obligation, or approved as part of compliance  
44 certification.

45 (2) Municipal development trust funds shall not be expended  
46 unless the municipality has immunity from builder's remedy  
47 litigation at the time of the expenditure, and shall not be expended:

1     (a) to reimburse municipalities for activities which occurred  
2     prior to the authorization of a municipality to collect development  
3     fees; or

4     (b) (i) on administrative costs, attorney fees or court costs to  
5     obtain a judgment of repose; (ii) to contest a determination of the  
6     municipality's fair share obligation; or (iii) on costs of any  
7     challenger in connection to a challenge to the municipality's  
8     obligation, housing element, or fair share plan.

9     (3) A municipality shall set aside a portion of its development  
10    fee trust fund for the purpose of providing affordability assistance  
11    to **low and moderate income** low- and moderate-income  
12    households in affordable units included in a municipal fair share  
13    plan, in accordance with rules of the **council** department.

14    (a) Affordability assistance programs may include down  
15    payment assistance, security deposit assistance, low interest loans,  
16    common maintenance expenses for units located in condominiums,  
17    rental assistance, and any other program authorized by the  
18    **council** department.

19    (b) Affordability assistance to households earning 30 percent or  
20    less of median income may include buying down the cost of **low**  
21    **income** low-income units in a municipal fair share plan to make  
22    them affordable to households earning 30 percent or less of median  
23    income. The use of development fees in this manner shall not  
24    entitle a municipality to bonus credits except as may **be provided**  
25    by the rules of the council otherwise be allowed by applicable  
26    precedent.

27    (4) A municipality may contract with a private or public entity  
28    to administer any part of its housing element and fair share plan,  
29    including the requirement for affordability assistance, or any  
30    program or activity for which the municipality expends  
31    development fee proceeds, in accordance with rules of the  
32    **council** department.

33    (5) Not more than 20 percent of the revenues collected from  
34    development fees shall be expended on administration, in  
35    accordance with rules of the **council** department. Such  
36    administration may include expending a portion of its affordable  
37    housing trust fund on actions and efforts reasonably related to the  
38    determination of its fair share obligation and the development of its  
39    housing element and fair share plan pursuant to paragraphs (1) and  
40    (2) of subsection f. of section 3 of P.L. , c. (C. ) (pending  
41    before the Legislature as this bill), and for expenses that are  
42    reasonably necessary for compliance with the processes of the  
43    program, including but not limited to, the costs to the municipality  
44    of resolving a challenge under the program.

45    d. The **council** department shall establish a time by which all  
46    development fees collected within a calendar year shall be  
47    expended; provided, however, that all fees shall be committed for

1 expenditure within four years from the date of collection. A  
2 municipality that fails to commit to expend the balance required in  
3 the development fee trust fund by the time set forth in this section  
4 shall be required by the council to transfer the remaining unspent  
5 balance at the end of the four-year period to the "New Jersey  
6 Affordable Housing Trust Fund," established pursuant to section 20  
7 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46  
8 (C.52:27D-329.1 et al.), to be used in the housing region of the  
9 transferring municipality for the authorized purposes of that fund.

10 e. Notwithstanding any provision of this section, or regulations  
11 of the **【council】 department**, a municipality shall not collect a  
12 development fee from a developer whenever that developer is  
13 providing for the construction of affordable units, either on-site or  
14 elsewhere within the municipality.

15 This section shall not apply to the collection of a Statewide  
16 development fee imposed upon non-residential development  
17 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
18 **【et seq.】 through C.40:55D-8.7**) by the State Treasurer, when such  
19 collection is not authorized to be retained by a municipality.  
20 (cf: P.L.2008, c.46, s.8)

21  
22 31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended  
23 to read as follows:

24 10. a. The **【council】 department** shall maintain on its Internet  
25 website, and also publish on **【a regular】 an annual** basis, an up-to-  
26 date municipal status report **【concerning the petitions for**  
27 substantive certification of each municipality that has submitted to  
28 the council's jurisdiction, and shall collect and publish**】 based on its**  
29 collection and publication of information concerning the number  
30 affordable of housing units actually constructed, construction starts,  
31 certificates of occupancy granted, **【rental units maintained, and the**  
32 number of housing units transferred or sold within the previous 12-  
33 month period**】 the start and expiration dates of deed restrictions,**  
34 and residential and non-residential development fees collected and  
35 expended, including purposes and amounts of such expenditures,  
36 along with the current balance in the municipality's affordable  
37 housing trust funds. With respect to units actually constructed, the  
38 information shall specify the characteristics of the housing,  
39 including housing type, tenure, affordability level, number of  
40 bedrooms, date and expiration of affordability controls, and whether  
41 occupancy is reserved for families, senior citizens, or other special  
42 populations. **【No later than 60 months after the effective date of**  
43 P.L.2008, c.46 (C.52:27D-329.1 et al.), the council shall require  
44 each municipality, as a condition of substantive certification, to  
45 provide, in a standardized electronic media format as determined by  
46 the council, the details of the fair share plan as adopted by the



1 municipality and approved by the council. The council shall  
2 publish and maintain such approved plans on its website.】

3 b. (1) No later than 90 days following the enactment of P.L. \_\_\_\_\_,  
4 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill), each  
5 municipality shall provide the department with the information  
6 necessary to comply with this section.

7 (2) Beginning with the year after the enactment of P.L. \_\_\_\_\_, c.  
8 (C. \_\_\_\_\_) (pending before the Legislature as this bill), by January  
9 15, each municipality shall provide the department with the  
10 information necessary to comply with this section.

11 c. The department may adopt, pursuant to the "Administrative  
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
13 regulations as may be necessary to effectuate the provisions of this  
14 section, including rules and regulations to ensure that municipalities  
15 and developers report any information as may be necessary for the  
16 department to fulfill its obligations pursuant to this section.

17 (cf: P.L.2008, c.46, s.10)

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

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

40 b. Subject to the provisions of subsection d. of this section, a  
41 developer of a project consisting of newly-constructed residential  
42 units being financed in whole or in part with State funds, including,  
43 but not limited to, transit villages designated by the Department of  
44 Transportation and units constructed on State-owned property, shall  
45 be required to reserve at least 20 percent of the residential units  
46 constructed for occupancy by 【low or moderate income】 low- or  
47 moderate-income households, as those terms are defined in section

1 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as  
2 required under the rules of the [council, unless the municipality in  
3 which the property is located has received substantive certification  
4 from the council and such a reservation is not required under the  
5 approved affordable housing plan, or the municipality has been  
6 given a judgment of repose or a judgment of compliance by the  
7 court, and such a reservation is not required under the approved  
8 affordable housing plan] agency.

9 c. [(1) The Legislature recognizes that regional planning  
10 entities are appropriately positioned to take a broader role in the  
11 planning and provision of affordable housing based on regional  
12 planning considerations. In recognition of the value of sound  
13 regional planning, including the desire to foster economic growth,  
14 create a variety and choice of housing near public transportation,  
15 protect critical environmental resources, including farmland and  
16 open space preservation, and maximize the use of existing  
17 infrastructure, there is created a new program to foster regional  
18 planning entities.

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

33 (3) In addition to the entities identified in subsection a. of this  
34 section, the Casino Reinvestment Development Authority, in  
35 conjunction with the Atlantic County Planning Board, shall identify  
36 and coordinate regional affordable housing opportunities directly  
37 attributable to Atlantic City casino development, which may be  
38 provided anywhere within Atlantic County, subject to the  
39 restrictions of paragraph (4) of this subsection.

40 (4) The coordination of affordable housing opportunities by  
41 regional entities as identified in this section shall not include  
42 activities which would provide housing units to be located in those  
43 municipalities that are eligible to receive aid under the "Special  
44 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or  
45 are coextensive with a school district which qualified for  
46 designation as a "special needs district" pursuant to the "Quality  
47 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at  
48 any time in the last 10 years have been qualified to receive

1 assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall  
2 within the jurisdiction of any of the regional entities specified in  
3 subsection a. of this section.】 (Deleted by amendment,  
4 P.L. , c. ) (pending before the Legislature as this bill)

5 d. Notwithstanding the provisions of subsection b. of this  
6 section, or any other law or regulation to the contrary, for purposes  
7 of mixed use projects or qualified residential projects in which a  
8 business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-  
9 207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90  
10 (C.34:1B-209.3), or both, an "eligible municipality," as defined in  
11 section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of  
12 deciding the percentage of newly-constructed residential units  
13 within the project, up to 20 percent of the total, required to be  
14 reserved for occupancy by **【low or moderate income】** low- or  
15 moderate-income households. For a mixed use project or a  
16 qualified residential project that has received preliminary or final  
17 site plan approval prior to the effective date of P.L.2011, c.89, the  
18 percentage shall be deemed to be the percentage, if any, of units  
19 required to be reserved for **【low or moderate income】** low- or  
20 moderate-income households in accordance with the terms and  
21 conditions of such approval.  
22 (cf: P.L.2011, c.89, s.5)

23  
24 33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to  
25 read as follows:

26 3. As used in this act:

27 "Affordable Home Ownership Opportunities Bonds" means any  
28 bonds of the New Jersey Housing and Mortgage Finance Agency  
29 that provide funds to facilitate the provisions of this act.

30 "Agency" means the New Jersey Housing and Mortgage Finance  
31 Agency.

32 "Annual income" means total income, from all sources, during  
33 the last full calendar year preceding the filing of an application for a  
34 loan pursuant to this act.

35 "Bonds" means bonds, notes or any other form of evidence of  
36 indebtedness of the agency, bearing either a fixed rate or a variable  
37 rate of interest, issued by the agency.

38 "Eligible project" means a project for the creation of low or  
39 moderate income housing which meets the standards of eligibility  
40 for loans under the program created by this act.

41 "Eligible purchaser" means a purchaser of a dwelling unit in an  
42 eligible project to whom a loan may be made under the program  
43 pursuant to section 5 of this act.

44 "Fund" means the Affordable Home Ownership Opportunities  
45 Fund established by section 5 of this act.

46 "Housing region" means a housing region as defined in  
47 subsection b. of section 4 of the "Fair Housing Act," P.L.1985,  
48 c.222 (C.52:27D-304) and determined **【by the Council on**

1 Affordable Housing pursuant to section 7 of that act, P.L.1985,  
2 c.222 (C.52:27D-307) **】** pursuant to subsection b. of section 6 of  
3 P.L. , c. (C. ) (pending before the Legislature as this bill).

4 "Local enforcement authority" means any officer or agency of  
5 local government responsible for the implementation or  
6 enforcement of land-use and building regulations established by or  
7 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
8 c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law,"  
9 P.L.1975, c.291 (C.40:55D-1 et seq.).

10 "Low income" means a gross annual household income equal to  
11 50% or less of the median gross annual household income for  
12 households of the same size within the relevant housing region.

13 "Moderate income" means a gross annual household income  
14 equal to not more than 80%, but more than 50% of the median gross  
15 annual household income for households of the same size within the  
16 relevant housing region.

17 "Program" means the Affordable Home Ownership Opportunities  
18 Program created by this act.

19 "Qualified nonprofit organization" means any corporation or  
20 association of persons organized under Title 15A of the New Jersey  
21 Statutes, having for its principal purpose, or as a purpose ancillary  
22 to its principal purpose, the improvement of realistic opportunities  
23 for low income and moderate income housing, as defined pursuant  
24 to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.),  
25 being within the description of section 501(c)(3) of the United  
26 States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been  
27 determined by the agency to be a bona fide organization not under  
28 the effective control of any for-profit organization or governmental  
29 entity, and appearing capable, by virtue of past activities,  
30 qualifications of staff or board, or other features, of furthering the  
31 purposes of this act.

32 "Substantial rehabilitation" means repair, reconstruction or  
33 renovation which (1) costs in excess of 60% of the fair market value  
34 of a rehabilitated dwelling after such repair, reconstruction or  
35 renovation, or (2) renders a previously vacant and uninhabitable  
36 dwelling safe, sanitary and decent for residential purposes, or (3)  
37 converts to safe, sanitary and decent residential use a structure  
38 previously in non-residential use.

39 (cf: P.L.1995, c.343, s.3)

40

41 34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to  
42 read as follows:

43 7. A project of new construction or substantial rehabilitation by  
44 a nonprofit organization shall be eligible for a loan under this act if  
45 (1) the homes to be constructed or substantially rehabilitated under  
46 the project are located within an identifiable neighborhood in which  
47 median family income does not exceed the current standard of  
48 "moderate income" pursuant to the contemporaneous standards **【**of

1 the Council on Affordable Housing】 established pursuant to the  
2 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the  
3 homes to be constructed or substantially rehabilitated under the  
4 project are sufficient in number and located on the same or  
5 contiguous parcels of land or within such proximity to each other as  
6 to render the cost per unit of housing practicable for acquisition by  
7 lower-income purchasers; and (3) each home constructed or  
8 substantially rehabilitated within the project will conform to all  
9 requirements of the State Uniform Construction Code, except as to  
10 the waiver of any fee or other requirement pursuant to subsection b.  
11 of section 9 of this act.

12 (cf: P.L.1995, c.343, s.7)

13  
14 35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to  
15 read as follows:

16 3. As used in this act:

17 "Agency" means the New Jersey Housing and Mortgage Finance  
18 Agency.

19 "Annual income" means total income, from all sources, during  
20 the last full calendar year preceding the filing of an application for a  
21 loan pursuant to this act.

22 "Bonds" means bonds, notes or any other form of evidence of  
23 indebtedness of the agency, bearing either a fixed rate or a variable  
24 rate of interest, issued by the agency.

25 "Eligible project" means a project undertaken by a qualified  
26 housing sponsor to create housing for shared occupancy by seniors  
27 or persons with disability of low or moderate income, whether for  
28 home ownership or rental, which meets the standards of eligibility  
29 for loans under the program created by section 4 of P.L.1998, c.128  
30 (C.55:14K-75).

31 "Eligible purchaser" means a purchaser of a dwelling unit in an  
32 eligible project who fulfills the definition of a senior or person with  
33 disability pursuant to this section, is of low or moderate income and  
34 to whom a loan may be made under the program pursuant to section  
35 4 of P.L.1998, c.128 (C.55:14K-75).

36 "Fund" means the Senior and Disabled Cooperative Housing  
37 Incentive Fund established by section 6 of P.L.1998, c.128  
38 (C.55:14K-77).

39 "Housing region" means a housing region as defined in  
40 subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and  
41 determined 【by the Council on Affordable Housing pursuant to  
42 section 7 of P.L.1985, c.222 (C.52:27D-307)】 pursuant to  
43 subsection b. of section 6 of P.L. , c. (C. ) (pending before  
44 the Legislature as this bill).

45 "Low income" means a gross annual household income equal to  
46 50% or less of the median gross annual household income for  
47 households of the same size within the relevant housing region.

1 "Moderate income" means a gross annual household income  
2 equal to not more than 80%, but more than 50% of the median gross  
3 annual household income for households of the same size within the  
4 relevant housing region.

5 "Person with disability" means any person who is 18 years of age  
6 or older and who fulfills the definition of having a "disability"  
7 pursuant to section 3 of the "Americans with Disabilities Act of  
8 1990," 42 U.S.C. s.12102).

9 "Program" means the New Jersey Senior and Disabled  
10 Cooperative Housing Finance Incentive Program created by  
11 P.L.1998, c.128 (C.55:14K-72 et seq.).

12 "Qualified housing sponsor" means any corporation or  
13 association of persons organized under the New Jersey Statutes, or  
14 any other corporation having for one of its purposes the  
15 improvement of realistic opportunities for low income and moderate  
16 income housing, as defined pursuant to the "Fair Housing Act,"  
17 P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by  
18 virtue of past activities, qualifications of staff or board, or other  
19 features, of furthering the purposes of P.L.1998, c.128 (C.55:14K-  
20 72 et seq.).

21 "Retrofitting" means renovating or remodeling an existing  
22 residential or non-residential structure to allow for cooperative  
23 living.

24 "Senior" means an individual who is 55 years of age or older.

25 "Substantial rehabilitation" means repair, reconstruction or  
26 renovation which (1) costs in excess of 60% of the fair market value  
27 of a rehabilitated dwelling after such repair, reconstruction or  
28 renovation, or (2) renders a previously vacant and uninhabitable  
29 dwelling safe, sanitary and decent for residential purposes or (3)  
30 converts to safe, sanitary and decent residential use a structure  
31 previously in non-residential use.

32 (cf: P.L.1998, c.128, s.3)

33  
34 36. (New section) a. (1) Notwithstanding the provisions of the  
35 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
36 seq.) to the contrary, the Commissioner of Community Affairs  
37 shall, in consultation with the Administrative Director of the Courts  
38 and the Executive Director of the New Jersey Housing and  
39 Mortgage Finance Agency, adopt, immediately upon filing with the  
40 Office of Administrative Law, no later than nine months after the  
41 effective date of P.L. , c. (C. ) (pending before the  
42 Legislature as this bill), such transitional rules and regulations as  
43 necessary for the implementation of P.L. , c. (C. ) (pending  
44 before the Legislature as this bill), including for the identification  
45 of any vestigial duties of the Council on Affordable Housing and  
46 for the transfer of those duties within the Department of Community  
47 Affairs to the extent that those duties are not otherwise assumed,  
48 pursuant to P.L. , c. (C. ) (pending before the Legislature as

1 this bill), by municipalities or the Affordable Housing Dispute  
2 Resolution Program.

3 (2) The department, in consultation with the agency, shall  
4 thereafter amend, adopt, or readopt the regulations in accordance  
5 with the requirements of the "Administrative Procedure Act,"  
6 P.L.1968, c.410 (C.52:14B-1 et seq.).

7 b. The Executive Director of the New Jersey Housing and  
8 Mortgage Finance Agency shall adopt, pursuant to the  
9 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
10 seq.), no later than nine months after the effective date of P.L. , c.  
11 (C. ) (pending before the Legislature as this bill), rules and  
12 regulations to update the Uniform Housing Affordability Controls  
13 as required pursuant to the "Fair Housing Act," P.L.1985, c.222  
14 (C.52:27D-301 et al.). As part of updating the Uniform Housing  
15 Affordability Controls, the agency shall set rules establishing that,  
16 for the purpose of low- and moderate-income rental units, a 40-year  
17 minimum deed restriction shall be required. For the purpose of for-  
18 sale units, a 20-year minimum deed restriction shall be required.

19

20 37. The following sections are repealed:

21 Section 5 of P.L.1985 c.222 (C.52:27D-305);  
22 Section 6 of P.L.1985, c.222 (C.52:27D-306);  
23 Section 7 of P.L.1985, c.222 (C.52:27D-307);  
24 Section 1 of P.L.1991, c.479 (C.52:27D-307.1);  
25 Section 2 of P.L.1991, c.479 (C.52:27D-307.2);  
26 Section 3 of P.L.1991, c.479 (C.52:27D-307.3);  
27 Section 4 of P.L.1991, c.479 (C.52:27D-307.4);  
28 Section 5 of P.L.1991, c.479 (C.52:27D-307.5);  
29 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);  
30 Section 8 of P.L.1985, c.222 (C.52:27D-308);  
31 Section 9 of P.L.1985, c.222 (C.52:27D-309);  
32 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);  
33 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);  
34 Section 14 of P.L.1985, c.222 (C.52:27D-314);  
35 Section 15 of P.L.1985, c.222 (C.52:27D-315);  
36 Section 16 of P.L.1985, c.222 (C.52:27D-316);  
37 Section 17 of P.L.1985, c.222 (C.52:27D-317);  
38 Section 18 of P.L.1985, c.222 (C.52:27D-318);  
39 Section 19 of P.L.1985 c.222 (C.52:27D-319);  
40 Section 22 of P.L.1985, c.222 (C.52:27D-322);  
41 Section 26 of P.L.1985, c.222 (C.52:27D-326);  
42 Section 28 of P.L.1985, c.222 (C.52:27D-328); and  
43 Section 9 of P.L.2008, c.46 (C.52:27D-329.3).

44

45 38. a. There is appropriated to the Affordable Housing Dispute  
46 Resolution Program, established pursuant to subsection a. of section  
47 5 of P.L. , c. (C. ) (pending before the Legislature as this  
48 bill), from the General Fund \$12,000,000 for the purposes of

1 carrying out its responsibilities for the fourth round of affordable  
2 housing obligations, as established pursuant to section 5 of  
3 P.L. , c. (C. ) (pending before the Legislature as this bill).

4 b. There is appropriated to the Department of Community  
5 Affairs, from the General Fund, \$4,000,000 for the purposes of  
6 carrying out responsibilities allocated to it pursuant to P.L. , c.  
7 (C. ) (pending before the Legislature as this bill).

8

9 39. This act shall take effect immediately, and shall apply to  
10 each new round of affordable housing obligations that begins  
11 following enactment.



[Second Reprint]

**SENATE, No. 50**

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**STATE OF NEW JERSEY**

**221st LEGISLATURE**

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INTRODUCED JANUARY 9, 2024

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Somerset and Union)**

**Senator M. TERESA RUIZ**

**District 29 (Essex and Hudson)**

**Co-Sponsored by:**

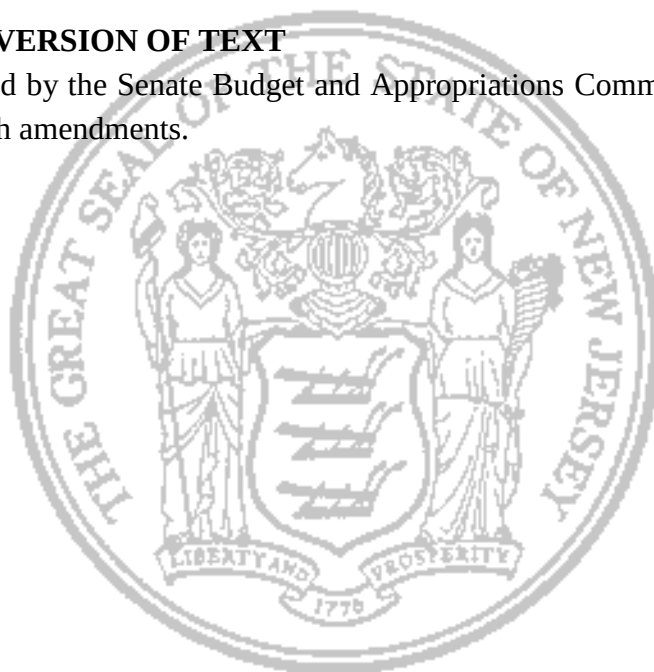
**Senators Beach, Burgess, Timberlake, McKnight and Pou**

**SYNOPSIS**

Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on March 11, 2024, with amendments.



**(Sponsorship Updated As Of: 3/18/2024)**

1 AN ACT concerning affordable housing, including administration  
2 and municipal obligations, amending, supplementing, and  
3 repealing various parts of the statutory law, and making an  
4 appropriation.

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

8  
9 1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to  
10 read as follows:

11 2. The Legislature finds that:

12 a. The New Jersey Supreme Court, through its rulings in  
13 **【South】** Southern Burlington County NAACP v. Mount Laurel, 67  
14 N.J. 151 (1975) and **【South】** Southern Burlington County NAACP  
15 v. Mount Laurel, 92 N.J. 158 (1983), has determined that every  
16 municipality in a growth area has a constitutional obligation to  
17 provide through its land use regulations a realistic opportunity for a  
18 fair share of its region's present and prospective needs for housing  
19 for **【low and moderate income】** low- and moderate-income  
20 families.

21 b. In the second Mount Laurel ruling, the Supreme Court stated  
22 that the determination of the methods for satisfying this  
23 constitutional obligation "is better left to the Legislature," that the  
24 court has "always preferred legislative to judicial action in their  
25 field," and that the judicial role in upholding the Mount Laurel  
26 doctrine "could decrease as a result of legislative and executive  
27 action."

28 c. The interest of all citizens, including **【low and moderate**  
29 **income】** low- and moderate-income families in need of affordable  
30 housing, and the needs of the workforce, would be best served by a  
31 comprehensive planning and implementation response to this  
32 constitutional obligation.

33 d. There are a number of essential ingredients to a  
34 comprehensive planning and implementation response, including  
35 the establishment of reasonable fair share housing guidelines and  
36 standards, the initial determination of fair share by officials at the  
37 municipal level and the preparation of a municipal housing element,  
38 State review of the local fair share study and housing element, and  
39 continuous State funding for **【low and moderate income】** low- and  
40 moderate-income housing to replace the federal housing subsidy  
41 programs which have been almost completely eliminated.

42 e. The State can maximize the number of **【low and moderate**  
43 **income】** low- and moderate-income units provided in New Jersey

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:

<sup>1</sup>Senate SCU committee amendments adopted January 25, 2024.

<sup>2</sup>Senate SBA committee amendments adopted March 11, 2024.

1 by allowing its municipalities to adopt appropriate phasing  
2 schedules for meeting their fair share, so long as the municipalities  
3 permit a timely achievement of an appropriate fair share of the  
4 regional need for **low and moderate income** low- and moderate-  
5 income housing as required by the Mt. Laurel I and II opinions and  
6 other relevant court decisions.

7 f. The State can also maximize the number of **low and**  
8 **moderate income** low- and moderate-income units by creating new  
9 affordable housing and by rehabilitating existing, but substandard,  
10 housing in the State. Because the Legislature has determined,  
11 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.), that it is no  
12 longer appropriate or in harmony with the Mount Laurel doctrine to  
13 permit the transfer of the fair share obligations among  
14 municipalities within a housing region, it is necessary and  
15 appropriate to create a new program to create new affordable  
16 housing and to foster the rehabilitation of existing, but substandard,  
17 housing.

18 g. Since the urban areas are vitally important to the State,  
19 construction, conversion and rehabilitation of housing in our urban  
20 centers should be encouraged. However, the provision of housing  
21 in urban areas must be balanced with the need to provide housing  
22 throughout the State for the free mobility of citizens.

23 h. The Supreme Court of New Jersey in its Mount Laurel  
24 decisions demands that municipal land use regulations affirmatively  
25 afford a **reasonable** realistic opportunity for a variety and choice  
26 of housing including low and moderate cost housing, to meet the  
27 needs of people desiring to live there. While provision for the  
28 actual construction of that housing by municipalities is not required,  
29 they are encouraged but not mandated to expend their own  
30 resources to help provide **low and moderate income** low- and  
31 moderate-income housing.

32 i. **Certain amendments to the enabling act of the Council on**  
33 **Affordable Housing are necessary to provide guidance to the**  
34 **council to ensure consistency with the legislative intent, while at the**  
35 **same time clarifying the limitations of the council in its rulemaking.**  
36 **Although the court has remarked in several decisions that the**  
37 **Legislature has granted the council considerable deference in its**  
38 **rulemaking, the Legislature retains its power and obligation to**  
39 **clarify and amend the enabling act from which the council derives**  
40 **its rulemaking power, from time to time, in order to better guide the**  
41 **council.】** (Deleted by amendment, P.L. , c. ) (pending before the  
42 Legislature as this bill)

43 j. The Legislature finds that the use of regional contribution  
44 agreements, which permits municipalities to transfer a certain  
45 portion of their fair share housing obligation outside of the  
46 municipal borders, should no longer be utilized as a mechanism for  
47 the creation of affordable housing **by the council**.

1     k. The Legislature finds that the role of the Council on  
2     Affordable Housing, as intended in the original enactment of the  
3     "Fair Housing Act," has not developed in practice as was intended  
4     in the legislation.

5     l. The council's inability to function ultimately led the Supreme  
6     Court in 2015 to order the temporary dissolution of the requirement  
7     that administrative remedies be exhausted prior to resolving  
8     affordable housing disputes before the court, and allowed the courts  
9     to resume their role as the forum of first resort for evaluating  
10    municipal compliance with Mount Laurel obligations pursuant to  
11    guidelines laid out by the Supreme Court's order.

12    m. The Legislature finds that the council's inability to function  
13    led to a "gap period" that frustrated the intent of the Legislature and  
14    compliance with constitutional and statutory obligations, and that it  
15    is necessary to establish definitive deadlines for municipal action  
16    and any challenges to those actions to avoid such a "gap period"  
17    from being repeated in the future.

18    n. The Legislature finds that although the court-led system that  
19    has developed since 2015 has resulted in a significant number of  
20    settlement agreements and increased production of affordable  
21    housing, the system could operate more expeditiously to produce  
22    affordable housing, and at a lower cost to all parties, if appropriate  
23    standards are established by the Legislature to be applied  
24    throughout the State including more clarity on calculation on fair  
25    share affordable housing obligations using transparent and  
26    established data sources to eliminate the lengthy and costly  
27    processes of determining those obligations that have characterized  
28    both the Council on Affordable Housing and court-led system.

29    o. The Legislature determines that, considering the unique  
30    history of the "Fair Housing Act," the Council on Affordable  
31    Housing shall be abolished, and that, pursuant to the formulas and  
32    process established pursuant to sections 6 and 7 of P.L. \_\_\_\_\_,  
33    c. (C. \_\_\_\_\_ and C. \_\_\_\_\_) (pending before the Legislature as this  
34    bill), a municipality shall be authorized to seek approval of its fair  
35    share affordable housing obligation, adopted pursuant to binding  
36    resolution and then filed with the court, with the guidance of  
37    calculations published by the Department of Community Affairs,  
38    but that advocates for the low- and moderate-income households of  
39    the State shall be provided with an opportunity to contest the  
40    municipal determination.

41    p. <sup>2</sup>The Legislature declares that the "Fair Housing Act,"  
42    P.L.1985, c.222 (C.52:27D-301 et al.), as amended and  
43    supplemented by P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
44    Legislature as this bill), is intended to implement the Mount Laurel  
45    doctrine, and that municipalities in compliance with the "Fair  
46    Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) are also in  
47    compliance with the Mount Laurel doctrine.

q.<sup>2</sup> The Legislature finds that the population of persons aged 65 years and older in the State has grown from approximately 13 percent in 1990, to 17 percent in 2021, and that such growth, in conjunction with expected future growth, makes it appropriate for the Legislature to <sup>2</sup>【continue to】<sup>2</sup> allow up to <sup>2</sup>【25】 30<sup>2</sup> percent of the units towards a municipality's prospective affordable housing obligation to be satisfied through the creation of age-restricted housing.

<sup>2</sup>r. The "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.) were enacted concurrently to address the ruling of the New Jersey Supreme Court in Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983) and associated land use planning concerns.

s. The Legislature, in amending and supplementing the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), intends to facilitate comprehensive planning in alignment with smart growth principles, and the State Development and Redevelopment Plan.

t. The Legislature declares that the changes made to affordable housing methodologies, obligations, and fair share plans, as determined to be a necessity by the Legislature, through the enactment of P.L. , c. (C. ) (pending before the Legislature as this bill), are made with the intention of furthering consistency with the State Development and Redevelopment Plan.<sup>2</sup>

(cf: P.L.2008, c.46, s.4)

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

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

a. "Council" means the Council on Affordable Housing established in P.L.1985, c.222 (C.52:27D-301 et al.), **【which shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State】** abolished pursuant to section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. "Housing region" means a geographic area **【of not less than two nor more than four contiguous, whole counties which exhibit significant social, economic and income similarities, and which constitute to the greatest extent practicable the primary metropolitan statistical areas as last defined by the United States Census Bureau prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.)】** established pursuant to subsection b. of section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).

c. **【"Low income】** "Low-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by

1 households with a gross household income equal to 50 percent or  
2 less of the median gross household income for households of the  
3 same size within the housing region in which the housing is located.

4 d. **["Moderate income"]** "Moderate-income housing" means  
5 housing affordable according to federal Department of Housing and  
6 Urban Development or other recognized standards for home  
7 ownership and rental costs and occupied or reserved for occupancy  
8 by households with a gross household income equal to more than 50  
9 **[%]** percent but less than 80 percent of the median gross household  
10 income for households of the same size within the housing region in  
11 which the housing is located.

12 e. **["Resolution of participation"]** means a resolution adopted by  
13 a municipality in which the municipality chooses to prepare a fair  
14 share plan and housing element in accordance with P.L.1985, c.222  
15 (C.52:27D-301 et al.). **](Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_)**  
16 (pending before the Legislature as this bill)

17 f. "Inclusionary development" means a residential housing  
18 development in which a substantial percentage of the housing units  
19 are provided for a reasonable income range of **[low and moderate**  
20 **income]** low- and moderate-income households.

21 g. "Conversion" means the conversion of existing commercial,  
22 industrial, or residential structures for **[low and moderate income]**  
23 low- and moderate-income housing purposes where a substantial  
24 percentage of the housing units are provided for a reasonable  
25 income range of **[low and moderate income]** low- and moderate-  
26 income households.

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

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

33 j. "Prospective need" means a projection of housing needs  
34 based on development and growth which is reasonably likely to  
35 occur in a region or a municipality, as the case may be, as a result  
36 of actual determination of public and private entities. **[In**  
37 **determining prospective need, consideration shall be given to**  
38 **approvals of development applications, real property transfers, and**  
39 **economic projections prepared by the State Planning Commission**  
40 **established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-**  
41 **196 et seq.)]** Prospective need shall be determined by the  
42 methodology set forth pursuant to sections 6 and 7 of P.L. \_\_\_\_\_,  
43 c. (C. \_\_\_\_\_ and C. \_\_\_\_\_) (pending before the Legislature as this  
44 bill) for the fourth round and all future rounds of housing  
45 obligations.

46 k. "Person with a disability" means a person with a physical  
47 disability, infirmity, malformation, or disfigurement which is

1 caused by bodily injury, birth defect, aging, or illness including  
2 epilepsy and other seizure disorders, and which shall include, but  
3 not be limited to, any degree of paralysis, amputation, lack of  
4 physical coordination, blindness or visual impairment, deafness or  
5 hearing impairment, the inability to speak or a speech impairment,  
6 or physical reliance on a service animal, wheelchair, or other  
7 remedial appliance or device.

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

14 m. "Very **[low income]** low-income housing" means housing  
15 affordable according to federal Department of Housing and Urban  
16 Development or other recognized standards for home ownership  
17 and rental costs and occupied or reserved for occupancy by  
18 households with a gross household income equal to 30 percent or  
19 less of the median gross household income for households of the  
20 same size within the housing region in which the housing is located.

21 n. "Accessory dwelling unit" means a residential dwelling unit  
22 that provides complete independent living facilities with a private  
23 entrance for one or more persons, consisting of provisions for  
24 living, sleeping, eating, sanitation, and cooking, including a stove  
25 and refrigerator, and is located within a proposed or existing  
26 primary dwelling, within an existing or proposed structure that is  
27 accessory to a dwelling on the same lot, constructed in whole or  
28 part as an extension to a proposed or existing primary dwelling, or  
29 constructed as a separate detached structure on the same lot as the  
30 existing or proposed primary dwelling.

31 o. "Builder's remedy" means court imposed site-specific relief  
32 for a litigant who seeks to build affordable housing for which the  
33 court requires a municipality to utilize zoning techniques such as  
34 mandatory set-asides or density bonuses, including techniques  
35 which provide for the economic viability of a residential  
36 development by including housing that is not for low- and  
37 moderate-income households.

38 p. "Commissioner" means the Commissioner of Community  
39 Affairs.

40 q. "Compliance certification" means the certification obtained  
41 by a municipality pursuant to section 3 of P.L. , c. (C. )  
42 (pending before the Legislature as this bill), that protects the  
43 municipality from <sup>2</sup>[a builder's remedy] exclusionary zoning  
44 litigation<sup>2</sup> during the current round of present and prospective need  
45 and through July 1 of the year the next round begins, which is also  
46 known as a "judgment of compliance" or "judgment of repose."  
47 The term "compliance certification" shall include a judgment of

1 repose granted in an action filed pursuant to section 13 of P.L.1985,  
2 c.222 (C.52:27D-313).

3 r. "County level housing judge" means a judge appointed  
4 pursuant to section 5 of P.L. , c. (C. ) (pending before the  
5 Legislature as this bill), to resolve disputes over the compliance of  
6 municipal fair share affordable housing obligations and municipal  
7 fair share plans and housing elements, with the "Fair Housing Act,"  
8 P.L.1985, c.222 (C.52:27D-301 et al.

9 s. "Deficient housing unit" means housing that: (1) is over fifty  
10 years old and overcrowded; (2) lacks complete plumbing; or (3)  
11 lacks complete kitchen facilities.

12 t. "Department" means the Department of Community Affairs.

13 u. <sup>2</sup>"Exclusionary zoning litigation" means litigation to  
14 challenge the fair share plan, housing element, or ordinances or  
15 resolutions implementing the fair share plan or housing element of a  
16 municipality based on alleged noncompliance with the "Fair  
17 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount  
18 Laurel doctrine, which litigation shall include, but shall not be  
19 limited to, litigation seeking a builder's remedy.

20 v. <sup>2</sup> "Fair share plan" means the plan or proposal that is in a form  
21 which may readily be adopted, with accompanying ordinances and  
22 resolutions, pursuant to subsection f. of section 3 of  
23 P.L. , c. (C. ) (pending before the Legislature as this bill),  
24 by which a municipality proposes to satisfy its obligation to create a  
25 realistic opportunity to meet its fair share of low- and moderate-  
26 income housing needs of its region and which details the  
27 affirmative measures the municipality proposes to undertake to  
28 achieve its fair share of low- and moderate-income housing, as  
29 provided in the municipal housing element, and addresses the  
30 development regulations necessary to implement the housing  
31 element, including, but not limited to, inclusionary requirements  
32 and development fees, and the elimination of unnecessary housing  
33 cost-generating features from the municipal land use ordinances and  
34 regulations.

35 <sup>2</sup>[v.] w. "Highlands-conforming municipality" means a  
36 municipality that has adopted a land development ordinance  
37 implementing the municipality's plan conformance petition and  
38 which land development ordinance has been certified by the  
39 Highlands Water Protection and Planning Council as consistent  
40 with the "Highlands Water Protection and Planning Act," P.L.2004,  
41 c.120 (C.13:20-1 et seq.), the Highlands regional master plan, and  
42 the municipality's plan conformance approval. The term "land  
43 development ordinance" shall be inclusive of any amendment to the  
44 municipality's land development ordinances that is adopted to  
45 further the municipality's petition of plan conformance.

46 x. <sup>2</sup> "Housing element" means that portion of a municipality's  
47 master plan consisting of reports, statements, proposals, maps,  
48 diagrams, and text designed to meet the municipality's fair share of



1 its region's present and prospective housing needs, particularly with  
 2 regard to low- and moderate-income housing, and which shall  
 3 contain the municipal present and prospective obligation for  
 4 affordable housing, determined pursuant to subsection f. of section  
 5 3 of P.L. , c. (C. ) (pending before the Legislature as this  
 6 bill).

7 <sup>2</sup>**[w.]** y.<sup>2</sup> "Program" means the Affordable Housing Dispute  
 8 Resolution Program, established pursuant to section 5 of P.L. ,  
 9 c. (C. ) (pending before the Legislature as this bill).

10 <sup>2</sup>**[x.]** z. "State Development and Redevelopment Plan" or "State  
 11 Plan" means the plan prepared pursuant to sections 1 through 12 of  
 12 the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.),  
 13 designed to represent a balance of development and conservation  
 14 objectives best suited to meet the needs of the State, and for the  
 15 purpose of coordinating planning activities and establishing  
 16 Statewide planning objectives in the areas of land use, housing,  
 17 economic development, transportation, natural resource  
 18 conservation, agriculture and farmland retention, recreation, urban  
 19 and suburban redevelopment, historic preservation, public facilities  
 20 and services, and intergovernmental coordination pursuant to  
 21 subsection f. of section 5 of P.L.1985,c.398 (C.52:18A-200).

22 aa.<sup>2</sup> "Transitional housing" means temporary housing that:

23 (1) includes, but is not limited to, single-room occupancy  
 24 housing or shared living and supportive living arrangements;

25 (2) provides access to on-site or off-site supportive services for  
 26 very low-income households who have recently been homeless or  
 27 lack stable housing;

28 (3) is licensed by the department; and

29 (4) allows households to remain for a minimum of six months.

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

31  
 32 3. (New section) a. The Council on Affordable Housing,  
 33 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-  
 34 301 et al.), is abolished. Each municipality shall determine its  
 35 municipal present and prospective obligations in accordance with  
 36 the formulas established in sections 6 and 7 of P.L. ,  
 37 c. (C. and C. ) (pending before the Legislature as this  
 38 bill) and may take into consideration the calculations in the report  
 39 published by the department in accordance with this section.

40 b. Following the expiration of the third round of affordable  
 41 housing obligations on July 1, 2025, a municipality shall have  
 42 immunity from <sup>2</sup>**[a builder's remedy]** exclusionary zoning  
 43 litigation<sup>2</sup> if the municipality complies with the deadlines  
 44 established in P.L. , c. (C. ) (pending before the Legislature  
 45 as this bill) for both determining present and prospective  
 46 obligations, and for adopting a housing element and fair share plan  
 47 to meet those obligations.

1       <sup>2</sup>(1) Immunity from exclusionary zoning litigation shall not limit  
2       the ability of an interested party to challenge a municipality for  
3       failure to comply with the terms of its compliance certification.  
4       However, a municipality's actions to comply with the terms of its  
5       compliance certification shall retain a presumption of validity if  
6       challenged for an alleged failure described in this paragraph.

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

16      c. Prior to the beginning of each new 10-year round of housing  
17      obligations beginning with the fourth round on July 1, 2025, the  
18      Department of Community Affairs shall conduct a calculation of  
19      regional need and municipal present and prospective obligations in  
20      accordance with the formulas established in sections 6 and 7 of  
21      P.L. , c. (C. and C. ) (pending before the Legislature as  
22      this bill).

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

1 department pursuant to this subsection in determining its present  
2 and prospective obligations.

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

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

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

1 challenged by an interested party on or before February 28, 2025.  
2 <sup>2</sup>The municipality's determination of its fair share obligation shall  
3 have a presumption of validity, if established in accordance with  
4 sections 6 and 7 of P.L. , c. (C. and C. ) (pending  
5 before the Legislature as this bill), in any challenge initiated  
6 through the program.<sup>2</sup> An interested party may file a challenge  
7 with the program, after adoption of the binding resolution and prior  
8 to March 1, 2025, alleging that the municipality's determination of  
9 its present and prospective obligation does not comply with the  
10 requirements of sections 6 and 7 of P.L. ,  
11 c. (C. and C. ) (pending before the Legislature as this  
12 bill). For the fifth round, and each subsequent new round of  
13 housing obligations, the deadlines established in this subparagraph  
14 shall be on the last day of January, the last day of February, and the  
15 first day of March, respectively, of the year of the start of each new  
16 round.

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

1 beginning and concurrently posted on the program's Internet  
2 website. The Administrative Director of the Courts shall establish  
3 procedures for any further appellate review of such determinations,  
4 and may establish an expedited process for consolidated review of  
5 any such challenges by the Supreme Court, provided that any party  
6 seeking appellate review shall not change the deadlines established  
7 for municipal filing of a housing element and fair share plan, and  
8 implementing ordinances.

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

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

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

8 (b) Following the filing, in an action, of an adopted housing  
9 element and fair share plan pursuant to subparagraph (a) of this  
10 paragraph, an interested party may file a response on or before  
11 August 31, 2025 alleging that the municipality's fair share plan and  
12 housing element are not in compliance with the "Fair Housing Act,"  
13 P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel doctrine.  
14 Such allegation shall not include a claim that a site on real property  
15 proposed by the interested party is a better site than a site in the  
16 plan, but rather shall be based on whether the housing element and  
17 fair share plan as proposed is compliant with the "Fair Housing  
18 Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel  
19 doctrine. To resolve a challenge, the program shall apply an  
20 objective assessment standard to determine whether or not the  
21 municipality's housing element and fair share plan is compliant  
22 with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.)  
23 and the Mount Laurel doctrine. Any interested party that files a  
24 challenge shall specify with particularity which sites or elements of  
25 the municipal fair share plan do not comply with the "Fair Housing  
26 Act," P.L.1985, c.222 (C.52:27D-301 et al.) or the Mount Laurel  
27 doctrine, and the basis for alleging such non-compliance. The  
28 program shall establish procedures to summarily dismiss any  
29 objection or challenge that does not meet these minimum standards.  
30 For the purpose of efficiency, the program shall, in its own  
31 discretion, permit multiple challenges to the same municipal  
32 housing element and fair share plan to be consolidated. If a  
33 municipality's fair share plan and housing element is not challenged  
34 on or before August 31, 2025, then the program shall <sup>2</sup>apply an  
35 objective standard to conduct a limited<sup>2</sup> review <sup>2</sup>of<sup>2</sup> the fair share  
36 plan and housing element for consistency and to determine whether  
37 it <sup>2</sup>enables the municipality to satisfy the fair share obligation,  
38 applies compliant mechanisms, meets the threshold requirements  
39 for rental and family units, does not exceed limits on other unit or  
40 category types, and<sup>2</sup> is compliant with the "Fair Housing Act,"  
41 P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount Laurel  
42 doctrine <sup>2</sup>["], and"] . The program shall<sup>2</sup> issue a compliance  
43 certification unless these objective standards are not met. The  
44 program shall facilitate communication between the municipality  
45 and any interested parties for a challenge, and provide the  
46 municipality until December 31, 2025 to commit to revising its fair  
47 share plan and housing element in compliance with the changes  
48 requested in the challenge, or provide an explanation as to why it

1 will not make all of the requested changes, or both. Upon  
2 resolution of a challenge, the program shall issue compliance  
3 certification, conditioned on the municipality's commitment, as  
4 necessary, to revise its fair share plan and housing element in  
5 accordance with the resolution of the challenge. The program may  
6 also terminate immunity if it finds that the municipality is not  
7 determined to come into constitutional compliance at any point in  
8 the process. If by December 31, 2025, the municipality and any  
9 interested party that filed a response have resolved the issues raised  
10 in the response through agreement or withdrawal of the filing, then  
11 the program shall review the fair share plan and housing element for  
12 consistency and to determine whether it is compliant with the "Fair  
13 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount  
14 Laurel doctrine, and issue a compliance certification unless these  
15 objective standards are not met. For the fifth round, and each  
16 subsequent new round of housing obligations, the deadline  
17 established in this subparagraph for an interested party to file a  
18 challenge shall be August 31, and for the municipality to revise its  
19 housing element and fair share plan in response, shall be December  
20 31, of the year of the beginning of the new round.

21 (c) For the fourth round of affordable housing obligations, the  
22 implementing ordinances and resolutions, proposed pursuant to  
23 subparagraph (a) of this paragraph, and incorporating any changes  
24 from the program, shall be adopted on or before March 15, 2026.  
25 For the fifth round, and each subsequent new round of housing  
26 obligations, the deadline established in this subparagraph for the  
27 implementing ordinances and resolutions shall be on March 15 of  
28 the year following the beginning of the new round. After adoption  
29 of the implementing ordinances and resolutions by the municipality,  
30 the municipality shall immediately file the ordinances and  
31 resolutions with the program through the program's Internet  
32 website. Failure to meet the March 15 deadline shall result in the  
33 municipality losing immunity from <sup>2</sup>**builder's remedy**  
34 exclusionary zoning<sup>2</sup> litigation.

35 (d) The program may permit a municipality that still has a  
36 remaining dispute by interested parties to retain immunity from  
37 <sup>2</sup>**builder's remedy** exclusionary zoning<sup>2</sup> litigation into the year  
38 following the year in which a new round begins if the program, or  
39 county level housing judge, determines that the municipality has  
40 been unable to resolve the issues disputed despite being determined  
41 to come into constitutional compliance. The Administrative  
42 Director of the Courts shall develop procedures to enable a county  
43 level housing judge to resolve this dispute over the issuance of  
44 compliance certification through a summary proceeding in Superior  
45 Court following the year in which the new round begins. A judge  
46 shall be permitted to serve as a county level housing judge for more  
47 than one county in the same vicinage. The pendency of such a  
48 dispute shall not stay the deadline for adoption of implementing



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

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

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

28 (b) A municipality that has not adopted and published a binding  
29 resolution pursuant to paragraph (1) of this subsection or that has  
30 not adopted and filed a housing element and fair share plan pursuant  
31 to paragraph (2) of this subsection may seek compliance  
32 certification by filing an action pursuant to section 13 of P.L.1985,  
33 c.222 (C.52:27D-313), provided that any <sup>2</sup>**["builder's remedy"]**  
34 exclusionary zoning<sup>2</sup> litigation filed by a plaintiff against such a  
35 municipality prior to such time may proceed notwithstanding such  
36 filing. In a municipality that has adopted and published a binding  
37 resolution pursuant to paragraph (1) of this subsection and has  
38 adopted and filed a housing element and fair share plan pursuant to  
39 paragraph (2) of this subsection, a court shall not <sup>2</sup>**["grant a builder's**  
40 **remedy to a plaintiff in"]** consider<sup>2</sup> exclusionary zoning litigation  
41 during the timeframe after the timely submission of a binding  
42 resolution or fair share plan and housing element of a municipality,  
43 or both, and before a challenge is submitted, or during the  
44 timeframe of a challenge that is pending resolution with the  
45 program pursuant to this subsection. A court may <sup>2</sup>**["grant a**  
46 **builder's remedy to a plaintiff in"]** consider<sup>2</sup> exclusionary zoning  
47 litigation after such timeframe upon a finding that the municipality:

1 (i) is determined to be constitutionally noncompliant with its  
 2 responsibilities pursuant to the "Fair Housing Act," P.L.1985, c.222  
 3 (C.52:27D-301 et al.) or is participating in the program in bad faith;  
 4 (ii) has failed to meet the deadlines established pursuant to P.L. ,  
 5 c. (C. ) (pending before the Legislature as this bill); or (iii)  
 6 has, after receiving compliance certification, failed to comply with  
 7 the terms of that certification by not actually allowing for the  
 8 development of the affordable housing as provided for in its fair  
 9 share plan and housing element through actions, omissions, or both,  
 10 of a municipality or its subordinate boards.

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

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

19 (e) A municipality shall not be deemed out of compliance with  
 20 the deadlines of P.L. , c. (C. ) (pending before the  
 21 Legislature as this bill), or lose immunity from <sup>2</sup>**builder's remedy**  
 22 exclusionary zoning<sup>2</sup> litigation, due to a failure by the program to  
 23 promptly maintain and update its Internet website, or other  
 24 operational failure of the program.

25 <sup>2</sup>g. A compliance certification, issued pursuant to P.L. ,  
 26 c. (C. ) (pending before the Legislature as this bill), shall be  
 27 accompanied by a written report that shall set forth the basis of the  
 28 issuance of the certification, and shall be in a format to be  
 29 developed and approved by the Administrative Director of the  
 30 Courts.<sup>2</sup>

31  
 32 4. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to  
 33 read as follows:

34 13. a. **[A]** If a municipality [which] has [filed a housing  
 35 element may, at any time during a two-year period following the  
 36 filing of the housing element, petition the council for a substantive  
 37 certification of its element and ordinances or] adopted a housing  
 38 element and fair share plan pursuant to section 3 of P.L. ,  
 39 c. (C. ) (pending before the Legislature as this bill), but has  
 40 failed to satisfy the June 30 deadline established pursuant to  
 41 paragraph (2) of subsection f. of section 3 of P.L. , c. (C. )  
 42 (pending before the Legislature as this bill), for any round of  
 43 affordable housing obligations, the municipality may request and be  
 44 provided with a grace period pursuant to paragraph (3) of  
 45 subsection f. of section 3 of P.L. , c. (C. ) (pending before  
 46 the Legislature as this bill), if authorized by the program or county  
 47 level housing judge, as determined by the rules of court. If a

1 municipality that has not satisfied this June 30 deadline is not  
2 provided with a grace period, the municipality may institute an  
3 action for declaratory judgment granting it repose in the Superior  
4 Court **】, but in no event shall a grant of substantive certification**  
5 extend beyond a 10-year period starting on the date the municipality  
6 files its housing element with the council**】** for the 10-year period  
7 constituting the current round of fair share obligations. The  
8 municipality shall publish notice of its **【petition】** filing of a  
9 declaratory judgment action in a newspaper of general circulation  
10 within the municipality and county and shall make available to the  
11 public information on the element and ordinances by submitting  
12 such information to the program to be published on the Internet  
13 website of the program in accordance with **【such procedures as the**  
14 council shall establish. The council shall also establish a procedure  
15 for providing public notice of each petition which it receives**】**  
16 section 3 of P.L. , c. (C. ) (pending before the Legislature  
17 as this bill).

18 b. **【Notwithstanding the provisions of subsection a. of this**  
19 section, a municipality which filed a housing element prior to the  
20 effective date of P.L.1990, c.121, shall be permitted to petition for  
21 substantive certification at any time within two years following that  
22 filing, or within one year following the effective date of P.L.1990,  
23 c.121, whichever shall result in permitting the municipality the  
24 longer period of time within which to petition.**】** (Deleted by  
25 amendment, P.L. , c. (pending before the Legislature as this bill)

26 **【The Council shall establish procedures for】** c. (1) A  
27 municipality or other interested party may file an action through the  
28 program seeking a realistic opportunity review **【at the midpoint of**  
29 the certification period and shall provide for notice to the public】 at  
30 the midpoint of the certification period and shall provide for notice  
31 to the public, including a realistic opportunity review of any  
32 inclusionary development site in the housing element and fair share  
33 plan that has not received preliminary site plan approval prior to the  
34 midpoint of the 10-year round. If such an action is initiated by a  
35 municipality, the municipality <sup>2</sup>**【shall】** may<sup>2</sup> propose one or more  
36 alternative sites with an accompanying development plan or plans  
37 that provide a realistic opportunity for the same number of  
38 affordable units and is otherwise in compliance with the "Fair  
39 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the Mount  
40 Laurel doctrine, provided that if the facts demonstrate that the  
41 municipality or its subordinate boards have prevented the site from  
42 receiving site plan approval, then the program shall reject the  
43 municipality's challenge.

44 (2) Any party may file a request for information from the  
45 program regarding the progress of development at any inclusionary  
46 development site in the housing element and fair share plan of a  
47 municipality, or at any alternative site proposed by the

1 municipality. The program may respond to a request independently  
2 or in coordination with the department.

3 (cf: P.L.2001, c.435, s.5)

4  
5 5. (New section) a. There is established an Affordable Housing  
6 Dispute Resolution Program that shall have the purpose of  
7 efficiently resolving disputes involving the "Fair Housing Act,"  
8 P.L.1985, c.222 (C.52:27D-301 et al.), to consist of an odd number  
9 of members, of at least three and no more than seven members who  
10 shall lead the administration of the program. The <sup>1</sup>【Chief Justice of  
11 the Supreme Court】 Administrative Director of the Courts<sup>1</sup> shall  
12 update the assignment of designated Mount Laurel judges to  
13 indicate which current or retired and on recall judges of the  
14 Superior Court shall serve as members, within <sup>1</sup>【40】 60<sup>1</sup> days  
15 following the effective date of P.L. , c. (C. ) (pending  
16 before the Legislature as this bill). The <sup>1</sup>【Chief Justice of the  
17 Supreme Court】 Administrative Director of the Courts<sup>1</sup> may  
18 appoint other qualified experts as members if sufficient current and  
19 retired judges are unavailable. The <sup>1</sup>【Chief Justice of the Supreme  
20 Court】 Administrative Director of the Courts<sup>1</sup> shall take into  
21 consideration in making such appointments experience in the  
22 employment of alternative dispute resolution methods and in  
23 relevant subject matter.

24 b. The <sup>1</sup>【Chief Justice of the Supreme Court】 Administrative  
25 Director of the Courts<sup>1</sup> shall designate a member to serve as chair.  
26 The <sup>1</sup>【Chief Justice of the Supreme Court】 Administrative Director  
27 of the Courts<sup>1</sup> shall make new appointments as needs arise for new  
28 appointments.

29 c. The program, in its discretion and in accordance with Rules of  
30 Court, may consult or employ the services of one or more special  
31 masters or staff to assist it in rendering determinations, resolving  
32 disputes, and facilitating communication as required by  
33 subparagraph (b) of paragraph (2) of subsection f. of section 3 of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill).  
35 In addition, the program may incorporate any existing or newly  
36 established court mediation or alternative dispute resolution process  
37 to assist the program in resolving disputes and facilitating  
38 communication among municipalities and interested parties.

39 d. The Administrative Director of the Courts shall establish a  
40 filing system via an Internet website in which the public is able to  
41 access, without cost, filings made pursuant to P.L. , c. (C. )  
42 (pending before the Legislature as this bill) and such other related  
43 filings as the Administrative Director of the Courts may include on  
44 the filing system.

45 e. The Administrative Director of the Courts may assign  
46 additional responsibilities to the program for resolving disputes

1 arising out of or related to the "Fair Housing Act," P.L.1985, c.222  
2 (C.52:27D-301 et al.).

3 f. The Administrative Director of the Courts shall establish  
4 procedures for the purpose of efficiently resolving disputes  
5 involving the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
6 et al.), for circumstances in which the program is unable to address  
7 the dispute within the time limitations established pursuant to  
8 section 3 of P.L. , c. (C. ) (pending before the Legislature  
9 as this bill). As a part of the procedures established pursuant to this  
10 section, in order to facilitate an appropriate level of localized  
11 control of affordable housing decisions, for each vicinage, the Chief  
12 Justice of the Supreme Court shall designate a Superior Court judge  
13 who sits within the vicinage, or a retired judge who, during the  
14 judge's tenure as a judge, served within the vicinage, to serve as  
15 county level housing judge to resolve disputes over the compliance,  
16 of fair share plans and housing elements of municipalities within  
17 their designated county or counties, with the "Fair Housing Act,"  
18 P.L.1985, c.222 (C.52:27D-301 et al.), as well as disputes that arise  
19 with respect to ongoing compliance or noncompliance with  
20 obligations created by fair share plans, housing elements, and the  
21 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). A  
22 judge shall be permitted to serve as a county level housing judge for  
23 more than one county in the same vicinage.

24 g. The Administrative Director of the Courts shall promulgate,  
25 maintain, and apply a Code of Ethics that is modeled upon the Code  
26 of Judicial Conduct of the American Bar Association, as amended  
27 and adopted by the Supreme Court of New Jersey, and may  
28 establish additional, more restrictive ethical standards in order to  
29 meet the specific needs of the program, and of county level housing  
30 judges.

31  
32 6. (New section) a. Municipal present need for each 10-year  
33 round of affordable housing obligations shall be determined by  
34 estimating the deficient housing units occupied by low- and  
35 moderate-income households in the region, following a  
36 methodology similar to the methodology used to determine third  
37 round municipal present need, through the use of most recent  
38 datasets made available through the federal decennial census and  
39 the American Community Survey <sup>2</sup>, including the Comprehensive  
40 Housing Affordability Strategy dataset thereof<sup>2</sup>.

41 b. For the purpose of determining regional need for the 10-year  
42 round of low- and moderate-income housing obligations, running  
43 from July 1, 2025 through June 30, 2035, and each 10-year round  
44 thereafter:

45 (1) The regions of the State shall be comprised as follows:

46 (a) Region 1 shall consist of the counties of Bergen, Hudson,  
47 Passaic, and Sussex;

1 (b) Region 2 shall consist of the counties of Essex, Morris,  
2 Union, and Warren;

3 (c) Region 3 shall consist of the counties of Hunterdon,  
4 Middlesex, and Somerset;

5 (d) Region 4 shall consist of the counties of Mercer, Monmouth,  
6 and Ocean;

7 (e) Region 5 shall consist of the counties of Burlington,  
8 Camden, and Gloucester; and

9 (f) Region 6 shall consist of the counties of Atlantic, Cape May,  
10 Cumberland, and Salem.

11 (2) Regional prospective need for a 10-year round of low- and  
12 moderate-income housing obligations shall be determined through  
13 the calculation provided in this subsection. Projected household  
14 change for a 10-year round in a region shall be estimated by  
15 establishing the household change experienced in the region  
16 between the most recent federal decennial census, and the second-  
17 most recent federal decennial census. This household change, if  
18 positive, shall be divided by 2.5 to estimate the number of low- and  
19 moderate-income homes needed to address low- and moderate-  
20 income household change in the region, and to determine the  
21 regional prospective need for a 10-year round of low- and  
22 moderate-income housing obligations. If household change is zero  
23 or negative, the number of low- and moderate-income homes  
24 needed to address low- and moderate-income household change in  
25 the region and the regional prospective need shall be zero.

26

27 7. (New section) a. The present and prospective fair share  
28 obligation for low- and moderate-income housing for each  
29 municipality in the State shall be determined as described in this  
30 section. In addition, the March 8, 2018 unpublished decision of the  
31 Superior Court, Law Division, Mercer County, In re Application of  
32 Municipality of Princeton shall be referenced as to datasets and  
33 methodologies that are not explicitly addressed by this section.  
34 These determinations of municipal present and prospective need  
35 shall be based on a determination of the present and prospective  
36 regional need for low- and moderate-income housing, established  
37 pursuant to section 6 of P.L. , c. (C. ) (pending before the  
38 Legislature as this bill). These calculations of municipal present  
39 and prospective need shall use necessary datasets that are updated  
40 to the greatest extent practicable.

41 b. A municipality's present need obligation shall be determined  
42 by estimating the existing deficient housing units currently  
43 occupied by low- and moderate-income households within the  
44 municipality, following a methodology comparable to the  
45 methodology used to determine third round present need, through  
46 the use of datasets made available through the federal decennial  
47 census and the American Community Survey <sup>2</sup>, including the  
48 Comprehensive Housing Affordability Strategy dataset thereof<sup>2</sup>.

1 c. A municipality's prospective fair share obligation of the  
2 regional prospective need for the upcoming 10-year round shall be  
3 determined in accordance with this subsection:

4 (1) If a municipality is a qualified urban aid municipality, the  
5 municipality shall be exempt from responsibility for any fair share  
6 prospective need obligation for the upcoming 10-year round. For  
7 the purposes of this section, a municipality is a qualified urban aid  
8 municipality if the municipality, as of July 1 of the year prior to the  
9 beginning of a new round, is designated by the department, pursuant  
10 to P.L.1978, c.14 (C.52:27D-178 et seq.), to receive State aid, and  
11 the municipality meets at least one of the following criteria:

12 (a) The ratio of substandard existing deficient housing units  
13 currently occupied by low- and moderate-income households within  
14 the municipality, compared to all existing housing in the  
15 municipality, is greater than the equivalent ratio in the region;

16 (b) The municipality has a population density greater than  
17 10,000 persons per square mile of land area; or

18 (c) The municipality has a population density of more than  
19 6,000, but less than 10,000 persons per square mile of land area,  
20 and less than five percent vacant parcels not used as farmland, as  
21 measured by the average of:

22 (i) The number of vacant land parcels in the municipality as a  
23 percentage of the total number of parcels in the municipality; and

24 (ii) The valuation of vacant land in the municipality as a  
25 percentage of total valuations in the municipality.

26 (2) A municipality's equalized nonresidential valuation factor  
27 shall be determined. To determine this factor, the changes in  
28 nonresidential property valuations in the municipality, since the  
29 beginning of the round preceding the round being calculated, shall  
30 be calculated using data published by the Division of Local  
31 Government Services in the department. <sup>2</sup>For the purposes of this  
32 paragraph, the beginning of the round of affordable housing  
33 obligations preceding the fourth round shall be the beginning of the  
34 gap period in 1999.<sup>2</sup> The change in the municipality's

35 nonresidential valuations shall be divided by the regional total  
36 change in nonresidential valuations to determine the municipality's  
37 share of the regional change as the equalized nonresidential  
38 valuation factor.

39 (3) A municipality's income capacity factor shall be determined.  
40 This factor shall be determined by calculating the average of the  
41 following measures:

42 (a) The municipal share of the regional sum of the differences  
43 between the median municipal household income, according to the  
44 most recent American Community Survey Five-Year Estimates, and  
45 an income floor of \$100 below the lowest median household  
46 income in the region; and

47 (b) The municipal share of the regional sum of the differences  
48 between the median municipal household incomes and an income

1 floor of \$100 below the lowest median household income in the  
2 region, weighted by the number of the households in the  
3 municipality.

4 (4) A municipality's land capacity factor shall be determined.  
5 This factor shall be determined by estimating the area of  
6 developable <sup>2</sup>~~and redevelopable~~<sup>2</sup> land in the municipality's  
7 boundaries, and regional boundaries, that may accommodate  
8 development through the use of the "land use / land cover data"  
9 most recently published by the Department of Environmental  
10 Protection, <sup>2</sup>data from the American Community Survey and  
11 Comprehensive Housing Affordability Strategy dataset thereof,  
12 MOD-IV Property Tax List data from the Division of Taxation in  
13 the Department of the Treasury, and construction permit data from  
14 the Department of Community Affairs,<sup>2</sup> and weighing such land  
15 based on the planning area type in which such land is located. After  
16 the weighing factors are applied, the sum of the total developable  
17 <sup>2</sup>~~and redevelopable~~<sup>2</sup> land area that may accommodate  
18 development in the municipality, and in the region shall be  
19 determined. The municipality's share of its region's developable  
20 <sup>2</sup>~~and redevelopable~~<sup>2</sup> land shall be its land capacity factor.  
21 Developable <sup>2</sup>~~and redevelopable~~<sup>2</sup> land that may accommodate  
22 development shall be weighted based on the planning area type in  
23 which such land is located, as designated pursuant to P.L.1985,  
24 c.398 (C.52:18A-196 et seq.), P.L.1979, c.111 (C.13:18A-1 et seq.),  
25 or P.L.2004, c.120 (C.13:20-1 et seq.), as follows:

26 (a) Planning Area 1 (Metropolitan) shall have a weighting factor  
27 of 1.0;

28 (b) Planning Area 2 (Suburban) shall have a weighting factor of  
29 1.0;

30 (c) Planning Area 3 (Fringe) shall have a weighting factor of  
31 0.5;

32 (d) Planning Area 4 (Rural) shall have a weighting factor of 0.0;

33 (e) Planning Area 5 (Environmentally Sensitive) shall have a  
34 weighting factor of 0.0;

35 (f) Centers in Planning Areas 1 and 2 shall have a weighting  
36 factor of 1.0;

37 (g) Centers in Planning Areas 3, 4, and 5 shall have a weighting  
38 factor of 0.5;

39 (h) Pinelands Regional Growth Area shall have a weighting  
40 factor of 0.5;

41 (i) Pinelands Town shall have a weighting factor of 0.5;

42 (j) All other Pinelands shall have a weighting factor of 0.0;

43 (k) Meadowlands shall have a weighting factor of 1.0;

44 (l) Meadowlands Center shall have a weighting factor of 1.0;

45 (m) Highlands Preservation Area shall have a weighting factor  
46 of 0.0;



(n) Highlands Planning Area Existing Community Zone <sup>2</sup>【, opted in municipality by May 1, 2022】 and Highlands Designated Center in a Highlands-conforming municipality, as determined by the Highlands Water Protection and Planning Council pursuant to the list provided to the department pursuant to subsection d. of section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill),<sup>2</sup> shall have a weighting factor of 1.0;

(o) Highlands Planning Area, State-designated sewer service area, <sup>2</sup>【municipality not opted in by May 1, 2022】 Highlands municipality that is not a Highlands-conforming municipality as determined by the Highlands Water Protection and Planning Council pursuant to the list provided to the department pursuant to subsection d. of section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill)<sup>2</sup>, shall have a weighting factor of 1.0; and

(p) All other Highlands Planning Areas shall have a weighting factor of 0.0.

(5) The equalized nonresidential valuation factor, income capacity factor, and land capacity factor, determined in paragraphs (2), (3), and (4) of this subsection, shall be averaged to yield the municipality's average allocation factor for distributing gross regional prospective need to the municipality. The regional prospective need shall then be multiplied by the municipality's average allocation factor to determine the municipality's gross prospective need for the 10-year round.

<sup>2</sup>【(6) Secondary sources of supply and demand shall be adjusted for by first calculating demolitions of low- and moderate-income housing, and housing creation through low- and moderate-income residential conversions. A municipality's share of low- and moderate-income conversions shall then be subtracted from the sum of each municipality's allocated share of gross prospective need and demolitions of low- and moderate-income housing.】<sup>2</sup>

8. Section 4 of P.L.1995, c.244 (C.2A:50-56) is amended to read as follows:

4. a. Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give a notice of intention, which shall include a notice of the right to cure the default as provided in section 5 of P.L.1995, c.244 (C.2A:50-57), at least 30 days, but not more than 180 days, in advance of such action as provided in this section, to the residential mortgage debtor, and, if the mortgage is secured by a residence for which a restriction on affordability was recorded in the county in

1    which the property is located, the clerk of the municipality in which  
2    the subject property is located, the municipal housing liaison, if one  
3    has been appointed by the municipality [pursuant to the regulations  
4    of the Council on Affordable Housing, and the Commissioner of  
5    Community Affairs]. For the purposes of this section, "restriction  
6    on affordability" means any conditions recorded with a mortgage or  
7    a deed which would limit the sale of such property to income  
8    qualified households pursuant to the rules adopted to effectuate the  
9    "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

10    b. Notice of intention to take action as specified in subsection  
11    a. of this section shall be in writing, provided to the Department of  
12    Community Affairs in accordance with subsection a. of section 2 of  
13    P.L.2019, c.134 (C.46:10B-49.2), sent to the debtor by registered or  
14    certified mail, return receipt requested, at the debtor's last known  
15    address, and, if different, to the address of the property which is the  
16    subject of the residential mortgage. The notice is deemed to have  
17    been effectuated on the date the notice is delivered in person or  
18    mailed to the party.

19    c. The written notice shall clearly and conspicuously state in a  
20    manner calculated to make the debtor aware of the situation:

21       (1) the particular obligation or real estate security interest;

22       (2) the nature of the default claimed;

23       (3) the right of the debtor to cure the default as provided in  
24    section 5 of P.L.1995, c.244 (C.2A:50-57);

25       (4) what performance, including what sum of money, if any, and  
26    interest, shall be tendered to cure the default as of the date specified  
27    under paragraph (5) of this subsection c.;

28       (5) the date by which the debtor shall cure the default to avoid  
29    initiation of foreclosure proceedings, which date shall not be less  
30    than 30 days after the date the notice is effective, and the name and  
31    address and phone number of a person to whom the payment or  
32    tender shall be made;

33       (6) that if the debtor does not cure the default by the date  
34    specified under paragraph (5) of this subsection c., the lender may  
35    take steps to terminate the debtor's ownership in the property by  
36    commencing a foreclosure suit in a court of competent jurisdiction;

37       (7) that if the lender takes the steps indicated pursuant to  
38    paragraph (6) of this subsection c., a debtor shall still have the right  
39    to cure the default pursuant to section 5 of P.L.1995, c.244  
40    (C.2A:50-57), but that the debtor shall be responsible for the  
41    lender's court costs and attorneys' fees in an amount not to exceed  
42    that amount permitted pursuant to the Rules Governing the Courts  
43    of the State of New Jersey;

44       (8) the right, if any, of the debtor to transfer the real estate to  
45    another person subject to the security interest and that the transferee  
46    may have the right to cure the default as provided in P.L.1995,  
47    c.244 (C.2A:50-53 et seq.), subject to the mortgage documents;

1 (9) that the debtor is advised to seek counsel from an attorney of  
2 the debtor's own choosing concerning the debtor's residential  
3 mortgage default situation, and that, if the debtor is unable to obtain  
4 an attorney, the debtor may communicate with the New Jersey Bar  
5 Association or Lawyer Referral Service in the county in which the  
6 residential property securing the mortgage loan is located; and that,  
7 if the debtor is unable to afford an attorney, the debtor may  
8 communicate with the Legal Services Office in the county in which  
9 the property is located;

10 (10) the possible availability of financial assistance for curing a  
11 default from programs operated by the State or federal government  
12 or nonprofit organizations, if any, as identified by the  
13 Commissioner of Banking and Insurance and, if the property is  
14 subject to restrictions on affordability, the address and phone  
15 number of the municipal affordable housing liaison and of the New  
16 Jersey Housing and Mortgage Finance Agency. This requirement  
17 shall be satisfied by attaching a list of such programs promulgated  
18 by the commissioner;

19 (11) the name and address of the lender and the telephone  
20 number of a representative of the lender whom the debtor may  
21 contact if the debtor disagrees with the lender's assertion that a  
22 default has occurred or the correctness of the mortgage lender's  
23 calculation of the amount required to cure the default;

24 (12) that if the lender takes the steps indicated pursuant to  
25 paragraph (6) of this subsection, the debtor has the option to  
26 participate in the Foreclosure Mediation Program following the  
27 filing of a mortgage foreclosure complaint by initiating mediation  
28 pursuant to paragraph (2) of subsection a. of section 4 of P.L.2019,  
29 c.64 (C.2A:50-77). Notice of the option to participate in the  
30 Foreclosure Mediation Program shall adhere to the requirements of  
31 section 3 of P.L.2019, c.64 (C.2A:50-76) and any court rules,  
32 procedures, or guidelines adopted by the Supreme Court;

33 (13) that the debtor is entitled to housing counseling, at no cost  
34 to the debtor, through the Foreclosure Mediation Program  
35 established by the New Jersey Judiciary, including information on  
36 how to contact the program;

37 (14) that if the property which is the subject of the mortgage has  
38 more than one dwelling unit but less than five, one of which is  
39 occupied by the debtor or a member of the debtor's immediate  
40 family as the debtor's or member's residence at the time the loan is  
41 originated, and is not properly maintained and meets the necessary  
42 conditions for receivership eligibility, established pursuant to  
43 section 4 of the "Multifamily Housing Preservation and  
44 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
45 mortgage lender shall file an order to show cause to appoint a  
46 receiver; and

47 (15) that the lender is either licensed in accordance with the  
48 "New Jersey Residential Mortgage Lending Act," sections 1

1 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89)  
2 or exempt from licensure under the act in accordance with  
3 applicable law.

4 d. The notice of intention to foreclose required to be provided  
5 pursuant to this section shall not be required if the debtor has  
6 voluntarily surrendered the property which is the subject of the  
7 residential mortgage.

8 e. The duty of the lender under this section to serve notice of  
9 intention to foreclose is independent of any other duty to give  
10 notice under the common law, principles of equity, State or federal  
11 statute, or rule of court and of any other right or remedy the debtor  
12 may have as a result of the failure to give such notice.

13 f. Compliance with this section and subsection a. of section 2  
14 of P.L.2019, c.134 (C.46:10B-49.2) shall be set forth in the  
15 pleadings of any legal action referred to in this section. If the  
16 plaintiff in any complaint seeking foreclosure of a residential  
17 mortgage alleges that the property subject to the residential  
18 mortgage has been abandoned or voluntarily surrendered, the  
19 plaintiff shall plead the specific facts upon which this allegation is  
20 based.

21 g. If more than 180 days have elapsed since the date the notice  
22 required pursuant to this section is sent, and any foreclosure or  
23 other legal action to take possession of the residential property  
24 which is the subject of the mortgage has not yet been commenced,  
25 the lender shall send a new written notice at least 30 days, but not  
26 more than 180 days, in advance of that action.

27 h. If the property which is the subject of the notice of intention  
28 to foreclose has more than one dwelling unit but less than five, one  
29 of which is occupied by the debtor or a member of the debtor's  
30 immediate family as the debtor's or member's residence at the time  
31 the loan is originated, and is not properly maintained and meets the  
32 necessary conditions for receivership eligibility, established  
33 pursuant to section 4 of the "Multifamily Housing Preservation and  
34 Receivership Act," P.L.2003, c.295 (C.2A:42-117), the residential  
35 mortgage lender shall file an order to show cause to appoint a  
36 receiver.

37 (cf: P.L.2019, c.134, s.4)

38

39 9. Section 2 of P.L.2005, c.306 (C.5:18-2) is amended to read as  
40 follows:

41 2. The New Jersey Council on Physical Fitness and Sports,  
42 established under P.L.1999, c.265 (C.26:1A-37.5 et seq.) is  
43 authorized to provide grants to assist low-income families in  
44 purchasing the protective eyewear. As used in this section, a "low-  
45 income family" means a family which qualifies for low-income  
46 housing under the standards promulgated by the **【Council on**  
47 **Affordable Housing】** New Jersey Housing and Mortgage Finance

1 Agency pursuant to the "Fair Housing Act," P.L.1985, c.222  
2 (C.52:27D-301 et al.).  
3 (cf: P.L.2005, c.306, s.2)  
4

5 10. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to  
6 read as follows:

7 25. a. The **【Council on Affordable Housing shall take into**  
8 **consideration the】** regional master plan **【prior to making any】** shall  
9 be taken into account as part of the determination of obligations  
10 pursuant to the method in section 7 of P.L. , c. (C. )  
11 (pending before the Legislature as this bill) regarding the allocation  
12 of the prospective fair share of the housing need **【in any**  
13 **municipality in the Highlands Region】** under the "Fair Housing  
14 Act," P.L.1985, c.222 (C.52:27D-301 et al.) for **【the】** any fair share  
15 period subsequent to **【1999】** the effective date of  
16 P.L. , c. (C. ) (pending before the Legislature as this bill) if  
17 a municipality is in the Highlands Region.

18 b. Nothing in **【this act】** P.L.2004, c.120 (C.13:20-1 et al.) shall  
19 affect protections provided through a grant of substantive  
20 certification or a judgment of repose granted prior to **【the date of**  
21 **enactment of this act】** August 10, 2004.  
22 (cf: P.L.2004, c.120, s.25)  
23

24 11. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to  
25 read as follows:

26 5. The requirements of this act shall not apply to:

27 a. Depository institutions; but subsidiaries and service  
28 corporations of these institutions shall not be exempt. A depository  
29 institution may register with the department for the purpose of  
30 sponsoring individuals, licensed as mortgage loan originators  
31 subject to subparagraph (b) of paragraph (1) of subsection c. of  
32 section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such  
33 registered entity obtains and maintains bond coverage for mortgage  
34 loan originators consistent with section 13 of P.L.2009, c.53  
35 (C.17:11C-63). A depository institution registered with the  
36 department in accordance with this subsection a. shall otherwise  
37 remain exempt from the licensing requirements of P.L.2009, c.53  
38 (C.17:11C-51 et seq.).

39 b. A registered mortgage loan originator that is registered  
40 under the federal "Secure and Fair Enforcement for Mortgage  
41 Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101  
42 et seq.).

43 c. A licensed attorney who negotiates the terms of a residential  
44 mortgage loan on behalf of a client as an ancillary matter to the  
45 attorney's representation of the client, unless the attorney is  
46 compensated by a residential mortgage lender, residential mortgage  
47 broker, or mortgage loan originator.

1 d. A person licensed as a real estate broker or salesperson  
2 pursuant to R.S.45:15-1 et seq., and not engaged in the business of a  
3 residential mortgage lender or residential mortgage broker. Any  
4 person holding a license under this act as a residential mortgage  
5 lender or broker shall be exempt from the licensing and other  
6 requirements of R.S.45:15-1 et seq. in the performance of those  
7 functions authorized by this act.

8 e. Any employer, other than a residential mortgage lender, who  
9 provides residential mortgage loans to his employees as a benefit of  
10 employment which are at an interest rate which is not in excess of  
11 the usury rate in existence at the time the loan is made, as  
12 established in accordance with the law of this State, and on which  
13 the borrower has not agreed to pay, directly or indirectly, any  
14 charge, cost, expense or any fee whatsoever, other than that interest.

15 f. The State of New Jersey or a municipality, or any agency or  
16 instrumentality thereof, which, in accordance with a housing  
17 element that has previously received substantive certification from  
18 the Council on Affordable Housing, or a judgment of repose or  
19 other court approval, pursuant to the "Fair Housing Act," P.L.1985,  
20 c.222 (C.52:27D-301 et al.), or in fulfillment of a regional  
21 contribution agreement with a municipality that has received a  
22 certification, employs or proposes to employ municipally generated  
23 funds, funds obtained through any State or federal subsidy, or funds  
24 acquired by the municipality under a regional contribution  
25 agreement, to finance the provision of affordable housing by  
26 extending loans or advances, the repayment of which is secured by  
27 a lien, subordinate to any prior lien, upon the property that is to be  
28 rehabilitated.

29 g. Any individual who offers or negotiates terms of a  
30 residential mortgage loan:

- 31 (1) with or on behalf of an immediate family member; or  
32 (2) secured by a dwelling that serves as the individual's  
33 residence.

34 h. Any person who, during a calendar year takes three or fewer  
35 residential mortgage loan applications or offers or negotiates the  
36 terms of three or fewer residential mortgage loans or makes three or  
37 fewer residential mortgage loans related to manufactured housing  
38 structures which are:

- 39 (1) titled by the New Jersey Motor Vehicle Commission;  
40 (2) located in a mobile home park as defined in subsection e. of  
41 section 3 of P.L.1983, c.400 (C.54:4-1.4); and  
42 (3) exempt from taxation as real property pursuant to subsection  
43 b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

44 i. A bona fide not for profit entity and any individuals directly  
45 employed by that entity, so long as the entity maintains its tax  
46 exempt status under Section 501(c)(3) of the Internal Revenue Code  
47 of 1986 and otherwise meets the definition of "bona fide not for  
48 profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as

1 periodically determined by the department in accordance with rules  
2 established by the commissioner.

3 (cf: P.L.2018, c.108, s.3)  
4

5 12. Section 2 of P.L.1991, c.465 (C.39:4-10.2) is amended to  
6 read as follows:

7 2. a. A person who violates a requirement of this act shall be  
8 warned of the violation by the enforcing official. The parent or  
9 legal guardian of that person also may be fined a maximum of \$25  
10 for the person's first offense and a maximum of \$100 for a  
11 subsequent offense if it can be shown that the parent or guardian  
12 failed to exercise reasonable supervision or control over the  
13 person's conduct. Penalties provided in this section for a failure to  
14 wear a helmet may be waived if an offender or his parent or legal  
15 guardian presents suitable proof that an approved helmet was  
16 owned at the time of the violation or has been purchased since the  
17 violation occurred.

18 b. All money collected as fines under subsection a. of this  
19 section and subsection a. of section 2 of P.L.1997, c.411  
20 (C.39:4-10.6) shall be deposited in a nonlapsing revolving fund to  
21 be known as the "Bicycle and Skating Safety Fund." Interest earned  
22 on money deposited in the fund shall accrue to the fund. Money in  
23 the fund shall be utilized by the director to provide educational  
24 programs devoted to bicycle, roller skating and skateboarding  
25 safety. If the director determines that sufficient money is available  
26 in the fund, he also may use, in a manner prescribed by rule and  
27 regulation, the money to assist **[low income]** low-income families  
28 in purchasing approved bicycle helmets. For the purposes of this  
29 subsection, **["low income family"]** "low-income family" means a  
30 family which qualifies for **[low income]** low-income housing under  
31 the standards promulgated by the **[Council on Affordable Housing]**  
32 New Jersey Housing and Mortgage Finance Agency pursuant to the  
33 provisions of P.L.1985, c.222 (C.52:27D-301 et seq.).

34 (cf: P.L.1997, c.411, s.11)  
35

36 13. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to  
37 read as follows:

38 33. The Legislature finds and declares:

39 a. The collection of development fees from builders of  
40 residential and non-residential properties has been authorized by the  
41 court through the powers **[delegated to the Council on Affordable**  
42 **Housing]** established pursuant to the "Fair Housing Act," P.L.1985,  
43 c.222 (C.52:27D-301 et al.). Due to the Legislature's determination  
44 that the role of the Council on Affordable Housing has not  
45 developed in practice as intended, the Legislature further  
46 determines that authority relating to rulemaking on the collection of  
47 residential and non-residential development fees is appropriately

1 delegated to the Department of Community Affairs, given the  
2 department's existing roles related to local government finance and  
3 the funding and financing of affordable housing throughout the  
4 State.

5 b. New Jersey's land resources are becoming more scarce, while  
6 its redevelopment needs are increasing. In order to balance the  
7 needs of developing and redeveloping communities, a reasonable  
8 method of providing for the housing needs of **low and moderate**  
9 **income** low-, moderate-, and middle income middle-income  
10 households, without mandating the inclusion of housing in every  
11 non-residential project, must be established.

12 c. A Statewide non-residential development fee program, which  
13 permits municipalities **under the council's jurisdiction** that have  
14 obtained or are in the process of seeking compliance certification to  
15 retain these fees for use in the municipality will provide a fair and  
16 balanced funding method to address the State's affordable housing  
17 needs, while providing an incentive to all municipalities to **seek**  
18 **substantive** obtain compliance certification **from the council**.

19 d. Whereas, pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),  
20 organizations are directed to invest in the Casino Reinvestment  
21 Development Authority to ensure that the development of housing  
22 for families of **low and moderate income** low- and moderate-  
23 income shall be provided. The Casino Reinvestment Development  
24 Authority **, in consultation with the council,** shall work to  
25 effectuate the purpose and intent of P.L.1985, c.222 (C.52:27D-301  
26 et al.).

27 e. **The "Statewide Non-Residential Development Fee Act,"**  
28 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through  
29 C.40:55D-8.7), prohibits municipalities from imposing their own  
30 fees to fund affordable housing on non-residential development, and  
31 P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this  
32 underlying policy. **Deleted by amendment P.L. , c. (pending**  
33 **before the Legislature as this bill)**

34 f. The negative impact of a State policy that over-relies on a  
35 municipal fee structure and of State programs that require a  
36 municipality to impose fees and charges on developers must be  
37 balanced against any public good expected from such regulation. It  
38 is undisputable that the charging of fees at high levels dissuades  
39 commerce from locating within a State or municipality or locality  
40 and halts non-residential and residential development, and these ill  
41 effects directly increase the overall costs of housing, and could  
42 impede the constitutional obligation to provide for a realistic  
43 opportunity for housing for families at all income levels.  
44 (cf: P.L.2009, c.90, s.36)

45  
46 14. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to  
47 read as follows:



1       34. As used in sections 32 through 38 of P.L.2008, c.46  
2 (C.40:55D-8.1 through C.40:55D-8.7):

3       "Construction" means new construction and additions, but does  
4 not include alterations, reconstruction, renovations, and repairs as  
5 those terms are defined under the State Uniform Construction Code  
6 promulgated pursuant to the "State Uniform Construction Code  
7 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

8       "Commissioner" means the Commissioner of Community  
9 Affairs.

10       **["Council" means the Council on Affordable Housing,**  
11 **established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).]**

12       "Department" means the Department of Community Affairs.

13       "Developer" means the legal or beneficial owner or owners of a  
14 lot or of any land proposed to be included in a proposed  
15 development, including the holder of an option or contract to  
16 purchase, or other person having an enforceable proprietary interest  
17 in such land.

18       "Equalized assessed value" means the assessed value of a  
19 property divided by the current average ratio of assessed to true  
20 value for the municipality in which the property is situated, as  
21 determined in accordance with sections 1, 5, and 6 of P.L.1973,  
22 c.123 (C.54:1-35a through C.54:1-35c).

23       "Mixed use development" means any development which  
24 includes both a non-residential development component and a  
25 residential development component, and shall include developments  
26 for which (1) there is a common developer for both the residential  
27 development component and the non-residential development  
28 component, provided that for purposes of this definition, multiple  
29 persons and entities may be considered a common developer if there  
30 is a contractual relationship among them obligating each entity to  
31 develop at least a portion of the residential or non-residential  
32 development, or both, or otherwise to contribute resources to the  
33 development; and (2) the residential and non-residential  
34 developments are located on the same lot or adjoining lots,  
35 including but not limited to lots separated by a street, a river, or  
36 another geographical feature.

37       "Non-residential development" means: (1) any building or  
38 structure, or portion thereof, including but not limited to any  
39 appurtenant improvements, which is designated to a use group other  
40 than a residential use group according to the State Uniform  
41 Construction Code promulgated to effectuate the "State Uniform  
42 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),  
43 including any subsequent amendments or revisions thereto; (2)  
44 hotels, motels, vacation timeshares, and child-care facilities; and (3)  
45 the entirety of all continuing care facilities within a continuing care  
46 retirement community which is subject to the "Continuing Care  
47 Retirement Community Regulation and Financial Disclosure Act,"  
48 P.L.1986, c.103 (C.52:27D-330 et seq.).

1 "Non-residential development fee" means the fee authorized to  
2 be imposed pursuant to sections 32 through 38 of P.L.2008, c.46  
3 (C.40:55D-8.1 through C.40:55D-8.7).

4 "Relating to the provision of housing" shall be liberally  
5 construed to include the construction, maintenance, or operation of  
6 housing, including but not limited to the provision of services to  
7 such housing and the funding of any of the above.

8 "Spending plan" means a method of allocating funds collected  
9 and to be collected pursuant to an approved municipal development  
10 fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)  
11 for the purpose of meeting the housing needs of low and moderate  
12 income individuals.

13 "Treasurer" means the Treasurer of the State of New Jersey.  
14 (cf: P.L.2008, c.46, s.34)

15  
16 15. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to  
17 read as follows:

18 35. a. Beginning on the effective date of P.L.2008, c.46  
19 (C.52:27D-329.1 et al.), a fee is imposed on all construction  
20 resulting in non-residential development, as follows:

21 (1) A fee equal to two and one-half percent of the equalized  
22 assessed value of the land and improvements, for all new non-  
23 residential construction on an unimproved lot or lots; or

24 (2) A fee equal to two and one-half percent of the increase in  
25 equalized assessed value, of the additions to existing structures to  
26 be used for non-residential purposes.

27 b. All non-residential construction of buildings or structures on  
28 property used by churches, synagogues, mosques, and other houses  
29 of worship, and property used for educational purposes, which is  
30 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the  
31 imposition of a non-residential development fee pursuant to this  
32 section, provided that the property continues to maintain its tax  
33 exempt status under that statute for a period of at least three years  
34 from the date of issuance of the certificate of occupancy. In  
35 addition, the following shall be exempt from the imposition of a  
36 non-residential development fee:

37 (1) parking lots and parking structures, regardless of whether the  
38 parking lot or parking structure is constructed in conjunction with a  
39 non-residential development, such as an office building, or whether  
40 the parking lot is developed as an independent non-residential  
41 development;

42 (2) any non-residential development which is an amenity to be  
43 made available to the public, including, but not limited to,  
44 recreational facilities, community centers, and senior centers, which  
45 are developed in conjunction with or funded by a non-residential  
46 developer;

1 (3) non-residential construction resulting from a relocation of or  
2 an on-site improvement to a nonprofit hospital or a nursing home  
3 facility;

4 (4) projects that are located within a specifically delineated  
5 urban transit hub, as defined pursuant to section 2 of P.L.2007,  
6 c.346 (C.34:1B-208);

7 (5) projects that are located within an eligible municipality, as  
8 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a  
9 majority of the project is located within a one-half mile radius of  
10 the midpoint of a platform area for a light rail system; and

11 (6) projects determined by the New Jersey Transit Corporation  
12 to be consistent with a transit village plan developed by a transit  
13 village designated by the Department of Transportation.

14 A developer of a non-residential development exempted from the  
15 non-residential development fee pursuant to this section shall be  
16 subject to it at such time the basis for the exemption set forth in this  
17 subsection no longer applies, and shall make the payment of the  
18 non-residential development fee, in that event, within three years  
19 after that event or after the issuance of the final certificate of  
20 occupancy of the non-residential development whichever is later.

21 For purposes of this subsection, "recreational facilities and  
22 community center" means any indoor or outdoor buildings, spaces,  
23 structures, or improvements intended for active or passive  
24 recreation, including but not limited to ball fields, meeting halls,  
25 and classrooms, accommodating either organized or informal  
26 activity; and "senior center" means any recreational facility or  
27 community center with activities and services oriented towards  
28 serving senior citizens.

29 If a property which was exempted from the collection of a non-  
30 residential development fee thereafter ceases to be exempt from  
31 property taxation, the owner of the property shall remit the fees  
32 required pursuant to this section within 45 days of the termination  
33 of the property tax exemption. Unpaid non-residential development  
34 fees under these circumstances may be enforceable by the  
35 municipality as a lien against the real property of the owner.

36 c. (1) Unless authorized to pay directly to the municipality in  
37 which the non-residential construction is occurring in accordance  
38 with paragraph (2) of this subsection, developers shall pay non-  
39 residential development fees imposed pursuant to P.L.2008, c.46  
40 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with  
41 subsection g. of this section in a manner and on such forms as  
42 required by the Treasurer, provided that a certified proof concerning  
43 the payment shall be furnished by the Treasurer, to the  
44 municipality.

45 (2) The **【council】** department shall maintain on its Internet  
46 website a list of each municipality that is authorized to use the  
47 development fees collected pursuant to this section and that has a  
48 confirmed status of compliance with the "Fair Housing Act,"

1 P.L.1985, c.222 (C.52:27D-301 et al.) , or is in the process of  
2 seeking compliance certification, which compliance shall include a  
3 spending plan **【authorized by the council】** pursuant to section 8 of  
4 P.L.2008, c.46 (C.52:27D-329.2) for all development fees collected.

5 (3) No later than 90 days following the enactment of P.L. \_\_\_\_\_,  
6 c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill), any  
7 municipality that is or has been authorized to retain and expend  
8 non-residential development fees shall provide the department with  
9 a detailed accounting of all such fees that have been collected and  
10 expended since the inception of the municipal authorization to  
11 collect and retain said fees.

12 (4) Beginning with the year after the enactment of P.L. \_\_\_\_\_,  
13 c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill), by  
14 <sup>2</sup>【January】 February<sup>2</sup> 15, every municipality that is or has been  
15 authorized to retain and expend non-residential development fees  
16 shall provide the department with a detailed accounting of all such  
17 fees that have been collected and expended previous year.

18 d. The payment of non-residential development fees required  
19 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
20 through C.40:55D-8.7) shall be made prior to the issuance of a  
21 certificate of occupancy for such development. A final certificate  
22 of occupancy shall not be issued for any non-residential  
23 development until such time as the fee imposed pursuant to this  
24 section has been paid by the developer. A non-residential developer  
25 may deposit with the appropriate entity the development fees as  
26 calculated by the municipality under protest, and the local code  
27 enforcement official shall thereafter issue the certificate of  
28 occupancy provided that the construction is otherwise eligible for a  
29 certificate of occupancy.

30 e. The construction official responsible for the issuance of a  
31 building permit shall notify the local tax assessor of the issuance of  
32 the first building permit for a development which may be subject to  
33 a non-residential development fee. Within 90 days of receipt of that  
34 notice, the municipal tax assessor, based on the plans filed, shall  
35 provide an estimate of the equalized assessed value of the non-  
36 residential development. The construction official responsible for  
37 the issuance of a final certificate of occupancy shall notify the local  
38 assessor of any and all requests for the scheduling of a final  
39 inspection on property which may be subject to a non-residential  
40 development fee. Within 10 business days of a request for the  
41 scheduling of a final inspection, the municipal assessor shall  
42 confirm or modify the previously estimated equalized assessed  
43 value of the improvements of the non-residential development in  
44 accordance with the regulations adopted by the Treasurer pursuant  
45 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential  
46 development fee pursuant to sections 32 through 38 of P.L.2008,  
47 c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the  
48 developer of the amount of the non-residential development fee.

1 Should the municipality fail to determine or notify the developer of  
2 the amount of the non-residential development fee within 10  
3 business days of the request for final inspection, the developer may  
4 estimate the amount due and pay that estimated amount consistent  
5 with the dispute process set forth in subsection b. of section 37 of  
6 P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-  
7 residential development fee, provided the developer is in full  
8 compliance with all other applicable laws, the municipality shall  
9 issue a final certificate of occupancy for the subject property.  
10 Failure of the municipality to comply with the timeframes or  
11 procedures set forth in this subsection may subject it to penalties to  
12 be imposed by the commissioner; any penalties so imposed shall be  
13 deposited into the "New Jersey Affordable Housing Trust Fund"  
14 established pursuant to section 20 of P.L.1985, c.222 as amended  
15 by section 17 of P.L.2008, c.46 (C.52:27D-320).

16 A developer of a mixed use development shall be required to pay  
17 the Statewide non-residential development fee relating to the non-  
18 residential development component of a mixed use development  
19 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).

20 Non-residential construction which is connected with the  
21 relocation of the facilities of a for-profit hospital shall be subject to  
22 the fee authorized to be imposed under this section to the extent of  
23 the increase in equalized assessed valuation in accordance with  
24 regulations to be promulgated by the Director of the Division of  
25 Taxation, Department of the Treasury.

26 f. Any municipality that is not in compliance with the  
27 requirements established pursuant to sections 32 through 38 of  
28 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or  
29 regulations of the **【council】** commissioner adopted thereto, may be  
30 subject to forfeiture of any or all funds remaining within its  
31 municipal development trust fund. Any funds so forfeited shall be  
32 deposited into the New Jersey Affordable Housing Trust Fund  
33 established pursuant to section 20 of P.L.1985, c.222 as amended  
34 by section 17 of P.L.2008, c.46 (C.52:27D-320).

35 g. The Treasurer shall credit to the "Urban Housing Assistance  
36 Fund," established pursuant to section 13 of P.L.2008, c.46  
37 (C.52:27D-329.7) annually from the receipts of the fees authorized  
38 to be imposed pursuant to this section an amount equal to \$20  
39 million; all receipts in excess of this amount shall be deposited into  
40 the "New Jersey Affordable Housing Trust Fund," established  
41 pursuant to section 20 of P.L.1985, c.222 as amended by section 17  
42 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of  
43 that fund.

44 The Treasurer shall adopt such regulations as necessary to  
45 effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
46 through C.40:55D-8.7), in accordance with the "Administrative  
47 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

48 (cf: P.L.2008, c.46, s.35)

1       16. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended to  
2 read as follows:

3       36. a. The commissioner **【**, in consultation with the council,**】**  
4 shall promulgate, in accordance with the provisions of the  
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
6 seq.), such regulations as are necessary for the prompt and effective  
7 implementation of the provisions and purposes of **【**P.L.2008, c.46  
8 (C.52:27D-329.1 et al.)**】** section 8 of P.L.2008, c.46 (C.52:27D-  
9 329.2), including, but not limited to, provisions for the payment of  
10 any necessary administrative costs related to the assessment of  
11 properties and collection of any development fees by a  
12 municipality.

13       b. **【**Notwithstanding the authority granted to the commissioner  
14 herein, the council**】** The commissioner shall adopt and promulgate,  
15 in accordance with the provisions of the "Administrative Procedure  
16 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are  
17 necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et  
18 al.), including but not limited to, regulations necessary for the  
19 establishment, implementation, review, monitoring, and  
20 enforcement of a municipal affordable housing trust fund and  
21 spending plan.

22 (cf: P.L.2008, c.46, s.36)

23

24       17. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended to  
25 read as follows:

26       38. a. Except as expressly provided in P.L.2008, c.46  
27 (C.52:27D-329.1 et al.),<sub>2</sub> including subsection b. of this section, any  
28 provision of a local ordinance which imposes a fee for the  
29 development of affordable housing upon a developer of non-  
30 residential property, including any and all development fee  
31 ordinances adopted in accordance with any regulations of the  
32 **【**Council on Affordable Housing**】** department, or any provision of  
33 an ordinance which imposes an obligation relating to the provision  
34 of housing affordable to **【**low and moderate income**】** low- and  
35 moderate-income households, or payment in-lieu of building as a  
36 condition of non-residential development, shall be void and of no  
37 effect. A provision of an ordinance which imposes a development  
38 fee which is not prohibited by any provision of P.L.2008, c.46  
39 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

40       b. No affordable housing obligation shall be imposed  
41 concerning a mixed use development that would result in an  
42 affordable housing obligation greater than that which would have  
43 been imposed if the residential portion of the mixed use  
44 development had been developed independently of the non-  
45 residential portion of the mixed use development.

46       c. Whenever the developer of a non-residential development  
47 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or

1 committed itself to make a financial or other contribution relating to  
2 the provision of housing affordable to low and moderate income  
3 households, the non-residential development fee authorized  
4 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied  
5 through the investment obligations made pursuant to P.L.1977,  
6 c.110 (C.5:12-1 et seq.).  
7 (cf: P.L.2008, c.46, s.38)  
8

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

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

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

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

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

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

1 e. **【**Notwithstanding the provisions of subsections a., b., c., and  
2 d. of this section, if, on the effective date of P.L.2009, c.90  
3 (C.52:27D-489a et al.), a municipality that has returned all or a  
4 portion of non-residential fees in accordance with subsection a. or  
5 b. of this section shall be reimbursed from the funds available  
6 through the appropriation made into the "New Jersey Affordable  
7 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90  
8 (C.52:27D-320.1) within 30 days of the municipality providing  
9 written notice to the Council on Affordable Housing.**】** (Deleted by  
10 amendment, P.L. , c. ) (pending before the Legislature as this  
11 bill)

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

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

30

31 19. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to  
32 read as follows:

33 3. a. There is established in, but not of, the department a Site  
34 Improvement Advisory Board, to devise statewide site improvement  
35 standards pursuant to section 4 of **【this act】** P.L.1993, c.32  
36 (C.40:55D-40.4). The board shall consist of the commissioner or  
37 **【his】** the commissioner's designee, who shall be a non-voting  
38 member of the board, the Director of the Division of **【Housing】**  
39 Codes and Standards in the Department of Community Affairs, who  
40 shall be a voting member of the board, the Executive Director of the  
41 New Jersey Housing and Mortgage Finance Agency, or the  
42 executive director's designee, who shall be a voting member of the  
43 board, and **【10】** nine other voting members, to be appointed by the  
44 commissioner. The other members shall include two professional  
45 planners, one of whom serves as a planner for a governmental entity  
46 or whose professional experience is predominantly in the public  
47 sector and who has worked in the public sector for at least the



1 previous five years and the other of whom serves as a planner in  
2 private practice and has particular expertise in private residential  
3 development and has been involved in private sector planning for at  
4 least the previous five years, and one representative each from:

5 (1) The New Jersey Society of Professional Engineers;

6 (2) The New Jersey Society of Municipal Engineers;

7 (3) The New Jersey Association of County Engineers;

8 (4) The New Jersey Federation of Planning Officials;

9 (5) **【The Council on Affordable Housing】** (Deleted by  
10 amendment, P.L. , c. (pending before the Legislature as this  
11 bill);

12 (6) The New Jersey Builders' Association;

13 (7) The New Jersey Institute of Technology;

14 (8) The New Jersey State League of Municipalities.

15 b. Among the members to be appointed by the commissioner  
16 who are first appointed, four shall be appointed for terms of two  
17 years each, four shall be appointed for terms of three years each,  
18 and two shall be appointed for terms of four years each. Thereafter,  
19 each appointee shall serve for a term of four years. Vacancies in  
20 the membership shall be filled in the same manner as original  
21 appointments are made, for the unexpired term. The **【commission】**  
22 board shall select a chair from among its members **【a chairman】**.  
23 Members may be removed by the commissioner for cause.

24 c. Board members shall serve without compensation, but may  
25 be entitled to reimbursement, from moneys appropriated or  
26 otherwise made available for the purposes of this act, for expenses  
27 incurred in the performance of their duties.

28 (cf: P.L.1993, c.32, s.3)

29  
30 20. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to  
31 read as follows:

32 3. As used in **【this act】** P.L.1992, c.79 (C.40A:12A-1 et seq.):

33 "Bonds" means any bonds, notes, interim certificates, debentures  
34 or other obligations issued by a municipality, county,  
35 redevelopment entity, or housing authority pursuant to P.L.1992,  
36 c.79 (C.40A:12A-1 et al.).

37 "Comparable, affordable replacement housing" means newly-  
38 constructed or substantially rehabilitated housing to be offered to a  
39 household being displaced as a result of a redevelopment project,  
40 that is affordable to that household based on its income under the  
41 guidelines established by the **【Council on Affordable Housing in**  
42 **the Department of Community Affairs】** New Jersey Housing and  
43 Mortgage Finance Agency for maximum affordable sales prices or  
44 maximum fair market rents, and that is comparable to the  
45 household's dwelling in the redevelopment area with respect to the  
46 size and amenities of the dwelling unit, the quality of the

1 neighborhood, and the level of public services and facilities offered  
2 by the municipality in which the redevelopment area is located.

3 "Development" means the division of a parcel of land into two or  
4 more parcels, the construction, reconstruction, conversion,  
5 structural alteration, relocation, or enlargement of any building or  
6 other structure, or of any mining, excavation or landfill, and any use  
7 or change in the use of any building or other structure, or land or  
8 extension of use of land, for which permission may be required  
9 pursuant to the "Municipal Land Use Law," P.L.1975, c.291  
10 (C.40:55D-1 et seq.).

11 "Electric vehicle charging station" means an electric component  
12 assembly or cluster of component assemblies designed specifically  
13 to charge batteries within electric vehicles by permitting the transfer  
14 of electric energy to a battery or other storage device in an electric  
15 vehicle.

16 "Governing body" means the body exercising general legislative  
17 powers in a county or municipality according to the terms and  
18 procedural requirements set forth in the form of government  
19 adopted by the county or municipality.

20 "Housing authority" means a housing authority created or  
21 continued pursuant to this act.

22 "Housing project" means a project, or distinct portion of a  
23 project, which is designed and intended to provide decent, safe and  
24 sanitary dwellings, apartments or other living accommodations for  
25 persons of **low and moderate income** low- and moderate-income;  
26 such work or undertaking may include buildings, land, equipment,  
27 facilities and other real or personal property for necessary,  
28 convenient or desirable appurtenances, streets, sewers, water  
29 service, parks, site preparation, gardening, administrative,  
30 community, health, recreational, educational, welfare or other  
31 purposes. The term "housing project" also may be applied to the  
32 planning of the buildings and improvements, the acquisition of  
33 property, the demolition of existing structures, the construction,  
34 reconstruction, alteration and repair of the improvements and all  
35 other work in connection therewith.

36 "Parking authority" means a public corporation created pursuant  
37 to the "Parking Authority Law," P.L.1948, c.198 (C.40:11A-1 et  
38 seq.), and authorized to exercise redevelopment powers within the  
39 municipality.

40 "Persons of **low and moderate income** low- and moderate-  
41 income" means persons or families who are, in the case of State  
42 assisted projects or programs, so defined by the **Council on**  
43 **Affordable Housing in the Department of Community Affairs** New  
44 Jersey Housing and Mortgage Finance Agency, or in the case of  
45 federally assisted projects or programs, defined as of **low and**  
46 **very low income** low- and very low-income by the United  
47 States Department of Housing and Urban Development.

1 "Public body" means the State or any county, municipality,  
2 school district, authority or other political subdivision of the State.

3 "Public electric vehicle charging station" means an electric  
4 vehicle charging station located at a publicly available parking  
5 space.

6 "Public housing" means any housing for persons of **low and**  
7 **moderate income** low- and moderate-income owned by a  
8 municipality, county, the State or the federal government, or any  
9 agency or instrumentality thereof.

10 "Public hydrogen fueling station" means publicly available  
11 equipment to store and dispense hydrogen fuel to vehicles  
12 according to industry codes and standards.

13 "Publicly assisted housing" means privately owned housing  
14 which receives public assistance or subsidy, which may be grants or  
15 loans for construction, reconstruction, conservation, or  
16 rehabilitation of the housing, or receives operational or maintenance  
17 subsidies either directly or through rental subsidies to tenants, from  
18 a federal, State or local government agency or instrumentality.

19 "Publicly available parking space" means a parking space that is  
20 available to, and accessible by, the public and may include on-street  
21 parking spaces and parking spaces in surface lots or parking  
22 garages, but shall not include: a parking space that is part of, or  
23 associated with, a private residence; or a parking space that is  
24 reserved for the exclusive use of an individual driver or vehicle or  
25 for a group of drivers or vehicles, such as employees, tenants,  
26 visitors, residents of a common interest development, or residents  
27 of an adjacent building.

28 "Real property" means all lands, including improvements and  
29 fixtures thereon, and property of any nature appurtenant thereto or  
30 used in connection therewith, and every estate, interest and right,  
31 legal or equitable, therein, including terms for years and liens by  
32 way of judgment, mortgage or otherwise, and indebtedness secured  
33 by such liens.

34 "Redeveloper" means any person, firm, corporation or public  
35 body that shall enter into or propose to enter into a contract with a  
36 municipality or other redevelopment entity for the redevelopment or  
37 rehabilitation of an area in need of redevelopment, or an area in  
38 need of rehabilitation, or any part thereof, under the provisions of  
39 this act, or for any construction or other work forming part of a  
40 redevelopment or rehabilitation project.

41 "Redevelopment" means clearance, replanning, development and  
42 redevelopment; the conservation and rehabilitation of any structure  
43 or improvement, the construction and provision for construction of  
44 residential, commercial, industrial, public or other structures and  
45 the grant or dedication of spaces as may be appropriate or necessary  
46 in the interest of the general welfare for streets, parks, playgrounds,  
47 or other public purposes, including recreational and other facilities

1 incidental or appurtenant thereto, in accordance with a  
2 redevelopment plan.

3 "Redevelopment agency" means a redevelopment agency created  
4 pursuant to subsection a. of section 11 of P.L.1992, c.79  
5 (C.40A:12A-11) or established heretofore pursuant to the  
6 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et  
7 al.), repealed by this act, which has been permitted in accordance  
8 with the provisions of **【this act】** P.L.1992, c.79 (C.40A:12A-1 et  
9 seq.) to continue to exercise its redevelopment functions and  
10 powers.

11 "Redevelopment area" or "area in need of redevelopment" means  
12 an area determined to be in need of redevelopment pursuant to  
13 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and C.40A:12A-6)  
14 or determined heretofore to be a "blighted area" pursuant to  
15 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both  
16 determinations as made pursuant to the authority of Article VIII,  
17 Section III, paragraph 1 of the Constitution. A redevelopment area  
18 may include lands, buildings, or improvements which of themselves  
19 are not detrimental to the public health, safety or welfare, but the  
20 inclusion of which is found necessary, with or without change in  
21 their condition, for the effective redevelopment of the area of which  
22 they are a part.

23 "Redevelopment entity" means a municipality or an entity  
24 authorized by the governing body of a municipality pursuant to  
25 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to  
26 implement redevelopment plans and carry out redevelopment  
27 projects in an area in need of redevelopment, or in an area in need  
28 of rehabilitation, or in both.

29 "Redevelopment plan" means a plan adopted by the governing  
30 body of a municipality for the redevelopment or rehabilitation of all  
31 or any part of a redevelopment area, or an area in need of  
32 rehabilitation, which plan shall be sufficiently complete to indicate  
33 its relationship to definite municipal objectives as to appropriate  
34 land uses, public transportation and utilities, recreational and  
35 municipal facilities, and other public improvements; and to indicate  
36 proposed land uses and building requirements in the redevelopment  
37 area or area in need of rehabilitation, or both.

38 "Redevelopment project" means any work or undertaking  
39 pursuant to a redevelopment plan; such undertaking may include  
40 any buildings, land, including demolition, clearance or removal of  
41 buildings from land, equipment, facilities, or other real or personal  
42 properties which are necessary, convenient, or desirable  
43 appurtenances, such as but not limited to streets, sewers, utilities,  
44 parks, site preparation, landscaping, and administrative, community,  
45 health, recreational, educational, and welfare facilities, and zero-  
46 emission vehicle fueling and charging infrastructure.

47 "Rehabilitation" means an undertaking, by means of extensive  
48 repair, reconstruction or renovation of existing structures, with or

1 without the introduction of new construction or the enlargement of  
2 existing structures, in any area that has been determined to be in  
3 need of rehabilitation or redevelopment, to eliminate substandard  
4 structural or housing conditions and arrest the deterioration of that  
5 area.

6 "Rehabilitation area" or "area in need of rehabilitation" means  
7 any area determined to be in need of rehabilitation pursuant to  
8 section 14 of P.L.1992, c.79 (C.40A:12A-14).

9 "Zero-emission vehicle" means a vehicle certified as a zero  
10 emission vehicle pursuant to the California Air Resources Board  
11 zero emission vehicle standards for the applicable model year,  
12 including but not limited to, battery electric-powered vehicles and  
13 hydrogen fuel cell vehicles.

14 "Zero-emission vehicle fueling and charging infrastructure"  
15 means infrastructure to charge or fuel zero-emission vehicles,  
16 including but not limited to, public electric vehicle charging  
17 stations and public hydrogen fueling stations.

18 (cf: P.L.2021, c.168, s.1)

19  
20 21. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to  
21 read as follows:

22 16. a. In order to carry out the housing purposes of this act, a  
23 municipality, county, or housing authority may exercise the  
24 following powers, in addition to those set forth in section 22 of  
25 P.L.1992, c.79 (C.40A:12A-22):

26 (1) Plan, construct, own, and operate housing projects; maintain,  
27 reconstruct, improve, alter, or repair any housing project or any part  
28 thereof; and for these purposes, receive and accept from the State or  
29 federal government, or any other source, funds or other financial  
30 assistance;

31 (2) Lease or rent any dwelling house, accommodations, lands,  
32 buildings, structures or facilities embraced in any housing project;  
33 and pursuant to the provisions of this act, establish and revise the  
34 rents and charges therefor;

35 (3) Acquire property pursuant to subsection i. of section 22 of  
36 P.L.1992, c.79 (C.40A:12A-22);

37 (4) Acquire, by condemnation, any land or building which is  
38 necessary for the housing project, pursuant to the provisions of the  
39 "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

40 (5) Issue bonds in accordance with the provisions of section 29  
41 of P.L.1992, c.79 (C.40A:12A-29);

42 (6) Cooperate with any other municipality, private, county, State  
43 or federal entity to provide funds to the municipality or other  
44 governmental entity and to homeowners, tenant associations,  
45 nonprofit or private developers to acquire, construct, rehabilitate or  
46 operate publicly assisted housing, and to provide rent subsidies for  
47 persons of **low and moderate income** low- and moderate-income,

1 including the elderly, pursuant to applicable State or federal  
2 programs;

3 (7) Encourage the use of demand side subsidy programs such as  
4 certificates and vouchers for low-income families and promote the  
5 use of project based certificates which provide subsidies for units in  
6 newly constructed and substantially rehabilitated structures, and of  
7 tenant based certificates which subsidize rent in existing units;

8 (8) Cooperate with any State or federal entity to secure  
9 mortgage assistance for any person of **low or moderate income**  
10 low- or moderate-income;

11 (9) Provide technical assistance and support to nonprofit  
12 organizations and private developers interested in constructing **low**  
13 **and moderate income** low- and moderate-income housing;

14 (10) If it owns and operates public housing units, provide to the  
15 tenants public safety services, including protection against  
16 substance use disorder, and social services, including counseling  
17 and financial management, in cooperation with other agencies;

18 (11) Provide emergency shelters, transitional housing and  
19 supporting services to homeless families and individuals.

20 b. All housing projects, programs and actions undertaken  
21 pursuant to this act shall accord with the housing element of the  
22 master plan of the municipality within which undertaken, and with  
23 any fair share housing plan **filed by** of the municipality **with the**  
24 **Council on Affordable Housing, based upon the council's criteria**  
25 **and guidelines**, adopted pursuant to the "Fair Housing Act,"  
26 P.L.1985, c.222 (C.52:27D-301 et al.) **], whether or not the**  
27 **municipality has petitioned for substantive certification of the**  
28 **plan**.

29 (cf: P.L.2017, c.131, s.176)

30

31 22. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to  
32 read as follows:

33 10. A municipality's housing element shall be designed to  
34 achieve the goal of access to affordable housing to meet present and  
35 prospective housing needs, with particular attention to **low and**  
36 **moderate income** low- and moderate-income housing, and shall  
37 contain at least:

38 a. An inventory of the municipality's housing stock by age,  
39 condition, purchase or rental value, occupancy characteristics, and  
40 type, including the number of units affordable to **low and moderate**  
41 **income** low- and moderate-income households and substandard  
42 housing capable of being rehabilitated, and in conducting this  
43 inventory the municipality shall have access, on a confidential basis  
44 for the sole purpose of conducting the inventory, to all necessary  
45 property tax assessment records and information in the assessor's  
46 office, including but not limited to the property record cards;

- 1       b. A projection of the municipality's housing stock, including  
2 the probable future construction of **low and moderate income**  
3 low- and moderate-income housing, for the next ten years, taking  
4 into account, but not necessarily limited to, construction permits  
5 issued, approvals of applications for development and probable  
6 residential development of lands;
- 7       c. An analysis of the municipality's demographic  
8 characteristics, including but not necessarily limited to, household  
9 size, income level and age;
- 10      d. An analysis of the existing and probable future employment  
11 characteristics of the municipality;
- 12      e. A determination of the municipality's present and prospective  
13 fair share for **low and moderate income** low- and moderate-  
14 income housing and its capacity to accommodate its present and  
15 prospective housing needs, including its fair share for **low and**  
16 **moderate income** low- and moderate-income housing, as  
17 established pursuant to section 3 of P.L. , c. (C. ) (pending  
18 before the Legislature as this bill);
- 19      f. A consideration of the lands that are most appropriate for  
20 construction of **low and moderate income** low- and moderate-  
21 income housing and of the existing structures most appropriate for  
22 conversion to, or rehabilitation for, **low and moderate income**  
23 low- and moderate-income housing, including a consideration of  
24 lands of developers who have expressed a commitment to provide  
25 **low and moderate income** low- and moderate-income housing;  
26 <sup>2</sup>**and**<sup>2</sup>
- 27      g. An analysis of the extent to which municipal ordinances and  
28 other local factors advance or detract from the goal of preserving  
29 multigenerational family continuity as expressed in the  
30 recommendations of the Multigenerational Family Housing  
31 Continuity Commission, adopted pursuant to paragraph (1) of  
32 subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20) <sup>2</sup>;
- 33      h. For a municipality located within the jurisdiction of the  
34 Highlands Water Protection and Planning Council, established  
35 pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of  
36 compliance of the housing element with the Highlands Regional  
37 Master Plan of lands in the Highlands Preservation Area, and lands  
38 in the Highlands Planning Area for Highlands-conforming  
39 municipalities. This analysis shall include consideration of the  
40 municipality's most recent Highlands Municipal Build Out Report,  
41 consideration of opportunities for redevelopment of existing  
42 developed lands into inclusionary or 100 percent affordable  
43 housing, or both, and opportunities for 100 percent affordable  
44 housing in both the Highlands Planning Area and Highlands  
45 Preservation Area that are consistent with the Highlands regional  
46 master plan; and

1       i. An analysis of consistency with the State Development and  
2 Redevelopment Plan, including water, wastewater, stormwater, and  
3 multi-modal transportation based on guidance and technical  
4 assistance from the State Planning Commission<sup>2</sup>.

5 (cf: P.L.2021, c.273, s.2)

6  
7       23. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended  
8 to read as follows:

9       1. Any municipality that receives an adjustment of its  
10 prospective need obligations for the fourth round or subsequent  
11 rounds based on a lack of vacant land shall as part of the process of  
12 adopting and implementing its housing element and fair share plan  
13 identify sufficient parcels likely to redevelop during the current  
14 round of obligations to address at least 25 percent of the prospective  
15 need obligation that has been adjusted, and adopt realistic zoning  
16 that allows for such adjusted obligation, or demonstrate why the  
17 municipality is unable to do so. When computing a municipal  
18 adjustment regarding available land resources as part of the  
19 determination of a municipality's fair share of affordable housing,  
20 the **【Council on Affordable Housing】** municipality, in filing a  
21 housing element and fair share plan pursuant to subsection f. of  
22 section 3 of P.L. , c. (C. and C. ) (pending before the  
23 Legislature as this bill), shall exclude from designating , and the  
24 process set forth pursuant to sections 3 and 4 of P.L. ,  
25 c. (C. and C. ) (pending before the Legislature as this  
26 bill) shall confirm was correctly excluded, as vacant land:

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

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

42       (c) any vacant contiguous parcels of land in private ownership  
43 of a size which would accommodate fewer than five housing units  
44 **【if current standards of the council were applied】** based on  
45 appropriate standards pertaining to housing density;

46       (d) historic and architecturally important sites listed on the State  
47 Register of Historic Places or National Register of Historic Places  
48 prior to the **【submission of the petition of substantive certification】**



1 date of filing a housing element and fair share plan pursuant to  
2 section 3, or initiation of an action pursuant to section 4 of P.L. ,  
3 c. (C. or C. ) (pending before the Legislature as this  
4 bill);

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

7 (f) sites designated for active recreation that are designated for  
8 recreational purposes in the municipal master plan; and

9 (g) environmentally sensitive lands where development is  
10 prohibited by any State or federal agency <sup>2</sup>, including, but not  
11 limited to, the Highlands Water Protection and Planning Council,  
12 established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), for  
13 lands in the Highlands Preservation Area, and lands in the  
14 Highlands Planning Area for Highlands-conforming  
15 municipalities<sup>2</sup>.

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

19 (cf: P.L.2008, c.46, s.39)

20

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

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

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

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

1 (3) Determination of measures that the municipality will take to  
2 assure that **low and moderate income** low- and moderate-income  
3 units remain affordable to **low and moderate income** low- and  
4 moderate-income households for an appropriate period of not less  
5 than **six years** the period required by the regulations adopted by  
6 the Department of Community Affairs pursuant to section 21 of  
7 P.L.1985, c.222 (C.52:27D-321);

8 (4) A plan for infrastructure expansion and rehabilitation and  
9 conversion or redevelopment of unused or underutilized real  
10 property, including existing structures, if necessary to assure the  
11 achievement of the municipality's fair share of **low and moderate**  
12 **income** low- and moderate-income housing;

13 (5) Donation or use of municipally owned land or land  
14 condemned by the municipality for purposes of providing **low and**  
15 **moderate income** low- and moderate-income housing;

16 (6) Tax abatements for purposes of providing **low and**  
17 **moderate income** low- and moderate-income housing;

18 (7) Utilization of funds obtained from any State or federal  
19 subsidy toward the construction of **low and moderate income**  
20 low- and moderate-income housing;

21 (8) Utilization of municipally generated funds toward the  
22 construction of **low and moderate income** low- and moderate-  
23 income housing; and

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

31 b. The municipality may provide for a phasing schedule for the  
32 achievement of its fair share of **low and moderate income** low-  
33 and moderate-income housing.

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

35 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall  
36 require a municipality to raise or expend municipal revenues in  
37 order to provide **low and moderate income** low- and moderate-  
38 income housing.

39 e. When a municipality's housing element includes the  
40 provision of rental housing units in a community residence for the  
41 developmentally disabled , for the mentally ill, or for persons with  
42 head injuries, as those terms are defined in section 2 of P.L.1977,  
43 c.448 (C.30:11B-2), or in transitional housing, which will be  
44 affordable to persons of **low and moderate income** low- and  
45 moderate-income, and for which adequate measures to retain such  
46 affordability pursuant to paragraph (3) of subsection a. of this  
47 section are included in the housing element, those housing units

- 1 shall be fully credited **【as permitted under the rules of the council】**  
2 towards the fulfillment of the municipality's fair share of **【low and**  
3 **moderate income】** low- and moderate-income housing. A  
4 municipality shall not credit transitional housing units towards more  
5 than 10 percent of the municipality's fair share obligation.
- 6 f. It having been determined by the Legislature that the  
7 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is  
8 a public purpose, a municipality or municipalities may utilize public  
9 monies to make donations, grants or loans of public funds for the  
10 rehabilitation of deficient housing units and the provision of new or  
11 substantially rehabilitated housing for **【low and moderate income】**  
12 low- and moderate-income persons, providing that any private  
13 advantage is incidental.
- 14 g. A municipality **【which】** that has received **【substantive**  
15 **certification from the council】** approval of its housing element and  
16 fair share plan for the current round, and **【which】** that has actually  
17 effected the construction of the affordable housing units it is  
18 obligated to provide, may amend its affordable housing element or  
19 zoning ordinances without **【the approval of the council】** losing  
20 immunity from <sup>2</sup>**【builder's remedy】** exclusionary zoning<sup>2</sup> litigation.
- 21 h. Whenever affordable housing units are proposed to be  
22 provided through an inclusionary development, a municipality shall  
23 provide, through its zoning powers, incentives to the developer,  
24 which shall include increased densities and reduced costs **【,** in  
25 accordance with the regulations of the council and this subsection**】**.
- 26 i. **【The council, upon the application of a】** A municipality and  
27 a developer **【,】** may **【approve】** request a modification of a  
28 compliance certification involving reduced affordable housing set-  
29 asides or increased densities to ensure the economic feasibility of an  
30 inclusionary development , if any such application demonstrates  
31 how any shortfall in meeting the municipal fair share obligation will  
32 then be addressed. Such a request may be granted only if the  
33 municipality and developer have demonstrated that the project has  
34 been impacted by market conditions beyond their reasonable  
35 control.
- 36 j. A municipality may enter into an agreement with a  
37 developer or residential development owner to provide a preference  
38 for affordable housing to **【low and moderate income】** low- and  
39 moderate-income veterans who served in time of war or other  
40 emergency, as defined in section 1 of P.L.1963, c.171  
41 (C.54:4-8.10), of up to 50 percent of the affordable units in that  
42 particular project. This preference shall be established in the  
43 applicant selection process for available affordable units so that  
44 applicants who are veterans who served in time of war or other  
45 emergency, as referenced in this subsection, and who apply within  
46 90 days of the initial marketing period shall receive preference for  
47 the rental of the agreed-upon percentage of affordable units. After

1 the first 90 days of the initial 120-day marketing period, if any of  
2 those units subject to the preference remain available, then  
3 applicants from the general public shall be considered for  
4 occupancy. Following the initial 120-day marketing period,  
5 previously qualified applicants and future qualified applicants who  
6 are veterans who served in time of war or other emergency, as  
7 referenced in this subsection, shall be placed on a special waiting  
8 list as well as the general waiting list. The veterans on the special  
9 waiting list shall be given preference for affordable units, as the  
10 units become available, whenever the percentage of preference-  
11 occupied units falls below the agreed upon percentage. Any  
12 agreement to provide affordable housing preferences for veterans  
13 pursuant to this subsection shall not affect a municipality's ability to  
14 receive credit for the unit **from the council, or its successor**.

15 k. In the fourth round, and in subsequent rounds of affordable  
16 housing obligations, a municipality shall be able to receive one  
17 credit against its affordable housing obligation for each unit of low-  
18 or moderate-income housing, and shall not receive bonus credit for  
19 any particular type of low- or moderate-income housing, unless  
20 authority to obtain bonus credit is expressly provided pursuant to  
21 this section, or other sections of the "Fair Housing Act," P.L.1985,  
22 c.222 (C.52:27D-301 et al.). A municipality shall not receive more  
23 than one type of bonus credit for any unit, and a municipality shall  
24 not be permitted to satisfy more than 25 percent of its prospective  
25 need obligation in the fourth round or any subsequent round  
26 through the use of bonus credits. This subsection shall not be  
27 construed to limit the ability of a municipality to receive a unit of  
28 credit for a low- or moderate-income housing unit that is subject to  
29 affordability controls that are scheduled to expire, but are extended  
30 <sup>2</sup>in accordance with the Uniform Housing Affordability Controls  
31 promulgated by the New Jersey Housing and Mortgage Finance  
32 Agency pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321)<sup>2</sup>  
33 , to the extent that this affordability control extension would  
34 otherwise generate this credit. As a part of a fair share plan and  
35 housing element adopted pursuant to subsection f. of section 3 of  
36 P.L. , c. (C. ) (pending before the Legislature as this bill), a  
37 municipality shall:

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

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

45 (3) receive one unit of credit and one-half bonus credit for each  
46 unit of low- or moderate-income housing located within a one-half  
47 mile radius, or one-mile radius for projects located in a Garden

1 State Growth Zone, as defined in section 2 of P.L.2011, c.149  
2 (C.34:1B-243), surrounding a New Jersey Transit Corporation, Port  
3 Authority Transit Corporation, or Port Authority Trans-Hudson  
4 Corporation rail, bus, or ferry station, including all light rail  
5 stations. For the purpose of this subparagraph, the distance from  
6 the bus, rail, or ferry station to a housing unit shall be measured  
7 from the closest point on the outer perimeter of the station,  
8 including any associated park-and-ride lot, to the closest point of  
9 the housing project property;

10 (4) receive one unit of credit and one-half bonus credit for a unit  
11 of age-restricted housing, provided that a bonus credit for age-  
12 restricted housing shall not be applied to more than <sup>2</sup>[15] 10<sup>2</sup>  
13 percent of the units of age-restricted housing constructed in  
14 compliance with the Uniform Housing Affordability Controls  
15 promulgated by the New Jersey Housing and Mortgage Finance  
16 Agency in a municipality that count towards the municipality's  
17 affordable housing obligation for any single 10-year round of  
18 affordable housing obligations;

19 (5) receive one unit of credit and one-half bonus credit for each  
20 unit of low- or moderate-income family housing with at least three  
21 bedrooms above the minimum number required by the bedroom  
22 distribution <sup>2</sup>[in a given development] . This bonus credit shall be  
23 calculated by taking into account the full municipal fair share plan  
24 and housing element, and the number of units with at least three  
25 bedrooms required for projects satisfying the minimum 50 percent  
26 family housing requirements. A municipality shall receive the  
27 bonus credit pursuant to this paragraph for each unit with at least  
28 three bedrooms that are above the minimum number required for  
29 the bedroom distribution determined pursuant to the Uniform  
30 Housing Affordability Controls promulgated by the New Jersey  
31 Housing and Mortgage Finance Agency<sup>2</sup>;

32 (6) receive one unit of credit and one-half bonus credit for a unit  
33 of low- or moderate-income housing constructed on land that is or  
34 was previously developed and utilized for retail, office, or  
35 commercial space;

36 (7) receive one unit of credit and one-half bonus credit for each  
37 existing low- or moderate-income rental housing unit for which  
38 affordability controls are extended for a new term of affordability,  
39 in compliance with the Uniform Housing Affordability Controls  
40 promulgated by the New Jersey Housing and Mortgage Finance  
41 Agency, and the municipality contributes funding towards the costs  
42 necessary for this preservation;

43 (8) receive one unit of credit and <sup>2</sup>[one-half] one<sup>2</sup> bonus credit  
44 for each unit of low- or moderate-income housing in a 100 percent  
45 affordable housing project <sup>2</sup>[toward] for<sup>2</sup> which the municipality  
46 <sup>2</sup>[either contributes property without which the project would not  
47 be feasible, or makes contributions from the municipal affordable

1 housing trust fund that cover no less than 10 percent of the project  
2 cost.] contributes toward the costs of the project. This contribution  
3 may consist of: (a) real property donations that enable siting and  
4 construction of the project; or (b) contributions from the municipal  
5 affordable housing trust fund in support of the project, if the  
6 contribution consists of no less than three percent of the project  
7 cost<sup>2</sup>; <sup>2</sup>[and]<sup>2</sup>

8 (9) receive one unit of credit and one-half bonus credit for each  
9 unit of very low-income housing for families above the 13 percent  
10 of units required to be reserved for very low-income housing  
11 pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1). <sup>2</sup>In  
12 accordance with section 7 of P.L.2008, c.46 (C.52:27D-329.1), a  
13 municipality shall not be required to provide that a specific  
14 percentage of the units in any specific project be reserved as very  
15 low-income housing in order to obtain this bonus credit, and the 13  
16 percent level, for the purpose of bonus credits, shall be calculated  
17 against the full prospective need obligation provided pursuant to the  
18 fair share plan; and

19 (10) receive one unit of credit and one bonus credit for each unit  
20 of low- or moderate-income housing created by transforming an  
21 existing rental or ownership unit from a market rate unit to an  
22 affordable housing unit. A municipality may only rely on this  
23 bonus credit as part of its fair share plan and housing element if the  
24 municipality demonstrates that a commitment to follow through  
25 with this market to affordable agreement has been made and: (a)  
26 this agreement has been signed by the property owner; or (b) the  
27 municipality has obtained ownership of the property.<sup>2</sup>

28 l. A municipality may not satisfy more than <sup>2</sup>[25] 30<sup>2</sup> percent  
29 of the affordable housing units, exclusive of any bonus credits, to  
30 address its prospective need affordable housing obligation through  
31 the creation of age-restricted housing. A municipality shall satisfy  
32 a minimum of 50 percent of the actual affordable housing units,  
33 exclusive of any bonus credits, created to address its prospective  
34 need affordable housing obligation through the creation of housing  
35 available to families with children and otherwise in compliance  
36 with the requirements and controls established pursuant to section  
37 21 of P.L.1985, c.222 (C.52:27D-321). A municipality shall satisfy  
38 a minimum of 25 percent of the actual affordable housing units,  
39 exclusive of any bonus credits, to address its prospective need  
40 affordable housing obligation, through rental housing, including at  
41 least half of that number available to families with children. All  
42 units referred to in this section shall otherwise be in compliance  
43 with the requirements and controls established pursuant to section  
44 21 of P.L.1985, c.222 (C.52:27D-321).

45 m. All parties shall be entitled to rely upon regulations on  
46 municipal credits, adjustments, and compliance mechanisms  
47 adopted by the Council on Affordable Housing unless those  
48 regulations are contradicted by statute, including but not limited to

1 P.L. , c. (C. ) (pending before the Legislature as this bill),  
2 or binding court decisions.

3 <sup>2</sup>n. P.L. , c. (C. ) (pending before the Legislature as this  
4 bill) shall not be construed to require a municipality to fund  
5 infrastructure improvements for affordable housing projects beyond  
6 any commitments made in a fair share plan and housing element  
7 that has been provided with compliance certification. A  
8 municipality may fund infrastructure improvements for affordable  
9 housing projects, through the adoption of a development agreement  
10 with the applicant, beyond any commitments made in a fair share  
11 plan and housing element that has been provided with compliance  
12 certification.<sup>2</sup>

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

14  
15 25. Section 6 of P.L.2005, c.350 (C.52:27D-311b) is amended to  
16 read as follows:

17 6. **【The council】** A municipality may take such measures as are  
18 necessary to assure compliance with the adaptability requirements  
19 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),  
20 including the inspection of those units which are newly constructed  
21 and receive housing credit as provided under section 1 of P.L.2005,  
22 c.350 (C.52:27D-311a) for adaptability, as part of the monitoring  
23 which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).  
24 No housing unit subject to the provisions of section 5 of P.L.2005,  
25 c.350 (C.52:27D-123.15) and to the provisions of the barrier free  
26 subcode adopted by the Commissioner of Community Affairs  
27 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
28 c.217 (C.52:27D-119 et seq.) shall be eligible for inclusion in a  
29 municipal fair share plan unless the unit complies with the  
30 requirements set forth thereunder. If any units for which credit was  
31 granted in accordance with the provisions of P.L.2005, c.350  
32 (C.52:27D-311a et al.) are found not to conform to the requirements  
33 of P.L.2005, c.350 (C.52:27D-311a et al.), 【the council may】 any  
34 party representing the interests of households with disabilities may  
35 seek a modification to the approval of the municipal fair share plan  
36 to require the municipality to amend its fair share plan within 90  
37 days of 【receiving notice from the council】 such a finding, to  
38 address its fair share obligation pursuant to P.L.1985, c.222  
39 (C.52:27D-301 et al.). In the event that the municipality fails to  
40 amend its fair share plan within 90 days of 【receiving such notice,  
41 the council may revoke substantive certification】 such a finding, the  
42 municipality shall lose immunity to <sup>2</sup>【a builder's remedy】  
43 exclusionary zoning litigation<sup>2</sup> for the portion of its obligation that  
44 is found not to conform to the requirements of P.L.2005, c.350  
45 (C.52:27D-311a et al.).

46 (cf: P.L.2005, c.350, s.6)

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

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

29       a. Except as permitted pursuant to subsection g. of this section,  
30 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the  
31 commissioner shall award grants or loans from this fund for  
32 housing projects and programs in municipalities whose housing  
33 elements have **【received substantive certification from the council,】**  
34 obtained compliance certification pursuant to section 3 of P.L. \_\_\_\_\_,  
35 c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill), or in  
36 municipalities receiving State aid pursuant to P.L.1978, c.14  
37 (C.52:27D-178 et seq.) **【, in municipalities subject to a builder's**  
38 **remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328),**  
39 **or in receiving municipalities in cases where the council has**  
40 **approved a regional contribution agreement and a project plan**  
41 **developed by the receiving municipality】.**

42       Of those monies deposited into the "New Jersey Affordable  
43 Housing Trust Fund" that are derived from municipal development  
44 fee trust funds, or from available collections of Statewide non-  
45 residential development fees, a priority for funding shall be  
46 established for projects in municipalities that have **【petitioned the**  
47 **council for substantive】** received compliance certification.



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

4 b. The commissioner shall establish rules and regulations  
5 governing the qualifications of applicants, the application  
6 procedures, and the criteria for awarding grants and loans and the  
7 standards for establishing the amount, terms, and conditions of each  
8 grant or loan.

9 c. For any period which the **【council】** commissioner may  
10 approve, the commissioner may assist affordable housing programs  
11 **【which】** that are **【not】** located in municipalities **【whose housing**  
12 **elements have been granted substantive certification or which are**  
13 **not in furtherance of a regional contribution agreement】** that have a  
14 pending request for compliance certification; provided that the  
15 affordable housing program will meet all or part of a municipal  
16 **【low and moderate income】** low- and moderate-income housing  
17 obligation.

18 d. Amounts deposited in the "New Jersey Affordable Housing  
19 Trust Fund" shall be targeted to regions based on the region's  
20 percentage of the State's **【low and moderate income】** low- and  
21 moderate-income housing need as determined **【by the council】**  
22 pursuant to the low- and moderate-income household growth over  
23 the prior 10 years, as calculated pursuant to section 6 of P.L. \_\_\_\_\_,  
24 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill). Amounts  
25 in the fund shall be applied for the following purposes in designated  
26 neighborhoods:

27 (1) Rehabilitation of substandard housing units occupied or to  
28 be occupied by **【low and moderate income】** low- and moderate-  
29 income households;

30 (2) Creation of accessory **【apartments】** dwelling units to be  
31 occupied by **【low and moderate income】** low- and moderate-  
32 income households;

33 (3) Conversion of non-residential space to residential purposes;  
34 provided a substantial percentage of the resulting housing units are  
35 to be occupied by **【low and moderate income】** low- and moderate-  
36 income households;

37 (4) Acquisition of real property, demolition and removal of  
38 buildings, or construction of new housing that will be occupied by  
39 **【low and moderate income】** low- and moderate-income households,  
40 or any combination thereof;

41 (5) Grants of assistance to eligible municipalities for costs of  
42 necessary studies, surveys, plans, and permits; engineering,  
43 architectural, and other technical services; costs of land acquisition  
44 and any buildings thereon; and costs of site preparation, demolition,  
45 and infrastructure development for projects undertaken pursuant to  
46 an approved regional contribution agreement;

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

9 (7) Other housing programs for **[low and moderate income]**  
10 low- and moderate-income housing, including, without limitation,  
11 (a) infrastructure projects directly facilitating the construction of  
12 **[low and moderate income]** low- and moderate-income housing not  
13 to exceed a reasonable percentage of the construction costs of the  
14 **[low and moderate income]** low- and moderate-income housing to  
15 be provided and (b) alteration of dwelling units occupied or to be  
16 occupied by households of **[low or moderate income]** low- or  
17 moderate-income and the common areas of the premises in which  
18 they are located in order to make them accessible to persons with  
19 disabilities.

20 e. Any grant or loan agreement entered into pursuant to this  
21 section shall incorporate contractual guarantees and procedures by  
22 which the division **[will]** shall ensure that any unit of housing  
23 provided for **[low and moderate income]** low- and moderate-  
24 income households shall continue to be occupied by **[low and**  
25 **moderate income]** low- and moderate-income households for **[at**  
26 **least 20 years]** a period that conforms to the requirements of  
27 subsection f. of section 21 of P.L.1985, c.222 (C.52:27D-321)  
28 following the award of the loan or grant, except that the division  
29 may approve a guarantee for a period of less **[than 20 years]**  
30 duration where necessary to ensure project feasibility.

31 f. Notwithstanding the provisions of any other law, rule, or  
32 regulation to the contrary, in making grants or loans under this  
33 section, the department shall not require that tenants be certified as  
34 **[low or moderate income]** low- or moderate-income or that  
35 contractual guarantees or deed restrictions be in place to ensure  
36 continued **[low and moderate income]** low- and moderate-income  
37 occupancy as a condition of providing housing assistance from any  
38 program administered by the department, when that assistance is  
39 provided for a project of moderate rehabilitation if the project: (1)  
40 contains 30 or fewer rental units; and (2) is located in a census tract  
41 in which the median household income is 60 percent or less of the  
42 median income for the housing region in which the census tract is  
43 located, as determined for a three person household by the  
44 **[council]** department in accordance with the latest federal  
45 decennial census. A list of eligible census tracts shall be  
46 maintained by the department and shall be adjusted upon

1 publication of median income figures by census tract after each  
2 federal decennial census.

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

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

32 i. The commissioner may award or grant the amount of any  
33 appropriation deposited in the "New Jersey Affordable Housing  
34 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-  
35 320.1) to municipalities pursuant to the provisions of section 39 of  
36 P.L.2009, c.90 (C.40:55D-8.8).  
37 (cf: P.L.2017, c.131, s.200)

38

39 27. Section 21 of P.L.1985, c.222 (C.52:27D-321) is amended to  
40 read as follows:

41 21. The agency shall establish affordable housing programs to  
42 assist municipalities in meeting the obligation of developing  
43 communities to provide **【low and moderate income】** low- and  
44 moderate-income housing.

45 a. Of the bond authority allocated to it under section 24 of  
46 P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a  
47 reasonable period of time established by its board, no less than  
48 **【25%】** 25 percent to be used in conjunction with housing to be

1 constructed or rehabilitated with assistance under **[this act]**  
2 P.L.1985, c.222 (C.52:27D-301 et al.).

3 b. The agency shall to the extent of available funds, award  
4 assistance to affordable housing programs located in municipalities  
5 whose housing elements have **[received substantive]** obtained  
6 compliance certification **[from the council]** , or which have been  
7 subject to a builder's remedy **[or which are in furtherance of a**  
8 **regional contribution agreement approved by the council]**. During  
9 **[the first 12 months from the effective date of this act and for]** any  
10 **[additional]** period which the **[council]** agency may approve, the  
11 agency may assist affordable housing programs **[which are not**  
12 **located in municipalities whose housing elements have been granted**  
13 **substantive certification or which are not in furtherance of a**  
14 **regional contribution agreement]** that have a pending request for  
15 compliance certification; provided the affordable housing program  
16 will meet all or in part a municipal **[low and moderate income]**  
17 low- and moderate-income housing obligation.

18 c. Assistance provided pursuant to this section may take the  
19 form of grants or awards to municipalities, prospective home  
20 purchasers, housing sponsors as defined in P.L.1983, c.530  
21 (C.55:14K-1 et seq.), or as contributions to the issuance of  
22 mortgage revenue bonds or multi-family housing development  
23 bonds which have the effect of achieving the goal of producing  
24 affordable housing.

25 d. Affordable housing programs which may be financed or  
26 assisted under this provision may include, but are not limited to:

27 (1) Assistance for home purchase and improvement including  
28 interest rate assistance, down payment and closing cost assistance,  
29 and direct grants for principal reduction;

30 (2) Rental programs including loans or grants for developments  
31 containing **[low and moderate income]** low- and moderate-income  
32 housing, moderate rehabilitation of existing rental housing,  
33 congregate care and retirement facilities;

34 (3) Financial assistance for the conversion of nonresidential  
35 space to residences;

36 (4) Other housing programs for **[low and moderate income]**  
37 low- and moderate-income housing, including infrastructure  
38 projects directly facilitating the construction of **[low and moderate**  
39 **income]** low- and moderate-income housing; and

40 (5) Grants or loans to municipalities, housing sponsors and  
41 community organizations to encourage development of innovative  
42 approaches to affordable housing, including:

43 (a) Such advisory, consultative, training and educational  
44 services as will assist in the planning, construction, rehabilitation  
45 and operation of housing; and

46 (b) Encouraging research in and demonstration projects to  
47 develop new and better techniques and methods for increasing the

1 supply, types and financing of housing and housing projects in the  
2 State.

3 e. The agency shall establish procedures and guidelines  
4 governing the qualifications of applicants, the application  
5 procedures and the criteria for awarding grants and loans for  
6 affordable housing programs and the standards for establishing the  
7 amount, terms and conditions of each grant or loan.

8 f. **【In consultation with the council, the】** The agency , in  
9 consultation with the department, shall establish requirements and  
10 controls to **【insure】** ensure the maintenance of housing assisted  
11 under **【this act】** P.L.1985, c.222 (C.52:27D-301 et al.) as affordable  
12 to **【low and moderate income】** low- and moderate-income  
13 households for a period of not less than 40 years for <sup>2</sup>newly  
14 created<sup>2</sup> rental units <sup>2</sup>【and , 20】 , 30<sup>2</sup> years for for-sale units  
15 <sup>2</sup>【provided that the agency】<sup>2</sup> 【may establish a shorter period upon a  
16 determination that the economic feasibility of the program is  
17 jeopardized by the requirement and the public purpose served by the  
18 program outweighs the shorter period】 <sup>2</sup>, and 30 years for housing  
19 units for which affordability controls are extended for a new term of  
20 affordability, provided that the minimum extension term may be  
21 limited to no less than 20 years as long as the original and extended  
22 term, in combination, total at least 60 years. Any 100 percent  
23 affordable rental property shall have a right to extinguish a deed  
24 restriction regardless of original length, beginning 30 years  
25 following the start of the deed restriction, provided a refinancing or  
26 rehabilitation, or both, for the purpose of preservation is  
27 commenced and that a new deed restriction of at least 30 years is  
28 provided. A municipality shall be eligible to receive credits for all  
29 preserved units pursuant to this subsection, as long as the original  
30 and extended term total at least 60 years, and this credit may be  
31 obtained at the time of preservation. All 100 percent affordable  
32 projects shall be eligible for any affordable housing preservation  
33 program administered by the State, beginning 30 years following  
34 the start of the deed restriction, regardless of original length of the  
35 deed restriction. Any State administered preservation program may  
36 allow a refinancing funding process to commence prior to the 30th  
37 year of the deed restriction when such refinancing or rehabilitation  
38 funding is needed to preserve affordable housing. The agency<sup>2</sup> may  
39 update or amend any controls previously adopted by the agency, in  
40 consultation with the Council on Affordable Housing, prior to the  
41 effective date of P.L. , c. (C. ) (pending before the  
42 Legislature as this bill), provided that the requirements and controls  
43 shall, at a minimum, be consistent with the controls as in effect  
44 immediately prior to the effective date of P.L. , c. (C. )  
45 (pending before the Legislature as this bill), including, but not  
46 limited to, any requirements concerning bedroom distributions,  
47 affordability averages, and affirmative marketing. The controls

1 may include, among others, requirements for recapture of assistance  
2 provided pursuant to **【this act】** P.L.1985, c.222 (C.52:27D-301 et  
3 al.) or restrictions on return on equity in the event of failure to meet  
4 the requirements of the program. With respect to rental housing  
5 financed by the agency pursuant to **【this act】** P.L.1985, c.222  
6 (C.52:27D-301 et al.) or otherwise which promotes the provision or  
7 maintenance of **【low and moderate income】** low- and moderate-  
8 income housing, the agency may waive restrictions on return on  
9 equity required pursuant to P.L.1983, c.530 (C.55:14K-1 et seq.)  
10 which is gained through the sale of the property or of any interest in  
11 the property or sale of any interest in the housing sponsor. The  
12 agency shall promulgate updated regulations no later than nine  
13 months following the effective date of P.L. , c. (C. )  
14 (pending before the Legislature as this bill). All parties may  
15 continue to rely on regulations previously adopted by the agency  
16 pursuant to the authority provided by this section as in effect  
17 immediately prior to the effective date of P.L. , c. (C. )  
18 (pending before the Legislature as this bill) until new rules and  
19 regulations are adopted by the agency. Notwithstanding the  
20 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
21 (C.52:14B-1 et seq.) to the contrary, the agency, after consultation  
22 with department, may adopt, immediately, upon filing with the  
23 Office of Administrative Law, said regulations, which shall be  
24 effective for a period not to exceed one year from the date of the  
25 filing. The agency shall thereafter amend, adopt, or readopt the  
26 regulations in accordance with the requirements of P.L.1968, c.410  
27 (C.52:14B-1 et seq.).

28 g. The agency may establish affordable housing programs  
29 through the use or establishment of subsidiary corporations or  
30 development corporations as provided in P.L.1983, c.530  
31 (C.55:14K-1 et seq.). The subsidiary corporations or development  
32 corporations shall be eligible to receive funds provided under **【this**  
33 **act】** P.L.1985, c.222 (C.52:27D-301 et al.) for any permitted  
34 purpose.

35 h. The agency shall provide assistance, through its bonding  
36 powers or in any other manner within its powers, to the grant and  
37 loan program established pursuant to section 20 of P.L.1985, c.222  
38 (C.52:27D-320).

39 i. (1) The department shall promulgate processes and standards  
40 for the certification of administrative agents and municipal housing  
41 liaisons in the State, as well as standards for measuring  
42 performance of and enforcing compliance by administrative agents  
43 and municipal housing liaisons in implementing the affordable  
44 housing requirements and controls established pursuant to  
45 subsection f. of this section.

46 (2) Administrative agents shall be responsible for implementing  
47 the requirements and controls set by the regulations promulgated

1 pursuant to subsection <sup>2</sup>**[(f)] f.**<sup>2</sup> of this section. The department  
2 may bring via summary proceeding any findings of violation of the  
3 responsibilities set forth in this section before a county level  
4 housing judge, to docket the violation and issue corrective orders  
5 and levy fines.

6 (3) Municipal housing liaisons shall be responsible for  
7 monitoring administrative agents within their municipality's  
8 jurisdiction to ensure compliance with the requirements and  
9 controls set by regulation under subsection f. of this section.

10 (4) Municipal housing liaisons, the department, and interested  
11 parties may bring a challenge before a county level housing judge to  
12 determine whether properties subject to the regulations set forth by  
13 this section are out of compliance with the regulations. A finding  
14 of deliberate noncompliance may result in the department removing  
15 the administrative agent's certification.

16 (5) A County level housing judge may issue fines and order  
17 corrective actions for violations and may consider patterns of  
18 violations in determining whether a municipality is meeting its  
19 obligations under the compliance certification established by  
20 section 3 of P.L. , c. (C. ) (pending before the Legislature  
21 as this bill).

22 (6) Notwithstanding the provisions of the "Administrative  
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the  
24 contrary, the department may adopt, immediately, upon filing with  
25 the Office of Administrative Law, regulations to implement the  
26 provisions of this subsection, which shall be effective for a period  
27 not to exceed one year from the date of the filing. The department  
28 shall thereafter amend, adopt, or readopt the regulations in  
29 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1  
30 et seq.).

31 (cf: P.L.2004, c.140, s.5)

32

33 28. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended  
34 to read as follows:

35 19. Notwithstanding any rules of the New Jersey Housing and  
36 Mortgage Finance Agency to the contrary, the allocation of **low**  
37 **income** low-income tax credits shall be made by the agency to the  
38 full extent such credits are permitted to be allocated under federal  
39 law, including allocations of **[4]** four percent or **[9]** nine percent  
40 federal **low income** low-income tax credits, and including  
41 allocations allowable for partial credits. The affordable portion of  
42 any mixed income or mixed use development that is part of a fair  
43 share housing plan **[approved by the council, or]** that has obtained  
44 compliance certification, including a court-approved judgment of  
45 repose or compliance, including, but not limited to, a development  
46 that has received a density bonus, shall be permitted to receive  
47 allocations of [low income] low-income tax credits, provided that

1 the applicant can conclusively demonstrate that the market rate  
2 residential or commercial units are unable to internally subsidize  
3 the affordable units, and the affordable units are developed  
4 contemporaneously with the commercial or market rate residential  
5 units.

6 (cf: P.L.2008, c.46, s.19)

7  
8 29. Section 7 of P.L.2008, c.46 (C.52:27D-329.1) is amended to  
9 read as follows:

10 7. **【**The council shall coordinate and review the housing  
11 elements as filed pursuant to section 11 of P.L.1985, c.222  
12 (C.52:27D-311), and the housing activities under section 20 of  
13 P.L.1985, c.222 (C.52:27D-320), at least once every three years, to**】**  
14 Housing elements and fair share plans adopted pursuant to section 3  
15 of P.L. , c. (C. ) (pending before the Legislature as this bill)  
16 shall ensure that at least 13 percent of the housing units made  
17 available for occupancy by low-income and **【**moderate income**】**  
18 moderate-income households to address a municipality's  
19 prospective need obligation will be reserved for occupancy by very  
20 low income households, as that term is defined pursuant to section 4  
21 of P.L.1985, c.222 (C.52:27D-304), with at least half of such units  
22 made available for families with children. The 13 percent shall  
23 count towards the minimum 50 percent of the housing units  
24 required to be made available for occupancy by low-income  
25 households to address a municipality's prospective need obligation.  
26 Nothing in this section shall require that a specific percentage of the  
27 units in any specific project be reserved as very **【**low income**】** low-  
28 income housing; provided, however, that a municipality shall not  
29 receive bonus credits for the provision of housing units reserved for  
30 occupancy by very **【**low income**】** low-income households unless  
31 the 13 percent target has been exceeded within that municipality **【**.  
32 The council shall coordinate all efforts to meet the goal of this  
33 section in a manner that will result in a balanced number of housing  
34 units being reserved for very low income households throughout all  
35 housing regions. For the purposes of this section, housing activities  
36 under section 20 of P.L.1985, c.222 (C.52:27D-320) shall include  
37 any project-based assistance provided from the "New Jersey  
38 Affordable Housing Trust Fund" pursuant to P.L.2004, c.140  
39 (C.52:27D-287.1 et al.), regardless of whether the housing activity  
40 is counted toward the municipal obligation under the "Fair Housing  
41 Act," P.L.1985, c.222 (C.52:27D-301 et al.)**】** , and that the agency  
42 shall update the regulations adopted pursuant to section 21 of  
43 P.L.1985, c.222 (C.52:27D-321) to replace any requirements for  
44 very low-income housing inconsistent with the percentages and  
45 definitions established pursuant to P.L. , c. (C. )  
46



1 (pending before the Legislature as this bill) with the percentage and  
2 definition specified in this section.

3 (cf: P.L.2008, c.46, s.7)

4  
5 30. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to  
6 read as follows:

7 8. a. **【The council may authorize a】** (1) A municipality that is  
8 in the process of seeking compliance certification, has 【petitioned  
9 for substantive】 obtained compliance certification, <sup>2</sup>is a qualified  
10 urban aid municipality, as determined pursuant to paragraph (1) of  
11 subsection c. of section 7 of P.L. , c. (C. ) (pending before  
12 the Legislature as this bill),<sup>2</sup> or that has been so authorized by a  
13 court of competent jurisdiction, and which has adopted a municipal  
14 development fee ordinance shall be authorized to impose and  
15 collect development fees from developers of residential property, in  
16 accordance with rules promulgated by the 【council】 department.  
17 Each amount collected shall be deposited and shall be accounted for  
18 separately, by payer and date of deposit.

19 (2) No later than <sup>2</sup>【90】 180<sup>2</sup> days following the enactment of  
20 P.L. , c. (C. ) (pending before the Legislature as this bill),  
21 any municipality that is or has been authorized to impose and  
22 collect development fees from developers of residential property, or  
23 payments in lieu of constructing affordable housing, shall provide  
24 the Department of Community Affairs with a detailed accounting of  
25 all such fees that have been collected and expended since the  
26 inception of the municipal authorization to collect the fees.

27 (3) Beginning with the year after the enactment of P.L. ,  
28 c. (C. ) (pending before the Legislature as this bill), by  
29 <sup>2</sup>【January】 February<sup>2</sup> 15, every municipality that is or has been  
30 authorized to impose and collect development fees from developers  
31 of residential property, or payments in lieu of constructing  
32 affordable housing, shall provide the Department of Community  
33 Affairs with a detailed accounting of all such fees that have been  
34 collected and expended the previous year.

35 (4) A municipality may not spend or commit to spend any  
36 affordable housing development fees, including Statewide non-  
37 residential fees collected and deposited into the municipal  
38 affordable housing trust fund, without first obtaining the 【council's】  
39 approval of the expenditure as part of its compliance certification or  
40 by the department. A municipality shall include in its housing  
41 element and fair share plan adopted pursuant to section 3 of P.L. ,  
42 c. (C. ) (pending before the Legislature as this bill) a  
43 spending plan for current funds in the municipal affordable housing  
44 trust fund and projected funds through the current round. Review  
45 of that spending plan for consistency with applicable law and the  
46 municipality's Housing Element and Fair Share Plan shall be part of  
47 the process specified in section 3 of P.L. , c. (C. ) (pending

1 before the Legislature as this bill). The **【council】** department shall  
2 promulgate updated regulations no later than nine months following  
3 the effective date of P.L. , c. (C. ) (pending before the  
4 Legislature as this bill) regarding the establishment, administration,  
5 reporting, and enforcement of the expenditure of affordable housing  
6 development fees by municipalities, which shall include  
7 establishing an expedited process for approving spending plan  
8 expenditures for emergent opportunities to create affordable  
9 housing after a municipality has obtained compliance certification  
10 and procedures for monitoring the collection and expenditure of  
11 trust funds. The department shall develop and publish on the  
12 department's Internet website a detailed summary of the municipal  
13 affordable housing trust fund expenditures for each municipality,  
14 and shall update each summary on an annual basis. As part of the  
15 regulations adopted pursuant to this section and section 10 of  
16 P.L.2008, c.46 (C.52:27D-329.4), the department shall adopt  
17 reporting requirements applicable to municipal affordable housing  
18 trust funds to facilitate fulfillment of the department's obligations  
19 pursuant to this section. Municipalities may continue to rely on  
20 regulations on development fees and spending plans previously  
21 adopted by the council until new rules and regulations are adopted  
22 by the department. The **【council】** department shall have  
23 **【exclusive】** jurisdiction regarding the enforcement of these  
24 regulations, provided that any municipality which is not in  
25 compliance with the regulations adopted by the **【council】**  
26 department may be subject to forfeiture of any or all funds  
27 remaining within its municipal trust fund. Any funds so forfeited  
28 shall be deposited into the "New Jersey Affordable Housing Trust  
29 Fund" established pursuant to section 20 of P.L.1985, c.222  
30 (C.52:27D-320).

31 b. A municipality shall deposit all fees collected, whether or  
32 not such collections were derived from fees imposed upon non-  
33 residential or residential construction into a trust fund dedicated to  
34 those purposes as required under this section, and such additional  
35 purposes as may be approved by the **【council】** department.

36 c. (1) A municipality <sup>2</sup>, other than a qualified urban aid  
37 municipality, as determined pursuant to paragraph (1) of subsection  
38 c. of section 7 of P.L. , c. (C. ) (pending before the  
39 Legislature as this bill),<sup>2</sup> may only spend development fees for an  
40 activity approved by the **【council】** department to address the  
41 municipal fair share obligation, or approved as part of compliance  
42 certification.

43 (2) Municipal development trust funds shall not be expended  
44 unless the municipality has immunity from <sup>2</sup>**【builder's remedy】**  
45 exclusionary zoning<sup>2</sup> litigation at the time of the expenditure <sup>2</sup>**【**  
46 and**】** , or said municipality has previously collected such funds  
47 while under the protection of presumptive validity or immunity

1 from exclusionary zoning litigation and in accordance with an  
2 approved spending plan. However, municipal development trust  
3 funds may be expended by a municipality if the municipality is a  
4 qualified urban aid municipality, as determined pursuant to  
5 paragraph (1) of subsection c. of section 7 of P.L. , c. (C. )  
6 (pending before the Legislature as this bill), with a development fee  
7 ordinance and spending plan approved by the department or a court  
8 of competent jurisdiction, regardless of whether this approval  
9 occurs prior to or subsequent to the effective date of P.L. ,  
10 c. (C. ) (pending before the Legislature as this bill).

11 Municipal development fee trust funds<sup>2</sup> shall not be expended:

12 (a) to reimburse municipalities for activities which occurred  
13 prior to the authorization of a municipality to collect development  
14 fees; or

15 (b) (i) on administrative costs, attorney fees or court costs to  
16 obtain a judgment of repose; (ii) to contest a determination of the  
17 municipality's fair share obligation; or (iii) on costs of any  
18 challenger in connection to a challenge to the municipality's  
19 obligation, housing element, or fair share plan.

20 (3) A municipality shall set aside a portion of its development  
21 fee trust fund for the purpose of providing affordability assistance  
22 to [low and moderate income] low- and moderate-income  
23 households in affordable units included in a municipal fair share  
24 plan, in accordance with rules of the [council] department.

25 (a) Affordability assistance programs may include down  
26 payment assistance, security deposit assistance, low interest loans,  
27 common maintenance expenses for units located in condominiums,  
28 rental assistance, and any other program authorized by the  
29 [council] department.

30 (b) Affordability assistance to households earning 30 percent or  
31 less of median income may include buying down the cost of [low  
32 income] low-income units in a municipal fair share plan to make  
33 them affordable to households earning 30 percent or less of median  
34 income. The use of development fees in this manner shall not  
35 entitle a municipality to bonus credits except as may [be provided  
36 by the rules of the council] otherwise be allowed by applicable  
37 precedent.

38 (4) A municipality may contract with a private or public entity  
39 to administer any part of its housing element and fair share plan,  
40 including the requirement for affordability assistance, or any  
41 program or activity for which the municipality expends  
42 development fee proceeds, in accordance with rules of the  
43 [council] department.

44 (5) Not more than 20 percent of the revenues collected from  
45 development fees shall be expended on administration, in  
46 accordance with rules of the [council] department. Such  
47 administration may include expending a portion of its affordable

1 housing trust fund on actions and efforts reasonably related to the  
2 determination of its fair share obligation and the development of its  
3 housing element and fair share plan pursuant to paragraphs (1) and  
4 (2) of subsection f. of section 3 of P.L. , c. (C. ) (pending  
5 before the Legislature as this bill), and for expenses that are  
6 reasonably necessary for compliance with the processes of the  
7 program, including but not limited to, the costs to the municipality  
8 of resolving a challenge under the program.

9 d. The **【council】** department shall establish a time by which all  
10 development fees collected within a calendar year shall be  
11 expended; provided, however, that all fees shall be committed for  
12 expenditure within four years from the date of collection. A  
13 municipality that fails to commit to expend the balance required in  
14 the development fee trust fund by the time set forth in this section  
15 shall be required by the council to transfer the remaining unspent  
16 balance at the end of the four-year period to the "New Jersey  
17 Affordable Housing Trust Fund," established pursuant to section 20  
18 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46  
19 (C.52:27D-329.1 et al.), to be used in the housing region of the  
20 transferring municipality for the authorized purposes of that fund.

21 e. Notwithstanding any provision of this section, or regulations  
22 of the **【council】** department, a municipality shall not collect a  
23 development fee from a developer whenever that developer is  
24 providing for the construction of affordable units, either on-site or  
25 elsewhere within the municipality.

26 This section shall not apply to the collection of a Statewide  
27 development fee imposed upon non-residential development  
28 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1  
29 **【et seq.】** through C.40:55D-8.7) by the State Treasurer, when such  
30 collection is not authorized to be retained by a municipality.

31 (cf: P.L.2008, c.46, s.8)

32  
33 31. Section 10 of P.L.2008, c.46 (C.52:27D-329.4) is amended  
34 to read as follows:

35 10. a. The **【council】** department shall maintain on its Internet  
36 website, and also publish on 【a regular】 an annual basis, an up-to-  
37 date municipal status report **【concerning the petitions for**  
38 **substantive certification of each municipality that has submitted to**  
39 **the council's jurisdiction, and shall collect and publish】** based on its  
40 collection and publication of information concerning the number  
41 affordable of housing units actually constructed, construction starts,  
42 certificates of occupancy granted, **【rental units maintained, and the**  
43 **number of housing units transferred or sold within the previous 12-**  
44 **month period】** the start and expiration dates of deed restrictions,  
45 and residential and non-residential development fees collected and  
46 expended, including purposes and amounts of such expenditures,  
47 along with the current balance in the municipality's affordable

1 housing trust funds. With respect to units actually constructed, the  
2 information shall specify the characteristics of the housing,  
3 including housing type, tenure, affordability level, number of  
4 bedrooms, date and expiration of affordability controls, and whether  
5 occupancy is reserved for families, senior citizens, or other special  
6 populations. **【**No later than 60 months after the effective date of  
7 P.L.2008, c.46 (C.52:27D-329.1 et al.), the council shall require  
8 each municipality, as a condition of substantive certification, to  
9 provide, in a standardized electronic media format as determined by  
10 the council, the details of the fair share plan as adopted by the  
11 municipality and approved by the council. The council shall  
12 publish and maintain such approved plans on its website.**】**

13 b. (1) No later than <sup>2</sup>**【90】** 180<sup>2</sup> days following the enactment of  
14 P.L. , c. (C. ) (pending before the Legislature as this bill),  
15 each municipality shall provide the department with the information  
16 necessary to comply with this section.

17 (2) Beginning with the year after the enactment of P.L. ,  
18 c. (C. ) (pending before the Legislature as this bill), by  
19 <sup>2</sup>**【January】** February<sup>2</sup> 15, each municipality shall provide the  
20 department with the information necessary to comply with this  
21 section.

22 c. The department may adopt, pursuant to the "Administrative  
23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and  
24 regulations as may be necessary to effectuate the provisions of this  
25 section, including rules and regulations to ensure that municipalities  
26 and developers report any information as may be necessary for the  
27 department to fulfill its obligations pursuant to this section.

28 (cf: P.L.2008, c.46, s.10)

29

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

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

1 percent of the residential units constructed **】, to the extent this is**  
2 **economically feasible】** with affordability controls as required  
3 pursuant to the rules and regulations of the agency.

4 b. Subject to the provisions of subsection d. of this section, a  
5 developer of a project consisting of newly-constructed residential  
6 units being financed in whole or in part with State funds, including,  
7 but not limited to, transit villages designated by the Department of  
8 Transportation and units constructed on State-owned property, shall  
9 be required to reserve at least 20 percent of the residential units  
10 constructed for occupancy by **【low or moderate income】** low- or  
11 moderate-income households, as those terms are defined in section  
12 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as  
13 required under the rules of the **【council, unless the municipality in**  
14 **which the property is located has received substantive certification**  
15 **from the council and such a reservation is not required under the**  
16 **approved affordable housing plan, or the municipality has been**  
17 **given a judgment of repose or a judgment of compliance by the**  
18 **court, and such a reservation is not required under the approved**  
19 **affordable housing plan】** agency.

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

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

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

1 attributable to Atlantic City casino development, which may be  
2 provided anywhere within Atlantic County, subject to the  
3 restrictions of paragraph (4) of this subsection.

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

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

34 (cf: P.L.2011, c.89, s.5)

35

36 33. Section 3 of P.L.1995, c.343 (C.55:14K-56) is amended to  
37 read as follows:

38 3. As used in this act:

39 "Affordable Home Ownership Opportunities Bonds" means any  
40 bonds of the New Jersey Housing and Mortgage Finance Agency  
41 that provide funds to facilitate the provisions of this act.

42 "Agency" means the New Jersey Housing and Mortgage Finance  
43 Agency.

44 "Annual income" means total income, from all sources, during  
45 the last full calendar year preceding the filing of an application for a  
46 loan pursuant to this act.

1 "Bonds" means bonds, notes or any other form of evidence of  
2 indebtedness of the agency, bearing either a fixed rate or a variable  
3 rate of interest, issued by the agency.

4 "Eligible project" means a project for the creation of low or  
5 moderate income housing which meets the standards of eligibility  
6 for loans under the program created by this act.

7 "Eligible purchaser" means a purchaser of a dwelling unit in an  
8 eligible project to whom a loan may be made under the program  
9 pursuant to section 5 of this act.

10 "Fund" means the Affordable Home Ownership Opportunities  
11 Fund established by section 5 of this act.

12 "Housing region" means a housing region as defined in  
13 subsection b. of section 4 of the "Fair Housing Act," P.L.1985,  
14 c.222 (C.52:27D-304) and determined **by the Council on**  
15 **Affordable Housing pursuant to section 7 of that act, P.L.1985,**  
16 **c.222 (C.52:27D-307)] pursuant to subsection b. of section 6 of**  
17 **P.L. , c. (C. ) (pending before the Legislature as this bill).**

18 "Local enforcement authority" means any officer or agency of  
19 local government responsible for the implementation or  
20 enforcement of land-use and building regulations established by or  
21 pursuant to the "State Uniform Construction Code Act," P.L.1975,  
22 c.217 (C.52:27D-119 et seq.) or the "Municipal Land Use Law,"  
23 P.L.1975, c.291 (C.40:55D-1 et seq.).

24 "Low income" means a gross annual household income equal to  
25 50% or less of the median gross annual household income for  
26 households of the same size within the relevant housing region.

27 "Moderate income" means a gross annual household income  
28 equal to not more than 80%, but more than 50% of the median gross  
29 annual household income for households of the same size within the  
30 relevant housing region.

31 "Program" means the Affordable Home Ownership Opportunities  
32 Program created by this act.

33 "Qualified nonprofit organization" means any corporation or  
34 association of persons organized under Title 15A of the New Jersey  
35 Statutes, having for its principal purpose, or as a purpose ancillary  
36 to its principal purpose, the improvement of realistic opportunities  
37 for low income and moderate income housing, as defined pursuant  
38 to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.),  
39 being within the description of section 501(c)(3) of the United  
40 States Internal Revenue Code (26 U.S.C. 501(c)(3)), having been  
41 determined by the agency to be a bona fide organization not under  
42 the effective control of any for-profit organization or governmental  
43 entity, and appearing capable, by virtue of past activities,  
44 qualifications of staff or board, or other features, of furthering the  
45 purposes of this act.

46 "Substantial rehabilitation" means repair, reconstruction or  
47 renovation which (1) costs in excess of 60% of the fair market value  
48 of a rehabilitated dwelling after such repair, reconstruction or



1 renovation, or (2) renders a previously vacant and uninhabitable  
2 dwelling safe, sanitary and decent for residential purposes, or (3)  
3 converts to safe, sanitary and decent residential use a structure  
4 previously in non-residential use.

5 (cf: P.L.1995, c.343, s.3)

6  
7 34. Section 7 of P.L.1995, c.343 (C.55:14K-60) is amended to  
8 read as follows:

9 7. A project of new construction or substantial rehabilitation by  
10 a nonprofit organization shall be eligible for a loan under this act if  
11 (1) the homes to be constructed or substantially rehabilitated under  
12 the project are located within an identifiable neighborhood in which  
13 median family income does not exceed the current standard of  
14 "moderate income" pursuant to the contemporaneous standards **【**of  
15 the Council on Affordable Housing**】** established pursuant to the  
16 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); (2) the  
17 homes to be constructed or substantially rehabilitated under the  
18 project are sufficient in number and located on the same or  
19 contiguous parcels of land or within such proximity to each other as  
20 to render the cost per unit of housing practicable for acquisition by  
21 lower-income purchasers; and (3) each home constructed or  
22 substantially rehabilitated within the project will conform to all  
23 requirements of the State Uniform Construction Code, except as to  
24 the waiver of any fee or other requirement pursuant to subsection b.  
25 of section 9 of this act.

26 (cf: P.L.1995, c.343, s.7)

27  
28 35. Section 3 of P.L.1998, c.128 (C.55:14K-74) is amended to  
29 read as follows:

30 3. As used in this act:

31 "Agency" means the New Jersey Housing and Mortgage Finance  
32 Agency.

33 "Annual income" means total income, from all sources, during  
34 the last full calendar year preceding the filing of an application for a  
35 loan pursuant to this act.

36 "Bonds" means bonds, notes or any other form of evidence of  
37 indebtedness of the agency, bearing either a fixed rate or a variable  
38 rate of interest, issued by the agency.

39 "Eligible project" means a project undertaken by a qualified  
40 housing sponsor to create housing for shared occupancy by seniors  
41 or persons with disability of low or moderate income, whether for  
42 home ownership or rental, which meets the standards of eligibility  
43 for loans under the program created by section 4 of P.L.1998, c.128  
44 (C.55:14K-75).

45 "Eligible purchaser" means a purchaser of a dwelling unit in an  
46 eligible project who fulfills the definition of a senior or person with  
47 disability pursuant to this section, is of low or moderate income and

1 to whom a loan may be made under the program pursuant to section  
2 4 of P.L.1998, c.128 (C.55:14K-75).

3 "Fund" means the Senior and Disabled Cooperative Housing  
4 Incentive Fund established by section 6 of P.L.1998, c.128  
5 (C.55:14K-77).

6 "Housing region" means a housing region as defined in  
7 subsection b. of section 4 of P.L.1985, c.222 (C.52:27D-304) and  
8 determined **【**by the Council on Affordable Housing pursuant to  
9 section 7 of P.L.1985, c.222 (C.52:27D-307)**】** pursuant to  
10 subsection b. of section 6 of P.L. , c. (C. ) (pending before  
11 the Legislature as this bill).

12 "Low income" means a gross annual household income equal to  
13 50% or less of the median gross annual household income for  
14 households of the same size within the relevant housing region.

15 "Moderate income" means a gross annual household income  
16 equal to not more than 80%, but more than 50% of the median gross  
17 annual household income for households of the same size within the  
18 relevant housing region.

19 "Person with disability" means any person who is 18 years of age  
20 or older and who fulfills the definition of having a "disability"  
21 pursuant to section 3 of the "Americans with Disabilities Act of  
22 1990," 42 U.S.C. s.12102).

23 "Program" means the New Jersey Senior and Disabled  
24 Cooperative Housing Finance Incentive Program created by  
25 P.L.1998, c.128 (C.55:14K-72 et seq.).

26 "Qualified housing sponsor" means any corporation or  
27 association of persons organized under the New Jersey Statutes, or  
28 any other corporation having for one of its purposes the  
29 improvement of realistic opportunities for low income and moderate  
30 income housing, as defined pursuant to the "Fair Housing Act,"  
31 P.L.1985, c.222 (C.52:27D-301 et al.), and appearing capable, by  
32 virtue of past activities, qualifications of staff or board, or other  
33 features, of furthering the purposes of P.L.1998, c.128  
34 (C.55:14K-72 et seq.).

35 "Retrofitting" means renovating or remodeling an existing  
36 residential or non-residential structure to allow for cooperative  
37 living.

38 "Senior" means an individual who is 55 years of age or older.

39 "Substantial rehabilitation" means repair, reconstruction or  
40 renovation which (1) costs in excess of 60% of the fair market value  
41 of a rehabilitated dwelling after such repair, reconstruction or  
42 renovation, or (2) renders a previously vacant and uninhabitable  
43 dwelling safe, sanitary and decent for residential purposes or (3)  
44 converts to safe, sanitary and decent residential use a structure  
45 previously in non-residential use.

46 (cf: P.L.1998, c.128, s.3)

1        36. (New section) a. (1) Notwithstanding the provisions of the  
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
3 seq.) to the contrary, the Commissioner of Community Affairs  
4 shall, in consultation with the Administrative Director of the Courts  
5 and the Executive Director of the New Jersey Housing and  
6 Mortgage Finance Agency, adopt, immediately upon filing with the  
7 Office of Administrative Law, no later than nine months after the  
8 effective date of P.L. , c. (C. ) (pending before the  
9 Legislature as this bill), such transitional rules and regulations as  
10 necessary for the implementation of P.L. , c. (C. ) (pending  
11 before the Legislature as this bill), including for <sup>2</sup>: (a)<sup>2</sup> the  
12 identification of any vestigial duties of the Council on Affordable  
13 Housing and <sup>2</sup>[for]<sup>2</sup> the transfer of those duties within the  
14 Department of Community Affairs to the extent that those duties are  
15 not otherwise assumed, pursuant to P.L. , c. (C. ) (pending  
16 before the Legislature as this bill), by municipalities or the  
17 Affordable Housing Dispute Resolution Program <sup>2</sup>; and (b) the  
18 establishment of policies regarding the cost of the assessments and  
19 fees of planned real estate developments, as defined in section 3 of  
20 P.L.1977, c.419 (C.45:22A-23), on low- and moderate-income  
21 housing units<sup>2</sup>.

22        (2) The department, in consultation with the agency, shall  
23 thereafter amend, adopt, or readopt the regulations in accordance  
24 with the requirements of the "Administrative Procedure Act,"  
25 P.L.1968, c.410 (C.52:14B-1 et seq.).

26        b. The Executive Director of the New Jersey Housing and  
27 Mortgage Finance Agency <sup>2</sup>, in consultation with the department,<sup>2</sup>  
28 shall adopt, pursuant to the "Administrative Procedure Act,"  
29 P.L.1968, c.410 (C.52:14B-1 et seq.), no later than nine months  
30 after the effective date of P.L. , c. (C. ) (pending before the  
31 Legislature as this bill), rules and regulations to update the Uniform  
32 Housing Affordability Controls as required pursuant to the "Fair  
33 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). As part of  
34 updating the Uniform Housing Affordability Controls, the agency  
35 shall set rules establishing that, for the purpose of <sup>2</sup>newly created<sup>2</sup>  
36 low- and moderate-income rental units, a 40-year minimum deed  
37 restriction shall be required. For the purpose of for-sale units, a  
38 <sup>2</sup>[20-year] 30-year<sup>2</sup> minimum deed restriction shall be required.  
39 <sup>2</sup>For the purpose of housing units for which affordability controls  
40 are extended for a new term of affordability, a 30-year minimum  
41 deed restriction shall be required, provided that the minimum  
42 extension term may be limited to no less than 20 years as long as  
43 the original and extended term, in combination, total at least 60  
44 years. Any 100 percent affordable rental property shall have a right  
45 to extinguish a deed restriction regardless of original length,  
46 beginning 30 years following the start of the deed restriction,  
47 provided a refinancing or rehabilitation, or both, for the purpose of

1 preservation is commenced and that a new deed restriction of at  
2 least 30 years is provided. A municipality shall be eligible to  
3 receive credits for all preserved units pursuant to this subsection, as  
4 long as the original and extended term total at least 60 years, and  
5 this credit may be obtained at the time of preservation. All 100  
6 percent affordable projects shall be eligible for any affordable  
7 housing preservation program administered by the State, beginning  
8 30 years following the start of the deed restriction, regardless of  
9 original length of the deed restriction. Any State administered  
10 preservation program may allow a refinancing funding process to  
11 commence prior to the 30th year of the deed restriction when such  
12 refinancing or rehabilitation funding is needed to preserve  
13 affordable housing.<sup>2</sup>

14

15 37. The following sections are repealed:

16 Section 5 of P.L.1985 c.222 (C.52:27D-305);  
17 Section 6 of P.L.1985, c.222 (C.52:27D-306);  
18 Section 7 of P.L.1985, c.222 (C.52:27D-307);  
19 Section 1 of P.L.1991, c.479 (C.52:27D-307.1);  
20 Section 2 of P.L.1991, c.479 (C.52:27D-307.2);  
21 Section 3 of P.L.1991, c.479 (C.52:27D-307.3);  
22 Section 4 of P.L.1991, c.479 (C.52:27D-307.4);  
23 Section 5 of P.L.1991, c.479 (C.52:27D-307.5);  
24 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);  
25 Section 8 of P.L.1985, c.222 (C.52:27D-308);  
26 Section 9 of P.L.1985, c.222 (C.52:27D-309);  
27 Section 40 of P.L.2009, c.90 (C.52:27D-311.3);  
28 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);  
29 Section 14 of P.L.1985, c.222 (C.52:27D-314);  
30 Section 15 of P.L.1985, c.222 (C.52:27D-315);  
31 Section 16 of P.L.1985, c.222 (C.52:27D-316);  
32 Section 17 of P.L.1985, c.222 (C.52:27D-317);  
33 Section 18 of P.L.1985, c.222 (C.52:27D-318);  
34 Section 19 of P.L.1985 c.222 (C.52:27D-319);  
35 Section 22 of P.L.1985, c.222 (C.52:27D-322);  
36 Section 26 of P.L.1985, c.222 (C.52:27D-326);  
37 Section 28 of P.L.1985, c.222 (C.52:27D-328); and  
38 Section 9 of P.L.2008, c.46 (C.52:27D-329.3).

39

40 38. a. There is appropriated to the Affordable Housing Dispute  
41 Resolution Program, established pursuant to subsection a. of section  
42 5 of P.L. , c. (C. ) (pending before the Legislature as this  
43 bill), from the General Fund \$12,000,000 for the purposes of  
44 carrying out its responsibilities for the fourth round of affordable  
45 housing obligations, as established pursuant to section 5 of  
46 P.L. , c. (C. ) (pending before the Legislature as this bill).

47 b. There is appropriated to the Department of Community  
48 Affairs, from the General Fund, \$4,000,000 for the purposes of

1 carrying out responsibilities allocated to it pursuant to P.L. ,  
2 c. (C. ) (pending before the Legislature as this bill).

3  
4 39. This act shall take effect immediately, and shall apply to  
5 each new round of affordable housing obligations that begins  
6 following enactment.

# SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

## STATEMENT TO

### **SENATE, No. 50**

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 25, 2024

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 50.

As amended, this bill would abolish the Council on Affordable Housing (COAH), initially established by the "Fair Housing Act," and would establish a process to enable a municipality to determine its own present and prospective fair share affordable housing obligation based on the formulas established in the bill, as calculated the Department of Community Affairs (DCA). In advance of the fourth, 10-year round of affordable housing obligations, beginning on July 1, 2025, the bill requires DCA to complete these calculations, and provide for their publication, within the earlier of seven months of the effective date of the bill or December 1, 2024.

The bill permits a municipality to diverge from DCA's calculations in determining its obligation as long as it adheres to the methodology established by the bill. In advance of the fourth round, the bill requires a municipality to adopt its obligation by binding resolution, on or before January 31, 2025, in order to be assured of protection from a builder's remedy lawsuit, as defined in the bill, through which a municipality may otherwise be compelled to permit development, when the fourth round begins. If the municipality meets this deadline, then the municipality's determination of its obligation would be established by default, beginning on March 1, 2025, as the municipality's obligation for the fourth round. However, if a challenge is filed with the "Affordable Housing Dispute Resolution Program" ("program"), established in the bill, on or before February 28, 2025, the program would be required to facilitate a resolution of the dispute prior to April 1, 2025.

The bill requires a municipality to establish a "housing element" to encompass its obligation, and a fair share plan to meet its obligation, in advance of the fourth round, and propose necessary changes to associated ordinances, on or before June 30, 2025, in order to be assured of protection from a builder's remedy lawsuit.

A municipality would be required to submit its adopted fair share plan and housing element to the program. The bill permits an interested party to initiate a challenge to a municipal fair share plan and housing element, if submitted through the program on or before

August 31, 2025. The program would facilitate communication over the challenge, and provide the municipality until December 31, 2025 to commit to revising its fair share plan and housing element in response to the challenge, or provide an explanation as to why it will not make all or the requested changes, or both. The bill requires municipalities to adopt associated changes to municipal ordinances on or before March 15, 2026. If a municipality fails to meet these deadlines, then the immunity of the municipality from builder's remedy litigation would end unless the program determines that the municipality's immunity shall be extended. If a municipality fails to adhere to any of these deadlines due to circumstances beyond the municipality's control, the bill directs the program to permit a grace period for the municipality to come into compliance with the timeline, the length of which, and effect of which on later deadlines, would be determined on a case-by-case basis.

After providing immunity, the bill also authorizes the program to subsequently terminate immunity under certain circumstances if it becomes apparent that the municipality is not determined to come into constitutional compliance. The municipality would still be permitted to seek immunity from a builder's remedy by initiating an action in Superior Court. A court would not grant a builder's remedy to a plaintiff in exclusionary zoning litigation during certain timeframes. The deadlines for subsequent 10-year rounds of affordable housing obligations would conform to the dates established in the bill for the fourth round.

In any challenge to a municipality's determination of its affordable housing obligation, or to its fair share plan and housing element, the bill requires the program to apply an objective assessment standard to determine whether or not the municipality's obligation determination, or its fair share plan and housing element, fails to comply with the requirements of the bill. Further, the challenger would be required to provide the basis for its challenge based on applicable law, and the program would have the power to dismiss challenges that do not provide such a basis.

All parties would be required to bear their own fees and costs for proceedings within the program. A determination by the program as to municipal obligations or compliance certification would be considered a final decision, subject to appellate review.

The Administrative Director of the Courts would appoint an odd number of at least three and no more than seven members to serve as program leaders for the program established by the bill, consisting of retired and on recall judges, or other qualified experts. The members and employees of the program would be considered State officers and employees for the purposes of the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.). The Administrative Director of the Courts would also establish procedures for the purpose of efficiently resolving circumstances in which the program is unable

to address a dispute over compliance certification within the time limitations established in the bill. As a part of these procedures, in order to facilitate an appropriate level of localized control of affordable housing decisions, for each vicinage, the bill directs the Chief Justice of the Supreme Court to designate a Superior Court judge who sits within the vicinage, or a retired judge who, during his or her tenure as a judge, served within the vicinage, to serve as county level housing judge to resolve disputes over the compliance, of fair share plans and housing elements of municipalities within their county, with the "Fair Housing Act," when those disputes are not be resolved within the deadlines established in the bill. The Administrative Director of the Courts would adopt and apply a Code of Ethics for the program and county level housing judges modeled on the Code of Judicial Conduct of the American Bar Association, adopted by the State Supreme Court, and may establish additional more restrictive ethical standards in order to meet the specific needs of the program and of county level housing judges.

Each municipality's determination of its fair share obligation would be made through the guidance of preliminary calculations made by DCA. No later than August 1 of the year prior to the year when a new round of housing obligations begins, or, for the fourth round, within seven months of the effective date of the bill or December 1, 2024, whichever is earlier, the bill requires DCA to calculate regional need and municipal present and prospective obligations in accordance with formulas established in the bill. DCA's calculations would be made publicly available, and provided to each municipality for use in determining their present and prospective obligations.

Municipal fair share obligations would be determined by applying the methods provided in the bill, along with the methods used by the Superior Court for the third round, to the extent that applicable methodologies are not explicitly articulated in the bill. Municipal present need obligations would be determined by estimating the existing deficient housing currently occupied by low- and moderate-income households within the municipality.

Regional prospective need would next be determined, upon which to base the municipal obligation, by estimating the regional growth of low- and moderate-income households during the housing round at issue. The bill would simplify the regional need estimation from the processes used in previous rounds in order to ease the administrative burden that has been associated with this process. First, projected household change for a 10-year round in a region would be estimated by establishing the household change experienced in the region between the most recent federal decennial census, the second-most recent federal decennial census. Although this relies on historical data, recent household change in a region is relevant to estimating future household change and associated housing need. This household change would be divided by 2.5 to estimate the number of low- and



moderate-income homes needed to address population change in the region, thereby determining the regional prospective need for the 10-year round. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective would be zero.

After determining regional prospective need, each municipality's fair share prospective obligation of that regional prospective need would be determined. To do this, DCA would first determine whether a municipality is a qualified urban aid municipality, and if so, the municipality would not have a prospective need obligation.

If the municipality is not a qualified urban aid municipality, three factors necessary for the prospective fair share determination would be calculated. First, the equalized nonresidential valuation factor, representing the municipality's share of the regional change in the value of nonresidential property, would be calculated. In prior rounds, this calculation, concerning nonresidential (commercial and industrial) property values, has been adopted as a representation of a municipality's employment potential. Data available from the Division of Local Government Services in DCA would be used for this calculation. Next, an income capacity factor would be determined, using a formula comparable to one used in prior rounds to estimate the municipality's ability to absorb low- and moderate-income households. The municipality's land capacity factor would then be determined, representing the municipality's relative share of developable and redevelopable land, available to accommodate development, using data made available by the Department of Environmental Protection or the Division of Taxation in the Department of Treasury. The average of these three factors would be determined and multiplied by the regional prospective need to determine the municipality's gross prospective need.

Finally, the bill would require, where appropriate, adjustments for secondary sources of housing supply and demand by first calculating demolitions of low- and moderate-income housing, and housing creation through residential conversions. To do this, a municipality's share of conversions would be subtracted from the sum of each municipality's allocated share of gross prospective need and demolitions of low- and moderate-income housing. After applying these secondary sources, as appropriate, the municipality's prospective fair share obligation for the 10-year round would be established.

A municipality would be permitted to make adjustments for a lack of available land resources as part of the determination of a municipality's fair share of affordable housing when, for example certain municipal lands are devoted for conservation purposes. However, the bill would require a municipality that receives such a vacant land adjustment to its fair share obligation to identify parcels for redevelopment to address at least 25 percent of the prospective

need obligation that has been adjusted, and adopt zoning that allows for the adjusted obligation, or demonstrate why this is not possible.

A municipality would ultimately be permitted to reduce its prospective need if necessary to prevent establishing a prospective need obligation that exceeds 1,000 units in total or 20 percent of the estimated occupied housing stock at the beginning of the 10-year round, whichever limitation results in a lower number.

The bill requires that a municipality is required to satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families with children. The bill amends existing statutory language to ensure that affordable housing is constructed that is accessible to persons with disabilities.

The bill permits a municipality to be credited for as much as 10 percent of its affordable housing obligation through transitional housing, and defines "transitional housing" as temporary housing, including but not limited to, single room occupancy housing or shared living and supportive living arrangements, that provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing.

The bill would establish limitations on the use of municipal affordable housing trust fund moneys for administrative costs, attorney fees, court costs to obtain immunity from a builder's remedy, to contest the municipality's fair share obligation, or use of the trust fund moneys while a municipality does not have immunity from builder's remedy litigation. The bill would authorize a municipality to expend a portion of its affordable housing trust fund on actions and efforts reasonably related to or necessary for certain processes of the program, as provided in the bill. The bill would require each municipality authorized to retain and expend non-residential development fees to periodically provide DCA with an accounting of all such fees that have been collected and expended. The bill would prohibit a municipality from receiving bonus credit for any particular type of low- or moderate-income housing, unless authority to obtain bonus credit is expressly provided by the "Fair Housing Act," as amended and supplemented by the bill. The bill expressly prohibits a municipality from receiving more than one type of bonus credit for any unit, or from satisfying more than 25 percent of its prospective need obligation through the use of bonus credits. The bill expressly authorizes bonus credits in the amounts provided in the bill for: (1) housing for individuals with special needs or permanent supportive housing; (2) ownership units created in partnership sponsorship with a non-profit housing developer; (3) housing located in a Garden State Growth Zone or certain transit-oriented locations; (4) certain age-

restricted housing units; (5) family housing with at least three bedrooms above the minimum number required by the bedroom distribution in a given development; (6) housing constructed on certain land previously used for retail, office, or commercial space; (7) certain existing rental housing for which affordability controls are extended through municipal contributions; (8) certain 100 percent affordable developments built through municipal contributions of land or funding; and (9) certain housing for very low-income households. The bill also clarifies that all parties would be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms previously adopted by COAH unless those regulations are contradicted by statute, including but not limited to this bill, or binding court decisions.

The bill would require DCA to maintain certain affordable housing-related information on its website, including: (1) the start and expiration dates of deed restrictions; (2) residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures; and (3) the current balance in the municipality's affordable housing trust funds. The bill would also direct municipalities to provide the information to DCA necessary to comply with this requirement.

The bill would amend various parts of the statutory law to remove references to COAH, and to transfer rulemaking authority, to the extent necessary, from COAH to DCA and the New Jersey Housing and Mortgage Finance Agency (HMFA). The bill directs HMFA to update the Uniform Housing Affordability Controls within nine months following the effective date of the bill. With certain exceptions, for the purpose of affordable rental units, a 40-year minimum deed restriction would be required, and in the case of for-sale units, a 20-year minimum deed restriction would be required.

The bill would appropriate \$12 million to the program, and \$4 million to DCA, from the General Fund, for the purposes of carrying out their respective responsibilities for the fourth round of affordable housing obligations.

The bill would take effect immediately, and would apply to each new round of affordable housing obligations beginning after enactment of the bill.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) require that DCA submit its report on the calculations of regional need and municipal obligations for the fourth round, within seven months following the effective date of the bill or December 1, 2024, whichever is earlier, instead of August 1, 2024; and

(2) require that the Administrative Director of the Courts, instead of the Chief Justice of the Supreme Court: update the assignment of designated Mount Laurel judges within 60, instead of 40, days of the

effective date of the bill, to indicate which current or retired and on recall judges of the Superior Court are to serve as members; take certain factors into consideration when making appointments; designate a member of the Affordable Housing Dispute Resolution Program to serve as chair, and make new appointments to the program as needs arise.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## **SENATE, No. 50**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 11, 2024

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 50 (1R).

As amended, this bill abolishes the Council on Affordable Housing (COAH), initially established by the "Fair Housing Act," and establishes a process to enable a municipality to determine its own present and prospective fair share affordable housing obligation based on the formulas established in the bill, as calculated the Department of Community Affairs (DCA). In advance of the fourth, 10-year round of affordable housing obligations, beginning on July 1, 2025, the bill requires DCA to complete these calculations, and provide for their publication, within the earlier of seven months of the effective date of the bill or December 1, 2024.

The bill permits a municipality to diverge from DCA's calculations in determining its obligation as long as it adheres to the methodology established by the bill. In advance of the fourth round, the bill requires a municipality to adopt its obligation by binding resolution, on or before January 31, 2025, in order to be assured of protection from exclusionary zoning litigation, as defined in the bill, through which a municipality may otherwise be compelled to permit development, when the fourth round begins. If the municipality meets this deadline, then the municipality's determination of its obligation would be established by default, beginning on March 1, 2025, as the municipality's obligation for the fourth round. However, if a challenge is filed with the "Affordable Housing Dispute Resolution Program" (program), established in the bill, on or before February 28, 2025, the program would be required to facilitate a resolution of the dispute prior to April 1, 2025. The presence of this ongoing dispute would not change the deadline for adoption of implementing ordinances and resolutions, but the implementing ordinances and resolutions adopted prior to the resolution of the dispute may be subject to changes to reflect the results of the dispute. As an alternative to adopting all necessary implementing ordinances and resolutions by the March 15 deadline, a municipality involved in a continuing dispute over the issuance of compliance certification would

be permitted to adopt a binding resolution by this date to commit to adopting the implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments.

The bill requires a municipality to establish a "housing element" to encompass its obligation, and a fair share plan to meet its obligation, in advance of the fourth round, and proposes necessary changes to associated ordinances, on or before June 30, 2025, in order to be assured of protection from exclusionary zoning litigation.

A municipality would be required to submit its adopted fair share plan and housing element to the program. The bill permits an interested party to initiate a challenge to a municipal fair share plan and housing element, if submitted through the program on or before August 31, 2025. The program would facilitate communication over the challenge, and provide the municipality until December 31, 2025 to commit to revising its fair share plan and housing element in response to the challenge, or provide an explanation as to why it will not make all or the requested changes, or both. The bill requires municipalities to adopt associated changes to municipal ordinances on or before March 15, 2026. If a municipality fails to meet these deadlines, then the immunity of the municipality from exclusionary zoning litigation would end unless the program determines that the municipality's immunity shall be extended. If a municipality fails to materially adhere to any of these deadlines due to circumstances beyond the municipality's control, the bill directs the program to permit a grace period for the municipality to come into compliance with the timeline, the length of which, and effect of which on later deadlines, is to be determined on a case-by-case basis.

After providing immunity, the bill also authorizes the program to subsequently terminate immunity under certain circumstances if it becomes apparent that the municipality is not determined to come into constitutional compliance. The municipality would still be permitted to seek immunity from exclusionary zoning litigation by initiating an action in Superior Court. The deadlines for subsequent 10-year rounds of affordable housing obligations would conform to the dates established in the bill for the fourth round.

The bill provides that a municipality with compliance certification would only benefit from presumptive validity, not immunity, if an interested party is to: (1) challenge a municipality for failure to comply with the terms of its compliance certification; or (2) bring a challenge before the program alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine. A municipality's determination of its fair share obligation, if determined to be in compliance with the bill, would have a presumption of validity in any challenge initiated through the program, before the issuance of compliance certification.

In any challenge to a municipality's determination of its affordable housing obligation, or to its fair share plan and housing element, the bill requires the program to apply an objective assessment standard to determine whether or not the municipality's obligation determination, or its fair share plan and housing element, fails to comply with the requirements of the bill. Further, the challenger would be required to provide the basis for its challenge based on applicable law, and the program would have the power to dismiss challenges that do not provide such a basis.

All parties would be required to bear their own fees and costs for proceedings within the program. A determination by the program as to municipal obligations or compliance certification would be considered a final decision, subject to appellate review.

The Administrative Director of the Courts would appoint an odd number of at least three and no more than seven members to serve as program leaders for the program established by the bill, consisting of retired and on recall judges, or other qualified experts. The members and employees of the program would be considered State officers and employees for the purposes of the "New Jersey Conflicts of Interest Law," P.L.1971, c.182 (C.52:13D-12 et seq.). The Administrative Director of the Courts would also establish procedures for the purpose of efficiently resolving circumstances in which the program is unable to address a dispute over compliance certification within the time limitations established in the bill. As a part of these procedures, in order to facilitate an appropriate level of localized control of affordable housing decisions, for each vicinage, the bill directs the Chief Justice of the Supreme Court to designate a Superior Court judge who sits within the vicinage, or a retired judge who, during his or her tenure as a judge, served within the vicinage, to serve as county level housing judge to resolve disputes over the compliance, of fair share plans and housing elements of municipalities within their county, with the "Fair Housing Act," when those disputes are not be resolved within the deadlines established in the bill. The Administrative Director of the Courts would adopt and apply a Code of Ethics for the program and county level housing judges modeled on the Code of Judicial Conduct of the American Bar Association, adopted by the State Supreme Court, and may establish additional more restrictive ethical standards in order to meet the specific needs of the program and of county level housing judges.

Each municipality's determination of its fair share obligation would be made through the guidance of preliminary calculations made by DCA. No later than August 1 of the year prior to the year when a new round of housing obligations begins, or, for the fourth round, within seven months of the effective date of the bill or December 1, 2024, whichever is earlier, the bill requires DCA to calculate regional need and municipal present and prospective obligations in accordance with formulas established in the bill. DCA's calculations would be

made publicly available, and provided to each municipality for use in determining their present and prospective obligations.

Municipal fair share obligations would be determined by applying the methods provided in the bill, along with the methods used by the Superior Court for the third round, to the extent that applicable methodologies are not explicitly articulated in the bill. Municipal present need obligations would be determined by estimating the existing deficient housing currently occupied by low- and moderate-income households within the municipality.

Regional prospective need would next be determined, upon which to base the municipal obligation, by estimating the regional growth of low- and moderate-income households during the housing round at issue. The bill simplifies the regional need estimation from the processes used in previous rounds in order to ease the administrative burden that has been associated with this process. First, projected household change for a 10-year round in a region would be estimated by establishing the household change experienced in the region between the most recent federal decennial census, the second-most recent federal decennial census. Although this relies on historical data, recent household change in a region is relevant to estimating future household change and associated housing need. This household change would be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address population change in the region, thereby determining the regional prospective need for the 10-year round. If household change is zero or negative, the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region and the regional prospective would be zero.

After determining regional prospective need, each municipality's fair share prospective obligation of that regional prospective need would be determined. To do this, DCA would first determine whether a municipality is a qualified urban aid municipality, and if so, the municipality would not have a prospective need obligation.

If the municipality is not a qualified urban aid municipality, three factors necessary for the prospective fair share determination would be calculated. First, the equalized nonresidential valuation factor, representing the municipality's share of the regional change in the value of nonresidential property, would be calculated. In prior rounds, this calculation, concerning nonresidential (commercial and industrial) property values, has been adopted as a representation of a municipality's employment potential. Data available from the Division of Local Government Services in DCA would be used for this calculation. Next, an income capacity factor would be determined, using a formula comparable to one used in prior rounds to estimate the municipality's ability to absorb low- and moderate-income households. The municipality's land capacity factor would then be determined, representing the municipality's relative share of



developable land, available to accommodate development, using data made available by the Department of Environmental Protection or the Division of Taxation in the Department of Treasury. The average of these three factors would be determined and multiplied by the regional prospective need to determine the municipality's gross prospective need.

A municipality would be permitted to make adjustments for a lack of available land resources as part of the determination of a municipality's fair share of affordable housing when, for example certain municipal lands are devoted for conservation purposes. However, the bill requires a municipality that receives such a vacant land adjustment to its fair share obligation to identify parcels for redevelopment to address at least 25 percent of the prospective need obligation that has been adjusted, and adopt zoning that allows for the adjusted obligation, or demonstrate why this is not possible.

A municipality would ultimately be permitted to reduce its prospective need if necessary to prevent establishing a prospective need obligation that exceeds 1,000 units in total or 20 percent of the estimated occupied housing stock at the beginning of the 10-year round, whichever limitation results in a lower number.

In response to the growth in population of senior citizens in the State, the bill changes the limit on the percentage of a municipality's prospective affordable housing obligation that may be satisfied through the creation of age-restricted housing to 30 percent of the units in a municipality's fair share plan, exclusive of any bonus credits. However, the bill requires that a municipality is required to satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families with children. The bill amends existing statutory language to ensure that affordable housing is constructed that is accessible to persons with disabilities.

The bill permits a municipality to be credited for as much as 10 percent of its affordable housing obligation through transitional housing, and defines "transitional housing" as temporary housing, including but not limited to, single room occupancy housing or shared living and supportive living arrangements, that provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing.

The bill establishes limitations on the use of municipal affordable housing trust fund moneys for administrative costs, attorney fees, court costs to obtain immunity from exclusionary zoning litigation, to contest the municipality's fair share obligation, or use of the trust fund moneys while a municipality does not have immunity from exclusionary zoning litigation. The bill authorizes a municipality to expend a portion of its affordable housing trust fund on actions and efforts reasonably related to, or necessary for, certain processes of the

program, as provided in the bill. The bill requires each municipality authorized to retain and expend non-residential development fees to periodically provide DCA with an accounting of all such fees that have been collected and expended.

The bill prohibits a municipality from receiving bonus credit for any particular type of low- or moderate-income housing, unless authority to obtain bonus credit is expressly provided by the "Fair Housing Act." The bill expressly prohibits a municipality from receiving more than one type of bonus credit for any unit, or from satisfying more than 25 percent of its prospective need obligation through the use of bonus credits. The bill expressly authorizes bonus credits in the amounts provided in the bill for: (1) housing for individuals with special needs or permanent supportive housing; (2) ownership units created in partnership sponsorship with a non-profit housing developer; (3) housing located in a Garden State Growth Zone or certain transit-oriented locations; (4) certain age-restricted housing units; (5) family housing with at least three bedrooms above the minimum number required by the bedroom distribution; (6) housing constructed on certain land previously used for retail, office, or commercial space; (7) certain existing rental housing for which affordability controls are extended through municipal contributions; (8) certain 100 percent affordable developments built through municipal contributions of real property or funding; (9) certain housing for very low-income households; and (10) certain transformation of existing market rate units to affordable housing. The bill also clarifies that all parties would be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms previously adopted by COAH unless those regulations are contradicted by statute, including but not limited to this bill, or binding court decisions.

The bill requires DCA to maintain certain affordable housing-related information on its website, including: (1) the start and expiration dates of deed restrictions; (2) residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures; and (3) the current balance in the municipality's affordable housing trust funds. The bill also directs municipalities to provide the information to DCA necessary to comply with this requirement.

The bill amends various parts of the statutory law to remove references to COAH, and to transfer rulemaking authority, to the extent necessary, from COAH to DCA and the New Jersey Housing and Mortgage Finance Agency (HMFA). The bill directs HMFA to update the Uniform Housing Affordability Controls (UHAC) within nine months following the effective date of the bill. With certain exceptions, for the purpose of newly created affordable rental units, a 40-year minimum deed restriction would be required, and in the case of for-sale units, a 30-year minimum deed restriction would be

required. For housing units for which affordability controls are extended for a new term of affordability, a 30-year minimum deed restriction would be required, except that the bill permits certain flexibility on how the extensions are provided.

The bill appropriates \$12 million to the program, and \$4 million to DCA, from the General Fund, for the purposes of carrying out their respective responsibilities for the fourth round of affordable housing obligations.

As amended and reported by the committee, Senate Bill No. 50 (1R) is identical to Assembly Bill No. 4 (1R), which was also amended and reported by the committee on this date.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- clarify the intent of the bill in implementing the Mount Laurel doctrine, and furthering consistency with the State Development and Redevelopment Plan;
- change the limit on the percentage of a municipality's prospective affordable housing obligation that may be satisfied through the creation of age-restricted housing from 25 to 30 percent of the units in a municipality's fair share plan;
- revise language to clarify that, if a municipality misses certain deadlines required by the program, existing protections from exclusionary zoning litigation would not be impacted immediately, but may only be impacted at the end of the third round of affordable housing obligations;
- provide that the immunity given to a municipality with compliance certification protects the municipality from "exclusionary zoning litigation," as defined in the bill, instead of only protecting against a builder's remedy;
- qualify that a municipality with compliance certification would only benefit from presumptive validity, not immunity, if an interested party is to: (1) challenge a municipality for failure to comply with the terms of its compliance certification; or (2) bring a challenge before the program alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or ordinances implementing the fair share plan or housing element are in violation of the Mount Laurel doctrine;
- to assist in the calculation of regional need and municipal obligations, require the Highlands Water Protection and Planning Council shall provide a list of Highlands-conforming municipalities to DCA no less than five business days following the effective date;
- provide that a municipality's determination of its fair share obligation, if determined to be in compliance with the bill, would have a presumption of validity in any challenge initiated

through the program, before the issuance of compliance certification;

- clarify that, in reviewing an unchallenged fair share plan and housing element, the program would limit the analysis to determining whether it enables the municipality to satisfy the fair share obligation, applies compliant mechanisms, meets the threshold requirements for rental and family units, does not exceed limits on other unit or category types, and is compliant with the "Fair Housing Act," and Mount Laurel doctrine;
- provide; (1) that the presence of an ongoing dispute over compliance certification would not change the deadline for a municipality to adopt ordinances and resolutions to implement its fair share plan and housing element, but the implementing ordinances and resolutions adopted prior to the dispute resolution may be subject to changes to reflect the results of the dispute; and (2) that, as an alternative to adopting all necessary implementing ordinances and resolutions by the deadline, a municipality would be permitted to adopt a binding resolution by March 15, 2026 to commit to adopting the implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments;
- require that the issuance of a compliance certification be accompanied by a written report providing for the basis of the certification's issuance;
- clarify the forms of data that may be used by DCA, and municipalities, in determining regional need and municipal obligations;
- provide that, if a municipality seeks a realistic opportunity review at the midpoint of a 10-year round, the municipality may, but would not be required to, propose one or more alternative sites with accompanying development plans that provide a realistic opportunity for the same number of affordable units;
- for the purposes of determining the equalized nonresidential valuation factor as a part of calculating a municipality's obligation, provide that the beginning of the round of affordable housing obligations preceding the fourth round would be the beginning of the gap period in 1999;
- provide that, in determining a municipality's land capacity factor, developable land would be estimated, as opposed to "developable and redevelopable" land;
- revise language referencing the Highlands Region for the purposes of adjusting a municipality's land capacity factor due to environmentally-sensitive lands, and add a definition of "Highlands-conforming municipality";
- remove a requirement to adjust for secondary sources of supply and demand in determining a municipal obligation;

- change the deadline for certain development fee reporting from January 15 to February 15 of each year;
- in a municipal housing element, require the inclusion of an analysis of consistency with the State Development and Redevelopment Plan, and require certain municipalities in the Highlands Region to include an analysis of the housing element's compliance with the Highlands Regional Master Plan;
- provide that a municipality would not be permitted to apply bonus credits for age-restricted housing to more than 10 percent of the units of age-restricted housing constructed in the municipality that count towards the municipality's affordable housing obligation;
- provide that the bonus credit for certain family housing with at least three bedrooms would be calculated by taking into account the full municipal fair share plan and housing element, and the number of units with at least three bedrooms required for projects satisfying the minimum 50 percent family housing requirements;
- provide that for bonus credit authorized by the bill for certain 100 percent affordable developments built through municipal contributions of real property or funding, the municipality would obtain one full bonus credit if the contribution either consists of real property donations, or amounts to no less than three percent of the project cost;
- specify that, to obtain bonus credit for certain housing for very low-income households provided above the 13 percent of units required to be reserved for very low-income households, the municipality would not be required to provide that a specific percentage of the units in any specific project be reserved as very low-income housing, and the 13 percent level, for the purpose of bonus credits, would be calculated against the full prospective need obligation;
- provide that, with certain conditions, a municipality would receive one bonus credit for certain transformation of existing market rate units to affordable housing;
- clarify that this bill does not require a municipality to fund infrastructure improvements for affordable housing projects beyond any commitments made in a fair share plan and housing element that has been provided with compliance certification;
- revise language concerning controls on the affordability of low- and moderate-income units, and provide that a 100 percent affordable rental property would have a right to extinguish a deed restriction regardless of the original length, beginning 30 years following the start of the restriction, provided certain actions are taken for the purpose of

affordability preservation, and a new deed restriction of at least 30 years is provided;

- clarify that a municipality would be eligible to receive credits for units preserved for affordability at the time of preservation;
- provide that 100 percent affordable projects would be eligible for any affordable housing preservation program administered by the State, beginning 30 years following the start of the deed restriction;
- authorize HMFA to provide for certain exceptions to deed restriction minimums;
- adjust restrictions on expenditures of municipal development fee trust funds, and specify that the restrictions would not apply to qualified urban aid municipalities;
- revise a requirement for each municipality authorized to retain and expend non-residential development fees to provide DCA with an accounting of all such fees that have been collected and expended, to allow the municipality 180 days, instead of 90 days, following enactment of the bill, to provide this information;
- revise a requirement for municipalities to provide certain information to DCA on affordable housing construction in its boundaries, to allow the municipality 180 days, instead of 90 days, following enactment of the bill, to provide this information;
- require DCA to adopt rules and regulations to address the cost of the assessments and fees of planned real estate developments on low- and moderate-income housing units;
- make other limited, clarifying, and technical changes.

**FISCAL IMPACT:**

The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate impact to State costs associated with the role of the Department of Community Affairs to determine the regional need for affordable housing and the prospective fair share per municipality, as well as with certain responsibilities of the Affordable Housing Dispute Resolution Program related to any challenge of a municipality's obligation, housing element, or fair share plan. The bill appropriates a total of \$16 million for: (1) the new program to function in the fourth round, which begins on July 1, 2025, and (2) the Department of Community Affairs to fulfill the requirements of the bill. The OLS finds that the State may experience cost avoidance in implementing the provisions of the bill, in lieu of the current Substantive Certification and Fair Share Housing Settlement Agreement regimes. The bill will also result in an indeterminate impact to municipal costs associated with the requirement that a municipality determine its affordable housing obligation and establish a housing element and fair share plan. The OLS notes that

municipalities have incurred significant costs in the third round of affordable housing obligations through the court process that followed the Council on Affordable Housing becoming defunct.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 50

STATE OF NEW JERSEY

221st LEGISLATURE

DATED: MARCH 21, 2024

SUMMARY

- Synopsis:** Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.
- Type of Impact:** State and local cost impacts.
- Agencies Affected:** The Judiciary, Department of Community Affairs, New Jersey Housing and Mortgage Finance Agency, Highlands Water Protection and Planning Council, Municipalities.

Office of Legislative Services Estimate

| Fiscal Impact                 | <u>Fourth 10-Year Round</u>   | <u>Every 10-Year Round</u> |
|-------------------------------|-------------------------------|----------------------------|
|                               | <u>(Beginning in FY 2026)</u> | <u>Thereafter</u>          |
| State Cost Increase           | \$16 million                  | Indeterminate              |
| Potential State Cost Decrease | Indeterminate                 | Indeterminate              |
| Local Cost Impact             | Indeterminate                 | Indeterminate              |

- The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate impact to State costs associated with the role of the Department of Community Affairs to determine the regional need for affordable housing and the prospective fair share per municipality, as well as with certain responsibilities of the Affordable Housing Dispute Resolution Program related to any challenge of a municipality’s obligation, housing element, or fair share plan.
- The bill appropriates a total of \$16 million for: (1) the new program to function in the fourth round, which begins on July 1, 2025, and (2) the Department of Community Affairs to fulfill the requirements of the bill.
- The OLS finds that the State may experience cost avoidance in implementing the provisions of the bill, in lieu of the current Substantive Certification and Fair Share Housing Settlement Agreement regimes.



- The bill will also result in an indeterminate impact to municipal costs associated with the requirement that a municipality determine its affordable housing obligation and establish a housing element and fair share plan. The OLS notes that municipalities have incurred significant costs in the third round of affordable housing obligations through the court process that followed the Council on Affordable Housing becoming defunct.

## **BILL DESCRIPTION**

This bill abolishes the Council on Affordable Housing, initially established by the Fair Housing Act, and establishes a process to enable a municipality to determine its own present and prospective fair share affordable housing obligation based on the formulas established in the bill, as calculated the Department of Community Affairs. In advance of the fourth 10-year round of affordable housing obligations, beginning on July 1, 2025, the bill requires the department to complete these calculations, and provide for their publication, within the earlier of seven months of the effective date of the bill or December 1, 2024.

The bill permits a municipality to diverge from Department of Community Affairs' calculations in determining its obligation as long as it adheres to the methodology established by the bill. In advance of the fourth round, the bill requires a municipality to adopt its obligation by binding resolution, on or before January 31, 2025, in order to be assured of protection from exclusionary zoning litigation through which a municipality may otherwise be compelled to permit development, when the fourth round begins. If the municipality meets this deadline, then the municipality's determination of its obligation would be established by default, beginning on March 1, 2025, as the municipality's obligation for the fourth round. However, if a challenge is filed with the Affordable Housing Dispute Resolution Program, established in the bill, on or before February 28, 2025, the program would be required to facilitate a resolution of the dispute prior to April 1, 2025. The presence of this ongoing dispute would not change the deadline for adoption of implementing ordinances and resolutions, but the implementing ordinances and resolutions adopted prior to the resolution of the dispute may be subject to changes to reflect the results of the dispute. As an alternative to adopting all necessary implementing ordinances and resolutions by the March 15 deadline, a municipality involved in a continuing dispute over the issuance of compliance certification would be permitted to adopt a binding resolution by this date to commit to adopting the implementing ordinances and resolutions following resolution of the dispute, with necessary adjustments.

The bill requires a municipality to establish a "housing element" to encompass its obligation, and a fair share plan to meet its obligation, in advance of the fourth round, and proposes necessary changes to associated ordinances, on or before June 30, 2025, in order to be assured of protection from exclusionary zoning litigation.

A municipality would be required to submit its adopted fair share plan and housing element to the program. The bill permits an interested party to initiate a challenge to a municipal fair share plan and housing element, if submitted through the program on or before August 31, 2025. The program would facilitate communication over the challenge, and provide the municipality until December 31, 2025 to commit to revising its fair share plan and housing element in response to the challenge, or provide an explanation as to why it will not make all or the requested changes, or both. The bill requires municipalities to adopt associated changes to municipal ordinances on or before March 15, 2026. If a municipality fails to meet these deadlines, then the immunity of the municipality from exclusionary zoning litigation would end unless the program determines that the municipality's immunity shall be extended. If a municipality fails to materially adhere to any of these deadlines due to circumstances beyond the municipality's control, the bill directs the

program to permit a grace period for the municipality to come into compliance with the timeline, the length of which, and effect of which on later deadlines, is to be determined on a case-by-case basis.

In any challenge to a municipality's determination of its affordable housing obligation, or to its fair share plan and housing element, the bill requires the program to apply an objective assessment standard to determine whether or not the municipality's obligation determination, or its fair share plan and housing element, fails to comply with the requirements of the bill. Further, the challenger would be required to provide the basis for its challenge based on applicable law, and the program would have the power to dismiss challenges that do not provide such a basis.

All parties would be required to bear their own fees and costs for proceedings within the program. A determination by the program as to municipal obligations or compliance certification would be considered a final decision, subject to appellate review.

The Administrative Director of the Courts would appoint an odd number of at least three and no more than seven members to serve as program leaders for the program established by the bill, consisting of retired and on recall judges, or other qualified experts. The members and employees of the program would be considered State officers and employees for the purposes of the New Jersey Conflicts of Interest Law, P.L.1971, c.182. The Administrative Director of the Courts would also establish procedures for the purpose of efficiently resolving circumstances in which the program is unable to address a dispute over compliance certification within the time limitations established in the bill. As a part of these procedures, in order to facilitate an appropriate level of localized control of affordable housing decisions, for each vicinage, the bill directs the Chief Justice of the Supreme Court to designate a Superior Court judge who sits within the vicinage, or a retired judge who, during his or her tenure as a judge, served within the vicinage, to serve as county level housing judge to resolve disputes over the compliance, of fair share plans and housing elements of municipalities within their county, with the Fair Housing Act, when those disputes are not be resolved within the deadlines established in the bill. The Administrative Director of the Courts would adopt and apply a Code of Ethics for the program and county level housing judges modeled on the Code of Judicial Conduct of the American Bar Association, adopted by the State Supreme Court, and may establish additional more restrictive ethical standards in order to meet the specific needs of the program and of county level housing judges.

Each municipality's determination of its fair share obligation would be made through the guidance of preliminary calculations made by the Department of Community Affairs. No later than August 1 of the year prior to the year when a new round of housing obligations begins, or, for the fourth round, within seven months of the effective date of the bill or December 1, 2024, whichever is earlier, the bill requires the department to calculate regional need and municipal present and prospective obligations in accordance with formulas established in the bill. The department's calculations would be made publicly available, and provided to each municipality for use in determining their present and prospective obligations.

Municipal fair share obligations would be determined by applying the methods provided in the bill, along with the methods used by the Superior Court for the third round, to the extent that applicable methodologies are not explicitly articulated in the bill. Municipal present need obligations would be determined by estimating the existing deficient housing currently occupied by low- and moderate- income households within the municipality.

Regional prospective need would next be determined, upon which to base the municipal obligation, by estimating the regional growth of low- and moderate-income households during the housing round at issue. If household change is zero or negative, the number of low- and moderate income homes needed to address low- and moderate-income household change in the region and the regional prospective would be zero.

After determining regional prospective need, each municipality's fair share prospective obligation of that regional prospective need would be determined. To do this, the Department of Community Affairs would first determine whether a municipality is a qualified urban aid municipality, and if so, the municipality would not have a prospective need obligation.

If the municipality is not a qualified urban aid municipality, three factors necessary for the prospective fair share determination would be calculated based on three factors, as specified in the bill. The average of these three factors would be determined and multiplied by the regional prospective need to determine the municipality's gross prospective need.

Finally, the bill requires, where appropriate, adjustments for secondary sources of housing supply and demand by first calculating demolitions of low- and moderate-income housing, and housing creation through residential conversions. After applying these secondary sources, as appropriate, the municipality's prospective fair share obligation for the 10-year round would be established.

The bill establishes limitations on the use of municipal affordable housing trust fund moneys for administrative costs, attorney fees, court costs to obtain immunity from exclusionary zoning litigation, to contest the municipality's fair share obligation, or use of the trust fund moneys while a municipality does not have immunity from exclusionary zoning litigation. The bill authorizes a municipality to expend a portion of its affordable housing trust fund on actions and efforts reasonably related to, or necessary for, certain processes of the program, as provided in the bill. The bill requires each municipality authorized to retain and expend non-residential development fees to periodically provide the Department of Community Affairs with an accounting of all such fees that have been collected and expended.

The bill requires the Department of Community Affairs to maintain certain affordable housing-related information on its website, including: (1) the start and expiration dates of deed restrictions; (2) residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures; and (3) the current balance in the municipality's affordable housing trust funds. The bill also directs municipalities to provide the information to the department necessary to comply with this requirement.

The bill appropriates \$12 million to the program, and \$4 million to the Department of Community Affairs, from the General Fund, for the purposes of carrying out their respective responsibilities for the fourth round of affordable housing obligations.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

#### ***Background***

In 1975 and 1983, respectively, the New Jersey Supreme Court ruled that each municipality has a constitutional obligation to provide a realistic opportunity for the construction of their fair share of affordable housing and created the "builder's remedy" suit. The purpose of the builder's remedy is to enable builders to commence litigation against municipalities to defend the constitutional rights of low- and moderate-income households in return for having their properties rezoned for high density multi-family housing which contain an affordable housing element. In response to these Supreme Court decisions, lawmakers enacted the Fair Housing Act which

provided an alternative administrative process for municipalities to participate in, to be overseen by the Council on Affordable Housing. One purpose of the council was to review a municipality's affordable housing plan and provide "substantive certification" to those plans that would provide a realistic opportunity for the construction of affordable housing within the municipality. Any municipality that received substantive certification would be shielded from the costly court process of a builder's remedy lawsuit. The council was also responsible for developing regulations and creating criteria related to each municipality's affordable housing obligation. Using its rulemaking authority, the council was meant to determine and assign a municipality's affordable housing obligation. Between 1986 and 1999, the council undertook two successful rounds of rulemaking to establish a formula meant to set each municipality's affordable housing obligation, but failed to establish rules for the third round, which was intended to begin in 1999, but ultimately began in 2015 following a 16-year gap period.

Today, the Council on Affordable Housing has been effectively defunct through inaction in appointing members as required by the Fair Housing Act. Municipalities are currently required to go through the process created by the court and overseen by a court appointed special master to obtain the functional equivalent of Substantive Certification, and to be protected from builder's remedy lawsuits and certain other exclusionary zoning lawsuits.

### *Impact*

The OLS concludes that the bill will result in increases to State costs associated with the role of the Department of Community Affairs to determine the regional need for affordable housing and the prospective fair share per municipality, as well as with certain responsibilities of the program related to any challenge of a municipality's obligation, housing element, or fair share plan. The bill appropriates a total \$16 million for: (1) the new program to function in the fourth round, which begins on July 1, 2025, and (2) the Department of Community Affairs to fulfill the requirements of the bill. The bill will also result in an indeterminate impact to municipal costs associated with the requirement for a municipality to determine its affordable housing obligation and establish a housing element and fair share plan.

Under the bill, the Department of Community Affairs would be responsible for determining regional affordable housing need and for calculating the prospective fair share for each municipality using formulas prescribed by the bill. The bill's regional need formula considers factors in a method similar to what was used by the courts in the third round of affordable housing obligations. The department would be required to make these calculations in advance of each new 10-year round. The calculations of municipal obligations would be informed by information provided by the Highlands Water Protection and Planning Council regarding Highlands-conforming municipalities.

Municipalities would then be required to determine their own affordable housing obligation, using the Department of Community Affairs' fair share calculations and local factors, and establish a housing element to encompass their obligation and a fair share plan to meet the obligation with accompanying resolutions and ordinances, which documents would be required to be made publicly available on the municipality's Internet website. Municipalities would be permitted to utilize monies from their respective Municipal Affordable Housing Trust Funds for the development of their obligation, housing element, and fair share plan. While municipalities are expected to incur costs to come into constitutional compliance based on the bill's amendatory nature of the current statutory process, the OLS notes that certain municipalities have incurred significant costs over lengthy periods of time through the process created by the court for the third round of affordable housing obligations. The OLS also notes that a municipality's affordable housing obligation can also be established through declaratory judgement or exclusionary zoning

litigation. The OLS is unable to predict the number of municipalities that will establish their affordable housing obligation through the program versus litigation.

Municipalities would be protected from exclusionary zoning litigation, including builder's remedy lawsuits, if the required resolution and ordinances are adopted by the deadlines established by the bill. However, the program may remove exclusionary zoning litigation immunity in certain circumstances in which it is apparent that the municipality is not determined to come into constitutional compliance. Additionally, any party can bring a challenge to the program of a municipality's obligation, housing element, or fair share plan. The municipality would be required to participate in the resolution of any challenges and, in the event a housing element or fair share plan is challenged through the program, commit to revising its fair share plan and housing element to be in compliance with the changes requested in the challenge, or provide an explanation as to why it will not make all of the requested changes, or both. Municipalities would be required to bear the costs for their role in resolving disputes. Municipalities would be permitted to utilize monies from their Municipal Affordable Housing Trust Funds to resolve disputes under the Affordable Housing Dispute Resolution Program, but would not be permitted to utilize these monies for certain court costs that may arise outside of the program. The OLS is unable to predict the number or complexity of disputes that may need to be resolved for each municipality and is therefore unable to estimate the costs that may be incurred by municipalities as a result of disputes. Additionally, the OLS is unable to predict whether municipalities will lose their immunity to exclusionary zoning litigation due to noncompliance with the bill and is therefore unable to estimate any costs that may be incurred by a municipality due to participating in exclusionary zoning litigation.

Municipalities may also incur administrative costs associated with requirements to report to the Department of Community Affairs annually on any collection and expenditure of development fees as well as on number affordable of housing units actually constructed, construction starts, certificates of occupancy granted, the start and expiration dates of deed restrictions, and residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures, along with the current balance in the municipality's affordable housing trust funds. The department would then be required to make this information publicly available on its Internet website.

The Administrative Director of the Courts would be required to appoint between three and seven members to the Affordable Housing Dispute Resolution Program. In the event a challenge is brought by an interested party, the program would be required to receive the challenge, and generally facilitate communication between the parties to assist the municipality and challenger in reaching a resolution. The program would also be required to apply an objective assessment of the obligation, housing element, or fair share plan to determine whether the municipality is in compliance with the provisions of the bill. Of the bill's \$16 million appropriation, \$12 million is intended for use by the program in the fourth round, which begins in 2025. The OLS is unable to predict the number or complexity of challenges sought to be resolved by the program and whether the \$12 million appropriation will be sufficient for the program's responsibilities in the fourth round. Therefore, the OLS is unable to estimate the amount that may need to be appropriated by the Legislature for future rounds.

If the program is unable to facilitate the resolution of a challenge, a superior court judge assigned to the applicable vicinage or retired superior court judge who, during the judge's tenure, served in the applicable vicinage, to be appointed by the Chief Justice of the Supreme Court, would be responsible for resolving the dispute, through procedures to be established by the Administrative Office of the Courts. The entity that issues a municipality a compliance certification, through the program or through judgement of repose, would be required to include a written report containing the basis for issuing the compliance certification. The Administrative

Office of the Courts would also be responsible for adopting a code of ethics for the program and county-level housing judges to be modeled upon the Code of Judicial Conduct of the American Bar Association, as amended and adopted by the Supreme Court of New Jersey.

Of the bill's \$16 million appropriation, \$4 million is intended to be used by the Department of Community Affairs for purposes of carrying out its responsibilities for the fourth round of affordable housing obligations. The OLS is unable to predict the extent to which the department may incur costs in the fourth and future rounds. The OLS is also unable to predict any potential cost avoidance that might be experienced by the State in implementing the provisions of the bill, in lieu of the current Substantive Certification and Fair Share Housing Settlement Agreement regimes.

The bill is also expected to result in cost shifting and increased administrative costs to the State to transfer responsibilities from the Council on Affordable Housing to the Department of Community Affairs and the New Jersey Housing and Mortgage Finance Agency, as well as for various rulemaking responsibilities required pursuant to the bill.

*Section: Local Government*  
*Analyst: Abigail Stoyer*  
*Associate Fiscal Analyst*  
*Approved: Thomas Koenig*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# Governor Murphy Signs Landmark Affordable Housing Legislation

03/20/2024

*Bill Revamps Process for Municipalities to Meet Their Mount Laurel Obligations in Most Significant Housing Legislation in Four Decades*

**TRENTON** – Governor Phil Murphy today signed landmark affordable housing legislation to support towns in meeting their affordable housing obligations, building on his administration’s promise to create a stronger, fairer, and more affordable state for all New Jerseyans. The legislation develops a new system for municipalities to meet their Mount Laurel affordable housing obligations, replacing the current process that exists entirely in the courts.

“One of our Administration’s top priorities has been to establish New Jersey as a national leader in expanding affordable housing,” **said Governor Murphy**. “With today’s bill signing, we will be able to create more certainty and lower costs in New Jersey’s affordable housing landscape. By establishing new processes and practices for towns to meet their Mount Laurel affordable housing obligations, we are able to more quickly and efficiently allocate funding to municipalities and support those building affordable housing in our state. I am proud that my Administration and the Legislature have enacted a coherent and workable framework that no longer leaves this issue exclusively to the courts.”

The primary bill, **A-4/S-50 (Lopez, Coughlin, Wimberly, Reynolds-Jackson/Singleton, Scutari, Ruiz)**, establishes a new, streamlined framework for determining and enforcing municipalities’ affordable housing obligations under the New Jersey Supreme Court’s Mount Laurel doctrine and the State’s Fair Housing Act. Starting with the compliance period that begins in 2025, the Department of Community Affairs will publish non-binding calculations of municipalities’ current and prospective need for affordable housing using a formula based on prior court decisions. Disputes about municipalities’ affordable housing obligations and plans to meet those obligations will be resolved on an expedited basis by the Judiciary with assistance from a new dispute resolution program.

This process will replace the role previously played by the Council on Affordable Housing (COAH), which has been defunct for over a decade and is formally abolished under this bill. The new process will streamline compliance and reduce litigation-related delays to the construction of new affordable housing and will give municipalities and developers more certainty, which will enable smarter planning around where housing should be built.

As part of this process, the bill contains provisions outlining how municipalities may receive “bonus credits” that allows units of affordable housing to be credited as 1.5 or 2 units in certain circumstances. This bonus credit system incentivizes age-restricted housing, housing set aside for individuals with special needs, and other location or purpose-specific housing projects, such as housing near mass transit stations. The bill caps the use of bonus credit units at 25% of a municipality’s prospective need obligations and establishes related parameters for how much of a municipality’s obligations must be satisfied through housing available to families with children and through rental housing.

Additional bills signed today include:

1. **ACS for A-2267/SCS for S-1415 (Lopez, Quijano/Singleton, Stack)**, which requires the New Jersey Housing Mortgage and Finance Agency to establish a pilot program to support insurance premiums for eligible affordable housing projects constructed by for-profit affordable housing developers.
2. **S-1422/A-3365 (Singleton, Turner/Lopez, Speight, Calabrese)**, which allows taxpayers to accelerate depreciation of eligible property expenditures in connection with construction of new affordable housing developments in order to realize cost savings.
3. **A-2296/S-2309 (Lopez, Wimberly/McKnight, Stack)**, which allows a municipal governing body to delegate to the municipal clerk the authority to issue certain approvals to facilitate development of affordable housing projects.
4. **A-3337/S-2312 (Wimberly, Reynolds-Jackson, Quijano/Stack, Singleton)**, which permits "payment in lieu of taxation" (PILOT) agreements between municipalities and affordable housing projects that receive funding through the State Affordable Housing Trust Fund or municipal affordable housing trust funds.
5. **A-1495/S-1484 (Karabinchak, Lopez, Swain/Lagana, Diegnan)**, which exempts receipts from sales made to contractors or repairmen of materials, supplies, or services related to the construction of 100%-affordable housing projects in order to help reduce costs for the construction of such projects.

"Affordability has been the cornerstone of the efforts we have taken in the Legislature to address the challenges our residents face every day," **said Senate President Nicholas Scutari**. "This initiative will allow us to develop additional affordable housing in New Jersey and make the system more workable. These bills make real progress in making housing more accessible and affordable for residents in communities throughout the state."

"At this critical juncture in New Jersey, with soaring housing prices and limited housing stock, this legislation is essential," **said Senate Majority Leader M. Teresa Ruiz**. "It will expedite the construction of affordable housing near transit hubs, generating more jobs. Furthermore, by streamlining the process for municipalities with clear guidance and deadlines, we aim to make fulfilling affordable housing obligations less daunting while effectively addressing the state's affordable housing shortage."

"Housing is the most basic of human needs, and without first securing that need, other policies that we implement cannot be as effective. The Governor's signing of S-50 puts us on a pathway to more success in the next round of affordable housing obligations, with clearer guidance for municipalities and a reduction of legal disputes that can allow those obligations to be fulfilled faster," **said Senate Majority Whip and Chair of the Senate Community and Urban Affairs Committee Senator Troy Singleton**. "The continued enforcement of the Mount Laurel Doctrine and the associated construction of affordable housing benefits everybody. It creates jobs and stimulates economic growth, while manageable rents give working families financial flexibility. Housing stability removes barriers to accessing better education and work opportunities. Most importantly, the availability of affordable housing helps to ensure that the next generation grows up in stable homes and safe environments."

"Families should not have to contend with uncertainty as to where they will be able to find a home, or whether they will be able to afford a future rent increase," **said Senator Angela McKnight**. "Unfortunately, years of neglect have led to a massive shortage of affordable rental and homeownership opportunities. It will take time, but these reforms would put us on a path to reversing that shortage and reducing the barriers to affordable housing production."

"These efforts would enable the faster production of affordable housing and faster fulfillment of local affordable housing obligations," **said Senator Brian Stack**. "Giving municipalities a more streamlined process, aligning our tax system with our housing production goals, and taking a regional approach to our affordable housing challenges will put a system in place that is best equipped to reverse the growing trend of unaffordability."

"We have an obligation to expand opportunities and make housing more affordable in our state," **said Assembly Speaker Craig J. Coughlin**. "When more families are secure in homes of their own, they contribute to their



communities and our economy thrives. This legislation strikes the right balance in incentivizing opportunity and providing support for municipalities.”

“A house is much more than four walls and a roof, it is a place where cherished memories are made, an asset that creates generational wealth and a structure upon which a great quality of life can be built,” **said Assemblywoman Yvonne Lopez**. “The signing of A4 will allow more hard working families to have access to affordable housing and ahead of the 4th Round offers a pathway for municipality's to deliver on their constitutional obligations within a consistent and uniform process for decades to come. The signing of this bill will allow more New Jerseyans to move into, stay and thrive in the communities they love.”

“These bills being signed into law today will address the housing needs of numerous New Jersey residents, spanning from the youngest children to the eldest seniors,” **said Assemblyman Benjie E. Wimberly**. “A3337 streamlines the process for towns to build or preserve certain affordable housing units by exempting them from property taxation. Instead, a municipality and housing sponsor may negotiate a payment in lieu of taxation (PILOT), contributing funds toward crucial services like garbage collection, road upkeep, schools, and other essential town services.”

“Empowering New Jersey residents is at heart of our efforts to create more affordable housing in New Jersey,” **said Assemblyman Robert J. Karabinchak**. “By making materials associated with the construction of affordable housing tax exempt, A1495 is mitigating the cost for developers and subsequently lowering the costs for New Jerseyans renting or owning their places of residence.”

“This law marks a significant change for the better. It's about ensuring that finding a good, affordable home is no longer a struggle. We are united in this effort to transform our state, our county, our city into a place where everyone can live well and have equal opportunities to thrive. Thank you, Governor and legislative leaders, for helping our families move towards a future where prosperity is accessible to all. Thank you for turning this historic day into reality,” **said City of Perth Amboy Mayor Helmin Caba**.

“The signing of today's bill package shows the commitment of Governor Murphy and state legislators to build more affordable housing in New Jersey. These new laws will promote the construction and preservation of affordable housing and enable working families to find affordable homes in good communities where they can live and raise a family,” **said New Jersey Department of Community Affairs Acting Commissioner Jacquelyn A. Suárez**. “It has long been DCA's mission to create affordable housing for New Jersey residents and we look forward to the opportunities the new laws present to further this goal. The Department is proud to be a part of such a noble pursuit and we will conduct our work to the best of our ability to make New Jersey a place where people from all walks of life can thrive.”

“The housing bills being signed today are the culmination of months of comprehensive, statewide focus on affordable housing. These significant updates to New Jersey housing policy reflect a clear understanding by all involved of the importance of affordable housing to our shared future,” **said NJHMFA Executive Director Melanie Walter**. “As allocator of the federal Low-Income Housing Tax Credit and administrator of numerous landmark housing developments programs, NJHMFA stands ready to help every community produce the housing needed to ensure that all New Jersey residents have access to safe, affordable homes.”

“This new law will help tear down the walls that have denied too many access to opportunity and create new affordable homes near jobs, schools, and transportation,” **said Adam Gordon, Executive Director of Fair Share Housing Center**. “By making compliance with New Jersey's landmark Mount Laurel Doctrine simpler and clearer, we will build affordable homes faster with less cost to everyone involved. It's good news for families across the state who are struggling to keep up with the soaring cost of housing. We commend Governor Murphy and the legislative

sponsors - Chairs Singleton and Lopez, Speaker Coughlin, and Senate President Scutari - for making this best-in-the-nation legislation the law of our state."

"Domestic violence is one of the leading causes of homelessness for women and their children," **said Cierra Hart, Director of Housing and Economic Justice at the NJ Coalition to End Domestic Violence.** "Affordable housing serves as a catalyst for breaking the cycle of violence and abuse. It offers survivors the stability necessary to access crucial support services — therapeutic interventions, legal aid, counseling — that are indispensable in their journey to recovery."

"This new law will create much-needed access to housing in the middle of a historic housing crisis. It will help overcome the deep segregation that has plagued our state for decades," **said Richard Smith, President of the NAACP New Jersey State Conference.** "I particularly want to thank lawmakers for adding stronger deed restrictions to this legislation, which will protect the affordability of newly-built homes for decades to come."

"We want to thank Governor Murphy for signing the affordable housing packages bill into law today. This legislation will strengthen the implementation of the Mount Laurel Doctrine and help ensure that New Jersey municipalities create their fair share of affordable housing," **said Dena Mottola Jaborska, Executive Director for New Jersey Citizen Action.**

"This legislation positions New Jersey to create opportunities for every household in the state to thrive by creating a clear process to ensure all municipalities create their fair share of affordable housing," **said Taiisa Kelly, CEO of Monarch Housing Associates.** "We at Monarch believe Housing is a Human Right and this legislation sets the stage to ensure every New Jersey resident has access to the housing they so critically need, in every community across the state, regardless of race or socioeconomic status."

"This legislation will help provide a lot more clarity and transparency in the affordable housing development process," **said Javier Robles, President of the Latino Action Network.** "Skyrocketing housing costs are making it extremely difficult for many hard-working people and vulnerable communities — including seniors, people with disabilities, and caregivers — to keep a roof over their heads. This legislation will help ensure access to affordable, accessible, and livable homes, which not only improve the lives of residents but also benefit society."

"Over the course of New Jersey's history, fair housing policies have been integral in making our state more inclusive," **said Jesselly de la Cruz, Executive Director of the Latino Action Network Foundation.** "It is encouraging that residents, advocates and policymakers from across our state are joining forces to break down racial and economic exclusion by strengthening the Mount Laurel Doctrine."