

A3365 (1R)

INTRODUCED BILL: (Includes sponsor(s) statement)	Yes	
REPRINT(S):	Yes	AAP 2/8/24 1R
TECHNICAL REVIEW OF BILL:	No	
COMMITTEE STATEMENT:	ASSEMBLY:	Yes Housing Appropriations
	SENATE:	No

(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)

FLOOR AMENDMENT STATEMENT:	No	
LEGISLATIVE FISCAL ESTIMATE:	Yes	02/12/2024 02/21/2024

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS:	No
HEARINGS:	No
NEWSPAPER ARTICLES:	No

CL/MM

§1
C.54:10A-4.17
§2
C.54A:5-1.2a
§3
Note

P.L. 2024, CHAPTER 1, *approved March 20, 2024*
Senate, No. 1422 (*Second Reprint*)

1 AN ACT allowing taxpayers to utilize alternative method of
2 depreciation for certain expenditures under corporation business
3 and gross income taxes, supplementing P.L.1945, c.162
4 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

5

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

8

9 1. a. Notwithstanding paragraph (12) of subsection (k) of section 4
10 of P.L.1945, c.162 (C.54:10A-4), for purposes of calculating the
11 depreciation deduction allowed pursuant to the Corporation Business
12 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), a taxpayer shall
13 be allowed to depreciate a percentage of eligible property expenditures,
14 as that percentage is determined and computed pursuant to subsection
15 b. of this section, over a ¹**ten-year** 10-year¹ period.

16 b. For purposes of calculating the percentage of eligible property
17 expenditures depreciated by a taxpayer pursuant to subsection a. of this
18 section, the taxpayer shall apply the following formula: $2 \times$ (the number
19 of affordable housing units in the development / the ¹total¹ number of
20 ¹**non-affordable**¹ housing units in the development).

21 c. The Director of the Division of Taxation in the Department of the
22 Treasury shall prescribe the rules and regulations necessary to carry out
23 the provisions of this section.

24 d. As used in this section:

25 ¹“Affordable housing” means housing occupied or restricted to
26 occupancy by households with income no greater than 80 percent of the
27 regional median income, including, but not limited to, housing that is
28 deed restricted as affordable pursuant to the “Fair Housing Act,”
29 P.L.1985, c.222 (C.52:27D-301 et al.).¹

30 “Affordable housing development” means a development ¹:

31 (1) for which construction commences on or after the effective date
32 of P.L. , c. (C.) (pending before the Legislature as this bill);

33 (2) ²for² which ²does not utilize funds obtained from any federal,
34 State, or local subsidy toward, or is allowed a tax credit or payment in

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:

¹Senate SCU committee amendments adopted January 25, 2024.

²Senate SBA committee amendments adopted March 11, 2024.

1 lieu of tax for,】 taxes are not abated or exempted pursuant to the terms
 2 of a financial agreement under the “Long Term Tax Exemption Law,”
 3 P.L.1991, c.431 (C.40A:20-1 et seq.) or does not receive an affordable
 4 housing subsidy for² the construction of low- and moderate-income
 5 housing; and

6 (3)¹ that includes one or more units of housing, at least 20 percent
 7 of which qualify as affordable housing.

8 ²“Affordable housing subsidy” means any financing that is intended
 9 to support the development of affordable housing and is provided by the
 10 Department of Community Affairs, the New Jersey Housing and
 11 Mortgage Finance Agency, or a municipal affordable housing trust
 12 fund, except that the term shall not include any rebates or incentives that
 13 are intended to promote energy efficiency standards.²

14 ¹“Affordable housing” means housing occupied or restricted to
 15 occupancy by households with income no greater than 80 percent of the
 16 regional median income, including, but not limited to, housing that is
 17 deed restricted as affordable pursuant to the “Fair Housing Act,”
 18 P.L.1985, c.222 (C.52:27D-301 et al.).】¹

19 “Eligible property expenditures” means capital expenditures
 20 incurred by the taxpayer in connection with the construction of a new
 21 affordable housing development owned by the taxpayer.

22 ¹“Non-affordable housing” means housing that does not qualify as
 23 affordable housing.】¹

24

25 2. a. Notwithstanding section 26 of P.L.2004, c.65 (C.54A:5-1.2),
 26 for purposes of calculating the depreciation deduction allowed under the
 27 “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., a taxpayer
 28 shall be allowed to depreciate a percentage of eligible property
 29 expenditures, as that percentage is determined and computed pursuant
 30 to subsection b. of this section, over a ¹ten-year】 10-year¹ period.

31 b. For purposes of calculating the percentage of eligible property
 32 expenditures depreciated by a taxpayer pursuant to subsection a. of this
 33 section, the taxpayer shall apply the following formula: 2 x (the number
 34 of affordable housing units in the development / the ¹total¹ number of
 35 ¹non-affordable】¹ housing units in the development).

36 c. The Director of the Division of Taxation in the Department of the
 37 Treasury shall prescribe the rules and regulations necessary to carry out
 38 the provisions of this section.

39 d. As used in this section:

40 ¹“Affordable housing” means housing occupied or restricted to
 41 occupancy by households with income no greater than 80 percent of the
 42 regional median income, including, but not limited to, housing that is
 43 deed restricted as affordable pursuant to the “Fair Housing Act,”
 44 P.L.1985, c.222 (C.52:27D-301 et al.).¹

45 “Affordable housing development” means a development ¹;

1 (1) for which construction commences on or after the effective date
2 of P.L. , c. (C.) (pending before the Legislature as this bill);

3 (2) ²for² which ²does not utilize funds obtained from any federal,
4 State, or local subsidy toward, or is allowed a tax credit or payment in
5 lieu of tax for,] taxes are not abated or exempted pursuant to the terms
6 of a financial agreement under the “Long Term Tax Exemption Law,”
7 P.L.1991, c.431 (C.40A:20-1 et seq.) or does not receive an affordable
8 housing subsidy for² the construction of low- and moderate-income
9 housing; and

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11 of which qualify as affordable housing.

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13 to support the development of affordable housing and is provided by the
14 Department of Community Affairs, the New Jersey Housing and
15 Mortgage Finance Agency, or a municipal affordable housing trust
16 fund, except that the term shall not include any rebates or incentives that
17 are intended to promote energy efficiency standards.²

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20 regional median income, including, but not limited to, housing that is
21 deed restricted as affordable pursuant to the “Fair Housing Act,”
22 P.L.1985, c.222 (C.52:27D-301 et al.).]¹

23 “Eligible property expenditures” means capital expenditures
24 incurred by the taxpayer in connection with the construction of a new
25 affordable housing development owned by the taxpayer.

26 ¹“Non-affordable housing” means housing that does not qualify as
27 affordable housing.]¹

28
29 3. This act shall take effect immediately and shall apply to eligible
30 property expenditures ¹incurred on and after the effective date of
31 P.L. , c. (C.) (pending before the Legislature as this bill)] for
32 affordable housing developments placed in service ²in the 2025]
33 during any² tax year ²or privilege period beginning January 1, 2025²
34 and thereafter¹.

35
36
37
38
39 Allows taxpayers to utilize alternative method of depreciation of certain
40 expenditures in connection with construction of new affordable housing
41 developments.

CHAPTER 1

AN ACT allowing taxpayers to utilize alternative method of depreciation for certain expenditures under corporation business and gross income taxes, supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

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

C.54:10A-4.17 Taxpayer, depreciation, eligible property expenditures, Corporation Business Tax Act; rules, regulations.

1. a. Notwithstanding paragraph (12) of subsection (k) of section 4 of P.L.1945, c.162 (C.54:10A-4), for purposes of calculating the depreciation deduction allowed pursuant to the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), a taxpayer shall be allowed to depreciate a percentage of eligible property expenditures, as that percentage is determined and computed pursuant to subsection b. of this section, over a 10-year period.

b. For purposes of calculating the percentage of eligible property expenditures depreciated by a taxpayer pursuant to subsection a. of this section, the taxpayer shall apply the following formula: $2 \times (\text{the number of affordable housing units in the development} / \text{the total number of housing units in the development})$.

c. The Director of the Division of Taxation in the Department of the Treasury shall prescribe the rules and regulations necessary to carry out the provisions of this section.

d. As used in this section:

“Affordable housing” means housing occupied or restricted to occupancy by households with income no greater than 80 percent of the regional median income, including, but not limited to, housing that is deed restricted as affordable pursuant to the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.).

“Affordable housing development” means a development:

for which construction commences on or after the effective date of P.L.2024, c.1 (C.54:10A-4.17 et al.);

for which taxes are not abated or exempted pursuant to the terms of a financial agreement under the “Long Term Tax Exemption Law,” P.L.1991, c.431 (C.40A:20-1 et seq.) or does not receive an affordable housing subsidy for the construction of low- and moderate-income housing; and

that includes one or more units of housing, at least 20 percent of which qualify as affordable housing.

“Affordable housing subsidy” means any financing that is intended to support the development of affordable housing and is provided by the Department of Community Affairs, the New Jersey Housing and Mortgage Finance Agency, or a municipal affordable housing trust fund, except that the term shall not include any rebates or incentives that are intended to promote energy efficiency standards.

“Eligible property expenditures” means capital expenditures incurred by the taxpayer in connection with the construction of a new affordable housing development owned by the taxpayer.

C.54A:5-1.2a Taxpayer, depreciation, eligible property expenditures, New Jersey Gross Income Tax Act; rules, regulations.

2. a. Notwithstanding section 26 of P.L.2004, c.65 (C.54A:5-1.2), for purposes of calculating the depreciation deduction allowed under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., a taxpayer shall be allowed to depreciate a percentage of eligible property expenditures, as that percentage is determined and computed pursuant to subsection b. of this section, over a 10-year period.

b. For purposes of calculating the percentage of eligible property expenditures depreciated by a taxpayer pursuant to subsection a. of this section, the taxpayer shall apply the following formula: $2 \times (\text{the number of affordable housing units in the development} / \text{the total number of housing units in the development})$.

c. The Director of the Division of Taxation in the Department of the Treasury shall prescribe the rules and regulations necessary to carry out the provisions of this section.

d. As used in this section:

“Affordable housing” means housing occupied or restricted to occupancy by households with income no greater than 80 percent of the regional median income, including, but not limited to, housing that is deed restricted as affordable pursuant to the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.).

“Affordable housing development” means a development:

for which construction commences on or after the effective date of P.L.2024, c.1 (C.54:10A-4.17 et al.);

for which taxes are not abated or exempted pursuant to the terms of a financial agreement under the “Long Term Tax Exemption Law,” P.L.1991, c.431 (C.40A:20-1 et seq.) or does not receive an affordable housing subsidy for the construction of low- and moderate-income housing; and

that includes one or more units of housing, at least 20 percent of which qualify as affordable housing.

“Affordable housing subsidy” means any financing that is intended to support the development of affordable housing and is provided by the Department of Community Affairs, the New Jersey Housing and Mortgage Finance Agency, or a municipal affordable housing trust fund, except that the term shall not include any rebates or incentives that are intended to promote energy efficiency standards.

“Eligible property expenditures” means capital expenditures incurred by the taxpayer in connection with the construction of a new affordable housing development owned by the taxpayer.

3. This act shall take effect immediately and shall apply to eligible property expenditures for affordable housing developments placed in service during any tax year or privilege period beginning January 1, 2025 and thereafter.

Approved March 20, 2024.

SENATE, No. 1422

STATE OF NEW JERSEY
221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Allows taxpayers to utilize alternative method of depreciation of certain expenditures in connection with construction of new affordable housing developments.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT allowing taxpayers to utilize alternative method of
2 depreciation for certain expenditures under corporation business
3 and gross income taxes, supplementing P.L.1945, c.162
4 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

5

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

8

9 1. a. Notwithstanding paragraph (12) of subsection (k) of
10 section 4 of P.L.1945, c.162 (C.54:10A-4), for purposes of
11 calculating the depreciation deduction allowed pursuant to the
12 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
13 et seq.), a taxpayer shall be allowed to depreciate a percentage of
14 eligible property expenditures, as that percentage is determined and
15 computed pursuant to subsection b. of this section, over a ten-year
16 period.

17 b. For purposes of calculating the percentage of eligible
18 property expenditures depreciated by a taxpayer pursuant to
19 subsection a. of this section, the taxpayer shall apply the following
20 formula: $2 \times (\text{the number of affordable housing units in the}$
21 $\text{development} / \text{the number of non-affordable housing units in the}$
22 $\text{development})$.

23 c. The Director of the Division of Taxation in the Department of
24 the Treasury shall prescribe the rules and regulations necessary to
25 carry out the provisions of this section.

26 d. As used in this section:

27 "Affordable housing development" means a development that
28 includes one or more units of housing, at least 20 percent of which
29 qualify as affordable housing.

30 "Affordable housing" means housing occupied or restricted to
31 occupancy by households with income no greater than 80 percent of
32 the regional median income, including, but not limited to, housing
33 that is deed restricted as affordable pursuant to the "Fair Housing
34 Act," P.L.1985, c.222 (C.52:27D-301 et al.).

35 "Eligible property expenditures" means capital expenditures
36 incurred by the taxpayer in connection with the construction of a
37 new affordable housing development owned by the taxpayer.

38 "Non-affordable housing" means housing that does not qualify as
39 affordable housing.

40

41 2. a. Notwithstanding section 26 of P.L.2004, c.65
42 (C.54A:5-1.2), for purposes of calculating the depreciation
43 deduction allowed under the "New Jersey Gross Income Tax Act,"
44 N.J.S.54A:1-1 et seq., a taxpayer shall be allowed to depreciate a
45 percentage of eligible property expenditures, as that percentage is
46 determined and computed pursuant to subsection b. of this section,
47 over a ten-year period.

S1422 SINGLETON, TURNER

4

- 1 by households with income no greater than 80 percent of the
- 2 regional median income, including, but not limited to, housing that
- 3 is deed restricted as affordable pursuant to the "Fair Housing Act."

[First Reprint]

SENATE, No. 1422

STATE OF NEW JERSEY
221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Allows taxpayers to utilize alternative method of depreciation of certain expenditures in connection with construction of new affordable housing developments.

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on January 25, 2024, with amendments.



1 AN ACT allowing taxpayers to utilize alternative method of
2 depreciation for certain expenditures under corporation business
3 and gross income taxes, supplementing P.L.1945, c.162
4 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

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

8
9 1. a. Notwithstanding paragraph (12) of subsection (k) of
10 section 4 of P.L.1945, c.162 (C.54:10A-4), for purposes of
11 calculating the depreciation deduction allowed pursuant to the
12 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
13 et seq.), a taxpayer shall be allowed to depreciate a percentage of
14 eligible property expenditures, as that percentage is determined and
15 computed pursuant to subsection b. of this section, over a ¹**ten-**
16 **year** ¹10-year¹ period.

17 b. For purposes of calculating the percentage of eligible
18 property expenditures depreciated by a taxpayer pursuant to
19 subsection a. of this section, the taxpayer shall apply the following
20 formula: $2 \times (\text{the number of affordable housing units in the}$
21 $\text{development} / \text{the } ^1\text{total}^1 \text{ number of } ^1\text{non-affordable}^1 \text{ housing}$
22 $\text{units in the development}).$

23 c. The Director of the Division of Taxation in the Department of
24 the Treasury shall prescribe the rules and regulations necessary to
25 carry out the provisions of this section.

26 d. As used in this section:

27 ¹“Affordable housing” means housing occupied or restricted to
28 occupancy by households with income no greater than 80 percent of
29 the regional median income, including, but not limited to, housing
30 that is deed restricted as affordable pursuant to the “Fair Housing
31 Act,” P.L.1985, c.222 (C.52:27D-301 et al.).¹

32 “Affordable housing development” means a development ¹:

33 (1) for which construction commences on or after the effective
34 date of P.L. , c. (C.) (pending before the Legislature as this
35 bill);

36 (2) which does not utilize funds obtained from any federal,
37 State, or local subsidy toward, or is allowed a tax credit or payment
38 in lieu of tax for, the construction of low- and moderate-income
39 housing; and

40 (3)¹ that includes one or more units of housing, at least 20
41 percent of which qualify as affordable housing.

42 ¹**“Affordable housing” means housing occupied or restricted to**
43 **occupancy by households with income no greater than 80 percent of**
44 **the regional median income, including, but not limited to, housing**

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹**Senate SCU committee amendments adopted January 25, 2024.**

1 that is deed restricted as affordable pursuant to the “Fair Housing
2 Act,” P.L.1985, c.222 (C.52:27D-301 et al.).¹

3 “Eligible property expenditures” means capital expenditures
4 incurred by the taxpayer in connection with the construction of a
5 new affordable housing development owned by the taxpayer.

6 ¹“Non-affordable housing” means housing that does not qualify
7 as affordable housing.¹

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9 2. a. Notwithstanding section 26 of P.L.2004, c.65
10 (C.54A:5-1.2), for purposes of calculating the depreciation
11 deduction allowed under the “New Jersey Gross Income Tax Act,”
12 N.J.S.54A:1-1 et seq., a taxpayer shall be allowed to depreciate a
13 percentage of eligible property expenditures, as that percentage is
14 determined and computed pursuant to subsection b. of this section,
15 over a ¹ten-year¹ ~~10-year~~¹ period.

16 b. For purposes of calculating the percentage of eligible
17 property expenditures depreciated by a taxpayer pursuant to
18 subsection a. of this section, the taxpayer shall apply the following
19 formula: $2 \times (\text{the number of affordable housing units in the}$
20 $\text{development} / \text{the } \sup{1}\text{total}^1 \text{ number of } \sup{1}\text{non-affordable}^1 \text{ housing}$
21 $\text{units in the development})$.

22 c. The Director of the Division of Taxation in the Department of
23 the Treasury shall prescribe the rules and regulations necessary to
24 carry out the provisions of this section.

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26 ¹“Affordable housing” means housing occupied or restricted to
27 occupancy by households with income no greater than 80 percent of
28 the regional median income, including, but not limited to, housing
29 that is deed restricted as affordable pursuant to the “Fair Housing
30 Act,” P.L.1985, c.222 (C.52:27D-301 et al.).¹

31 “Affordable housing development” means a development ¹:

32 (1) for which construction commences on or after the effective
33 date of P.L. , c. (C.) (pending before the Legislature as this
34 bill);

35 (2) which does not utilize funds obtained from any federal,
36 State, or local subsidy toward, or is allowed a tax credit or payment
37 in lieu of tax for, the construction of low- and moderate-income
38 housing; and

39 (3)¹ that includes one or more units of housing, at least 20
40 percent of which qualify as affordable housing.

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42 occupancy by households with income no greater than 80 percent of
43 the regional median income, including, but not limited to, housing
44 that is deed restricted as affordable pursuant to the “Fair Housing
45 Act,” P.L.1985, c.222 (C.52:27D-301 et al.).¹

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2 incurred by the taxpayer in connection with the construction of a
3 new affordable housing development owned by the taxpayer.

4 ¹“Non-affordable housing” means housing that does not qualify
5 as affordable housing.¹

6
7 3. This act shall take effect immediately and shall apply to
8 eligible property expenditures ¹“incurred on and after the effective
9 date of P.L. , c. (C.) (pending before the Legislature as this
10 bill)” for affordable housing developments placed in service in the
11 2025 tax year and thereafter¹.

[Second Reprint]

SENATE, No. 1422

STATE OF NEW JERSEY
221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex and Hudson)

Assemblyman CLINTON CALABRESE

District 36 (Bergen and Passaic)

Co-Sponsored by:

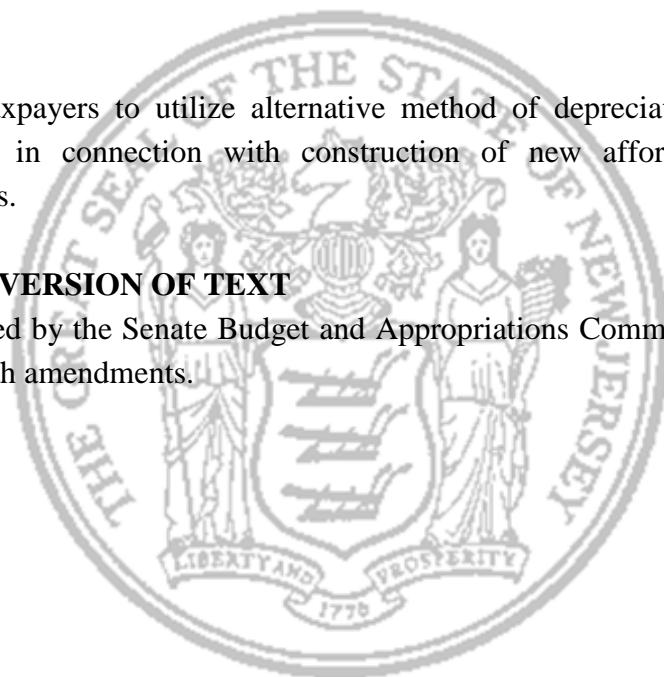
Senator Pou

SYNOPSIS

Allows taxpayers to utilize alternative method of depreciation of certain expenditures in connection with construction of new affordable housing developments.

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 allowing taxpayers to utilize alternative method of
2 depreciation for certain expenditures under corporation business
3 and gross income taxes, supplementing P.L.1945, c.162
4 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

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10 4 of P.L.1945, c.162 (C.54:10A-4), for purposes of calculating the
11 depreciation deduction allowed pursuant to the Corporation Business
12 Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), a taxpayer shall
13 be allowed to depreciate a percentage of eligible property
14 expenditures, as that percentage is determined and computed pursuant
15 to subsection b. of this section, over a ¹~~ten-year~~ 10-year¹ period.

16 b. For purposes of calculating the percentage of eligible property
17 expenditures depreciated by a taxpayer pursuant to subsection a. of
18 this section, the taxpayer shall apply the following formula: $2 \times$ (the
19 number of affordable housing units in the development / the ¹~~total~~¹
20 number of ¹~~non-affordable~~¹ housing units in the development).

21 c. The Director of the Division of Taxation in the Department of
22 the Treasury shall prescribe the rules and regulations necessary to
23 carry out the provisions of this section.

24 d. As used in this section:

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37 of a financial agreement under the “Long Term Tax Exemption Law,”
38 P.L.1991, c.431 (C.40A:20-1 et seq.) or does not receive an affordable
39 housing subsidy for² the construction of low- and moderate-income
40 housing; and

41 (3)¹ that includes one or more units of housing, at least 20 percent
42 of which qualify as affordable housing.

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¹Senate SCU committee amendments adopted January 25, 2024.

²Senate SBA committee amendments adopted March 11, 2024.

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 2 intended to support the development of affordable housing and is
 3 provided by the Department of Community Affairs, the New Jersey
 4 Housing and Mortgage Finance Agency, or a municipal affordable
 5 housing trust fund, except that the term shall not include any rebates or
 6 incentives that are intended to promote energy efficiency standards.²

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 13 incurred by the taxpayer in connection with the construction of a new
 14 affordable housing development owned by the taxpayer.

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 16 as affordable housing.¹

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 18 2. a. Notwithstanding section 26 of P.L.2004, c.65 (C.54A:5-1.2),
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 20 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., a
 21 taxpayer shall be allowed to depreciate a percentage of eligible
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 27 this section, the taxpayer shall apply the following formula: 2 x (the
 28 number of affordable housing units in the development / the ¹total¹
 29 number of ¹non-affordable¹ housing units in the development).

30 c. The Director of the Division of Taxation in the Department of
 31 the Treasury shall prescribe the rules and regulations necessary to
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 42 bill);

43 (2) ²for² which ²does not utilize funds obtained from any federal,
 44 State, or local subsidy toward, or is allowed a tax credit or payment in
 45 lieu of tax for,] taxes are not abated or exempted pursuant to the terms
 46 of a financial agreement under the “Long Term Tax Exemption Law,”
 47 P.L.1991, c.431 (C.40A:20-1 et seq.) or does not receive an affordable

1 housing subsidy for² the construction of low- and moderate-income
2 housing; and

3 (3)¹ that includes one or more units of housing, at least 20 percent
4 of which qualify as affordable housing.

5 ²“Affordable housing subsidy” means any financing that is
6 intended to support the development of affordable housing and is
7 provided by the Department of Community Affairs, the New Jersey
8 Housing and Mortgage Finance Agency, or a municipal affordable
9 housing trust fund, except that the term shall not include any rebates or
10 incentives that are intended to promote energy efficiency standards.²

11 ¹**“Affordable housing” means housing occupied or restricted to**
12 **occupancy by households with income no greater than 80 percent of**
13 **the regional median income, including, but not limited to, housing that**
14 **is deed restricted as affordable pursuant to the “Fair Housing Act,”**
15 **P.L.1985, c.222 (C.52:27D-301 et al.).¹**

16 “Eligible property expenditures” means capital expenditures
17 incurred by the taxpayer in connection with the construction of a new
18 affordable housing development owned by the taxpayer.

19 ¹**“Non-affordable housing” means housing that does not qualify**
20 **as affordable housing.¹**

21

22 3. This act shall take effect immediately and shall apply to eligible
23 property expenditures ¹**incurred on and after the effective date of**
24 **P.L. , c. (C.) (pending before the Legislature as this bill)** ¹**for**
25 **affordable housing developments placed in service ²in the 2025**
26 **during any² tax year ²or privilege period beginning January 1, 2025²**
27 **and thereafter¹.**

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 1422

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. 1422.

This bill, as amended, allows taxpayers to claim a deduction for depreciation, under the Gross Income Tax and the Corporation Business Tax, based on a percentage of eligible property expenditures, meaning capital expenditures incurred by the taxpayer in connection with the construction of a new affordable housing development owned by the taxpayer. Under the bill, a taxpayer may claim this deduction over a 10-year period.

To calculate the percentage of eligible property expenditures that may be depreciated, the taxpayer would be required to apply the following formula: $2 \times (\text{the number of affordable housing units in the development} / \text{the total number of housing units in the development})$.

As defined in the bill, “affordable housing development” means a development: (1) for which construction commences on or after the effective date of the bill; (2) which does not utilize funds obtained from any federal, State, or local subsidy toward, or is allowed a tax credit or payment in lieu of tax for, the construction of low- and moderate-income housing; and (3) that includes one or more units of housing, at least 20 percent of which qualify as affordable housing, as defined in the bill.

This bill was pre-filed for introduction in the 2024-2025 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

The committee amended the bill to: (1) adjust the formula which calculates the percentage of eligible property expenditures depreciated; (2) provide that affordable housing developments, for which a taxpayer would be allowed to depreciate a percentage of eligible property expenditures, are required to be constructed after the effective date of the bill and are not to utilize federal, State, or local subsidies, tax credits, or payments in lieu of taxes; (3) provide that the bill’s provisions would apply to eligible property expenditures for affordable housing developments placed in service in the 2025 tax year and thereafter; and (4) make technical changes.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1422

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. 1422 (1R).

As amended, this bill allows a taxpayer to claim a depreciation deduction under the “Corporation Business Tax Act,” P.L.1945, c.162 (C.54:10A-1 et seq.) and the “New Jersey Gross Income Tax Act,” (N.J.S.54A:1-1 et seq.) for eligible property expenditures incurred by the taxpayer for the construction of a new affordable housing development owned by the taxpayer. The bill permits a taxpayer to claim the deduction over a 10-year period.

Deprecation is an annual deduction from income that allows a taxpayer to recover the cost or other basis of certain property over the time that they use the property. To calculate the percentage of eligible property expenditures that may be depreciated, the taxpayer would be required to apply the following formula: 2 times (the number of affordable housing units in the development divided by the total number of housing units in the development).

The bill defines an “affordable housing development” as a development: (1) for which construction commences on or after the effective date of the bill; (2) for which taxes are not abated or exempted pursuant to the “Long Term Tax Exemption Law,” P.L.1991, c.431 (C.40A:20-1 et seq.), or does not receive an affordable housing subsidy for the construction of low- and moderate-income housing; and (3) that includes one or more units of housing, at least 20 percent of which qualify as affordable housing, as defined in the bill.

As amended, the bill allows a depreciation deduction to be claimed for affordable housing developments placed in service during any tax year or privilege period beginning January 1, 2025, or thereafter.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) revise the definition of “affordable housing development” to include developments for which taxes are not abated or exempted pursuant to the “Long Term Tax Exemption Law,” P.L.1991, c.431 (C.40A:20-1 et seq.) or that do not receive an affordable housing

subsidy for the construction of low- and moderate-income housing. Previously, this definition would have included developments that do not utilize funds obtained from any federal, State, or local subsidy toward, or is allowed a tax credit or payment in lieu of tax for, for the construction of low- and moderate-income housing;

(2) define the term “affordable housing subsidy” to mean any financing that is intended to support the development of affordable housing and that is provided by the Department of Community Affairs, the New Jersey Housing and Mortgage Finance Agency, or a municipal affordable housing trust fund, except not including rebates or incentives to promote energy efficiency standards; and

(3) provide that the bill allows a depreciation deduction to be claimed for affordable housing developments placed in service in tax years and privilege periods beginning January 1, 2025 and thereafter.

FISCAL IMPACT:

The Office of Legislative Services (OLS) projects that the bill will result in annual State revenue losses incurred by the General Fund and Property Tax Relief Fund in the range of \$1.2 million to \$2.3 million in the first year of implementation.

State revenue losses thereafter will be dependent on several factors that may influence the amount of depreciation that is deducted from income using the new method provided by the bill, including the pace of affordable housing construction, the value of new affordable housing developments, and whether an affordable housing development has received an affordable housing subsidy or a property tax abatement or exemption.

The alternate method of depreciating the value of new housing construction under the bill would allow taxpayers to accelerate the depreciation of property sooner than is the case under current law, and potentially claim larger depreciation deductions, thereby lowering the amount of income that is subject to taxation. This would, in turn, reduce State revenue collections from the corporation business tax and gross income tax.

There are several factors, such as the percentage of affordable housing units in an affordable housing development, and differences in the methods of calculating depreciation under current law and the bill, that may cause State revenue losses to be higher or lower than anticipated in this estimate.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1422 STATE OF NEW JERSEY 221st LEGISLATURE

DATED: FEBRUARY 23, 2024

SUMMARY

- Synopsis:** Allows taxpayers to utilize alternative method of depreciation of certain expenditures in connection with construction of new affordable housing developments.
- Type of Impact:** Annual State revenue loss to the General Fund and Property Tax Relief Fund.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>First Year of Implementation</u>	<u>Thereafter</u>
State Revenue Loss	\$1.2 million to \$2.3 million	Indeterminate

- The Office of Legislative Services (OLS) projects that the bill will result in annual State revenue losses incurred by the General Fund and Property Tax Relief Fund in the range of \$1.2 million to \$2.3 million in the first year of implementation.
- State revenue losses thereafter will be dependent on several factors that may influence the amount of depreciation that is deducted from income using the new method provided by the bill, including the pace of affordable housing construction, the value of new affordable housing developments, and whether an affordable housing development has received any State, federal, or local financial subsidies for the construction of low- and moderate-income housing.
- The alternate method of depreciating the value of new housing construction under the bill would allow taxpayers to accelerate the depreciation of property sooner than is the case under current law, and potentially claim larger depreciation deductions, thereby lowering the amount of income that is subject to taxation. This would, in turn, reduce State revenue collections from the corporation business tax and gross income tax.
- There several factors, such as the percentage of affordable housing units in an affordable housing development, and differences in the methods of calculating depreciation under current

law and the bill, that may cause State revenue losses to be higher or lower than anticipated in this estimate.

BILL DESCRIPTION

This bill allows a taxpayer to claim a depreciation deduction under the corporation business tax and the gross income tax for eligible property expenditures incurred by the taxpayer for the construction of a new affordable housing development owned by the taxpayer. The bill permits a taxpayer to claim the deduction over a 10-year period.

To calculate the percentage of eligible property expenditures that may be depreciated, the taxpayer would be required to apply the following formula: 2 times (the number of affordable housing units in the development divided by the total number of housing units in the development).

The bill defines an “affordable housing development” as a development: (1) for which construction commences on or after the effective date of the bill; (2) which does not utilize funds obtained from any federal, State, or local subsidy, or is allowed a tax credit or payment in lieu of tax, for the construction of low- and moderate-income housing; and (3) that includes one or more units of housing, at least 20 percent of which qualify as affordable housing.

The bill allows a depreciation deduction to be claimed for affordable housing developments placed in service in tax year 2025 and thereafter.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill will result in annual State revenue losses incurred by the General Fund and Property Tax Relief Fund in the range of \$1.2 million to \$2.3 million in the first year of implementation. State revenue losses thereafter will be dependent on several factors that may influence the amount of depreciation that is deducted from income using the new method provided by the bill, including the pace of affordable housing construction, the value of new affordable housing developments, and the percentage of affordable housing units in each development. This estimate has been calculated using data published by the Department of Community Affairs in the New Jersey Construction Reporter and is based on certain assumptions regarding housing construction activity.

Deprecation is an annual deduction from income that allows a taxpayer to recover the cost or other basis of certain property over the time that they use the property. Except as otherwise provided under current law, New Jersey follows the rules for depreciation set forth in the federal Internal Revenue Code. The approaches used to depreciate the value of different types of property and determine the amount a taxpayer may deduct from income due to the decline in a property’s value are prescribed by the Internal Revenue Code. Taxpayers may claim depreciation as a deduction from income, thereby lowering their State and federal tax liabilities.

Although the Internal Revenue Code does not specifically reference affordable housing, it does establish a method used to determine depreciation for residential rental property (defined as any building or structure if 80 percent or more of the gross rental income from such building or

structure for the taxable year is rental income from dwelling units). The code requires residential rental property to be depreciated over a period of 27.5 years using a straight-line method of depreciation. The straight-line method of depreciation allows a taxpayer to deduct the same amount of depreciation each year over the useful life of the property. Residential real property depreciates by about 3.636 percent annually. The bill establishes an alternate formula for calculating the amount that may be depreciated for affordable housing developments and requires that amount to be depreciated over a period of 10 years. Under this new formula, the amount of depreciation is based on the number of affordable housing units in a development.

The Construction Reporter contains statistics on the construction activity in New Jersey from data submitted by construction officials who administer the State Uniform Construction Code. According to the Construction Reporter, about 30,900 building permits for the construction of new housing units were issued in 2022. The estimated cost of construction of these new units was approximately \$5.74 billion. Under the bill, a development qualifies as an affordable housing development if 20 percent of the housing units are affordable housing. Thus, if all 30,900 new housing units authorized by building permit for new construction in 2022 were located in affordable housing developments, then at least 6,180 units would have to qualify as affordable housing in order for the taxpayer to utilize the new depreciation method.

The bill provides that the amount to be depreciated would use the following formula: two times the quotient of the number of affordable housing units in the development, divided by the number of housing units in the development. Applying this formula to the 2022 housing unit data yields a product of 40 percent $[(6,180/30,898) \times 2 = .40]$. The total amount to be depreciated is determined by multiplying the total amount of eligible property expenditures by the depreciation percentage. The OLS assumes that the \$5.74 billion in construction costs for new housing units would also qualify as eligible property expenditures. Multiplying that amount by the depreciation percentage yields a depreciation amount of \$2.3 billion over 10 years, or \$230 million per year. As noted above, the current depreciation method provides that real property depreciate by 3.636 percent annually over 27.5 years. If all 30,900 new housing units were to qualify as residential real property and the \$5.74 billion in associated construction costs were depreciable, then taxpayers would currently be able to deduct about \$208.7 million annually. In each circumstance, the impact of the depreciation on State revenue collections would be proportional to the marginal income tax rate of the entity claiming the deduction.

A taxpayer subject to the bill's provisions would be subject to corporation business tax, gross income tax, or the pass-through business alternative income tax, depending on the structure of the taxpayer's business. However, information regarding the corporate structure of those taxpayers most likely to use the alternate depreciation method is not available. For purposes of this estimate, the OLS assumes that those taxpayers are subject to State tax rates ranging from 5.675 percent to 10.9 percent. The State revenue loss is equal to the difference between each taxpayer's tax liability after accounting for the amounts that would be deducted from income using each method of depreciation. Applying these rates to the estimated amounts of depreciation in the first year of the bill's implementation (\$230 million and \$208.74 million) yields projected State revenue losses of \$1.2 million to \$2.3 million.

The OLS notes that the bill does not allow a taxpayer to employ the alternate depreciation formula for an affordable housing development that has received State, federal, or local subsidies, or is allowed tax credit or payment in lieu of tax for the construction of low- and moderate-income housing. This restriction will limit the State's revenue losses because it reduces the number of affordable housing developments for which the alternate depreciation may be utilized. Information regarding the number of affordable housing developments that have received State, federal, or local subsidies, or has been allowed a tax credit or payment in lieu of tax for the construction of low- and moderate-income housing is not readily available.

However, the OLS notes that there are additional factors that may cause actual State revenue losses to differ from these amounts. First, this estimate presumes that 20 percent of new housing units will be affordable housing. This is the minimum amount required for a taxpayer to be allowed to use the alternate depreciation method under the provisions of the bill. If an affordable housing development contains a greater proportion of affordable housing, a taxpayer would be able to depreciate a higher amount of eligible property expenditures, thereby increasing the amount they may deduct from income and the State's revenue losses. Second, this estimate is based on a dollar amount of construction, \$5.74 billion, indicated in the Construction Reporter. The Construction Reporter defines the "dollar amount of construction" as the estimated cost of work as reported by a permit applicant to the construction official. There are likely construction costs reported on a permit application that are not depreciable, and therefore, deductible from income. In these instances, the State revenue loss would be lower than anticipated. Third, this estimate assumes that all housing units authorized for construction in 2022 were part of an affordable housing development, as defined in the bill. As such, this estimate may overstate the total amount of eligible property expenditures that may be subject to the depreciation allowance. Lastly, federal Internal Revenue Service guidance provides that a taxpayer may deduct depreciation only on that part of their property used for rental purposes. The bill allows a taxpayer to deduct depreciable costs for eligible capital expenditures associated with the construction of an entire housing development, thereby permitting a deduction for depreciation for a potentially larger amount of expenditures.

The application of the new formula may cause certain taxpayers to claim the deduction for depreciation over a shorter time-frame, thereby resulting in higher amounts of taxable income in the years after its application. The new formula may also incentivize some taxpayers to make deductible investments in the construction of new affordable housing developments they may not otherwise make. To the extent that these factors might contribute to higher business earnings and increase economic activity overall, State tax collections may increase by an indeterminate amount.

Section: Revenue, Finance, and Appropriations

*Analyst: Scott A. Brodsky
Staff Fiscal and Budget 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]

SENATE, No. 1422 STATE OF NEW JERSEY 221st LEGISLATURE

DATED: MARCH 21, 2024

SUMMARY

- Synopsis:** Allows taxpayers to utilize alternative method of depreciation of certain expenditures in connection with construction of new affordable housing developments.
- Type of Impact:** Annual State revenue loss to the State General Fund and Property Tax Relief Fund.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>First Year of Implementation</u>	<u>Thereafter</u>
State Revenue Loss	\$1.2 million to \$2.3 million	Indeterminate

- The Office of Legislative Services (OLS) projects that the bill will result in annual State revenue losses incurred by the General Fund and Property Tax Relief Fund in the range of \$1.2 million to \$2.3 million in the first year of implementation.
- State revenue losses thereafter will be dependent on several factors that may influence the amount of depreciation that is deducted from income using the new method provided by the bill, including the pace of affordable housing construction, the value of new affordable housing developments, and whether an affordable housing development has received an affordable housing subsidy or a property tax abatement or exemption.
- The alternate method of depreciating the value of new housing construction under the bill would allow taxpayers to accelerate the depreciation of property sooner than is the case under current law, and potentially claim larger depreciation deductions, thereby lowering the amount of income that is subject to taxation. This would, in turn, reduce State revenue collections from the corporation business tax and gross income tax.
- There are several factors, such as the percentage of affordable housing units in an affordable housing development, and differences in the methods of calculating depreciation under current law and the bill, that may cause State revenue losses to be higher or lower than anticipated in this estimate.

BILL DESCRIPTION

This bill allows a taxpayer to claim a depreciation deduction under the corporation business tax and the gross income tax for eligible property expenditures incurred by the taxpayer for the construction of a new affordable housing development owned by the taxpayer. The bill permits a taxpayer to claim the deduction over a 10-year period.

To calculate the percentage of eligible property expenditures that may be depreciated, the taxpayer would be required to apply the following formula: 2 times (the number of affordable housing units in the development divided by the total number of housing units in the development).

The bill defines an “affordable housing development” as a development: (1) for which construction commences on or after the effective date of the bill; (2) for which taxes are not abated or exempted pursuant to the Long Term Tax Exemption Law, P.L.1991, c.431, or does not receive an affordable housing subsidy for the construction of low- and moderate-income housing; and (3) that includes one or more units of housing, at least 20 percent of which qualify as affordable housing, as defined in the bill.

The bill allows a depreciation deduction to be claimed for affordable housing developments placed in service during any tax year or privilege period beginning January 1, 2025, or thereafter.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill will result in annual State revenue losses incurred by the General Fund and Property Tax Relief Fund in the range of \$1.2 million to \$2.3 million in the first year of implementation. State revenue losses thereafter will be dependent on several factors that may influence the amount of depreciation that is deducted from income using the new method provided by the bill, including the pace of affordable housing construction, the value of new affordable housing developments, and the percentage of affordable housing units in each development. This estimate has been calculated using data published by the Department of Community Affairs in the New Jersey Construction Reporter and is based on certain assumptions regarding housing construction activity.

Depreciation is an annual deduction from income that allows a taxpayer to recover the cost or other basis of certain property over the time that they use the property. Except as otherwise provided under current law, New Jersey follows the rules for depreciation set forth in the federal Internal Revenue Code. The approaches used to depreciate the value of different types of property and determine the amount a taxpayer may deduct from income due to the decline in a property’s value are prescribed by the Internal Revenue Code. Taxpayers may claim depreciation as a deduction from income, thereby lowering their State and federal tax liabilities.

Although the Internal Revenue Code does not specifically reference affordable housing, it does establish a method used to determine depreciation for residential rental property (defined as any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units). The code requires residential rental property to be depreciated over a period of 27.5 years using a straight-line method of depreciation. The straight-line method of depreciation allows a taxpayer to deduct the same amount of depreciation each year over the useful life of the property. Residential real property

depreciates by about 3.636 percent annually. The bill establishes an alternate formula for calculating the amount that may be depreciated for affordable housing developments and requires that amount to be depreciated over a period of 10 years. Under this new formula, the amount of depreciation is based on the number of affordable housing units in a development.

The Construction Reporter contains statistics on the construction activity in New Jersey from data submitted by construction officials who administer the State Uniform Construction Code. According to the Construction Reporter, about 30,900 building permits for the construction of new housing units were issued in 2022. The estimated cost of construction of these new units was approximately \$5.74 billion. Under the bill, a development qualifies as an affordable housing development if 20 percent of the housing units are affordable housing. Thus, if all 30,900 new housing units authorized by building permit for new construction in 2022 were located in affordable housing developments, then at least 6,180 units would have to qualify as affordable housing in order for the taxpayer to utilize the new depreciation method.

The bill provides that the amount to be depreciated would use the following formula: two times the quotient of the number of affordable housing units in the development, divided by the number of housing units in the development. Applying this formula to the 2022 housing unit data yields a product of 40 percent $[(6,180/30,898) \times 2 = .40]$. The total amount to be depreciated is determined by multiplying the total amount of eligible property expenditures by the depreciation percentage. The OLS assumes that the \$5.74 billion in construction costs for new housing units would also qualify as eligible property expenditures. Multiplying that amount by the depreciation percentage yields a depreciation amount of \$2.3 billion over 10 years, or \$230 million per year. As noted above, the current depreciation method provides that real property depreciate by 3.636 percent annually over 27.5 years. If all 30,900 new housing units were to qualify as residential real property and the \$5.74 billion in associated construction costs were depreciable, then taxpayers would currently be able to deduct about \$208.7 million annually. In each circumstance, the impact of the depreciation on State revenue collections would be proportional to the marginal income tax rate of the entity claiming the deduction.

A taxpayer subject to the bill's provisions would be subject to corporation business tax, gross income tax, or the pass-through business alternative income tax, depending on the structure of the taxpayer's business. However, information regarding the corporate structure of those taxpayers most likely to use the alternate depreciation method is not available. For purposes of this estimate, the OLS assumes that those taxpayers are subject to State tax rates ranging from 5.675 percent to 10.9 percent. The State revenue loss is equal to the difference between each taxpayer's tax liability after accounting for the amounts that would be deducted from income using each method of depreciation. Applying these rates to the estimated amounts of depreciation in the first year of the bill's implementation (\$230 million and \$208.74 million) yields projected State revenue losses of \$1.2 million to \$2.3 million.

The OLS notes that the bill does not allow a taxpayer to employ the alternate depreciation formula if the property tax liability for an affordable housing development has received a property tax abatement or exemption or an affordable housing subsidy. The bill broadly defines an affordable housing subsidy as financing that is intended to support the development of affordable housing and provided by the Department of Community Affairs, New Jersey Housing and Mortgage and Finance Agency, or a municipal affordable housing trust fund. This restriction will limit the State's revenue losses because it reduces the number of affordable housing developments for which the alternate depreciation may be utilized. Information regarding the number of affordable housing developments that have received an affordable housing subsidy is not readily available.

However, the OLS notes that there are additional factors that may cause actual State revenue losses to differ from these amounts. First, this estimate presumes that 20 percent of new housing

units will be affordable housing. This is the minimum amount required for a taxpayer to be allowed to use the alternate depreciation method under the provisions of the bill. If an affordable housing development contains a greater proportion of affordable housing, a taxpayer would be able to depreciate a higher amount of eligible property expenditures, thereby increasing the amount they may deduct from income and the State's revenue losses. Second, this estimate is based on a dollar amount of construction, \$5.74 billion, indicated in the Construction Reporter. The Construction Reporter defines the "dollar amount of construction" as the estimated cost of work as reported by a permit applicant to the construction official. There are likely construction costs reported on a permit application that are not depreciable, and therefore, deductible from income. In these instances, the State revenue loss would be lower than anticipated. Third, this estimate assumes that all housing units authorized for construction in 2022 were part of an affordable housing development, as defined in the bill. As such, this estimate may overstate the total amount of eligible property expenditures that may be subject to the depreciation allowance. Lastly, federal Internal Revenue Service guidance provides that a taxpayer may deduct depreciation only on that part of their property used for rental purposes. The bill allows a taxpayer to deduct depreciable costs for eligible capital expenditures associated with the construction of an entire housing development, thereby permitting a deduction for depreciation for a potentially larger amount of expenditures.

The application of the new formula may cause certain taxpayers to claim the deduction for depreciation over a shorter time-frame, thereby resulting in higher amounts of taxable income in the years after its application. The new formula may also incentivize some taxpayers to make deductible investments in the construction of new affordable housing developments they may not otherwise make. To the extent that these factors might contribute to higher business earnings and increase economic activity overall, State tax collections may increase by an indeterminate amount.

Section: Revenue, Finance, and Appropriations

*Analyst: Joseph A. Pezzulo
Section Chief*

*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.).

ASSEMBLY, No. 3365

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JANUARY 9, 2024

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

SYNOPSIS

Allows taxpayers to utilize alternative method of depreciation of certain expenditures in connection with construction of new affordable housing developments.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT allowing taxpayers to utilize alternative method of
2 depreciation for certain expenditures under corporation business
3 and gross income taxes, supplementing P.L.1945, c.162
4 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

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

8
9 1. a. Notwithstanding paragraph (12) of subsection (k) of
10 section 4 of P.L.1945, c.162 (C.54:10A-4), for purposes of
11 calculating the depreciation deduction allowed pursuant to the
12 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
13 et seq.), a taxpayer shall be allowed to depreciate a percentage of
14 eligible property expenditures, as that percentage is determined and
15 computed pursuant to subsection b. of this section, over a ten-year
16 period.

17 b. For purposes of calculating the percentage of eligible
18 property expenditures depreciated by a taxpayer pursuant to
19 subsection a. of this section, the taxpayer shall apply the following
20 formula: $2 \times (\text{the number of affordable housing units in the}$
21 $\text{development} / \text{the number of non-affordable housing units in the}$
22 $\text{development})$.

23 c. The Director of the Division of Taxation in the Department of
24 the Treasury shall prescribe the rules and regulations necessary to
25 carry out the provisions of this section.

26 d. As used in this section:

27 "Affordable housing development" means a development that
28 includes one or more units of housing, at least 20 percent of which
29 qualify as affordable housing.

30 "Affordable housing" means housing occupied or restricted to
31 occupancy by households with income no greater than 80 percent of
32 the regional median income, including, but not limited to, housing
33 that is deed restricted as affordable pursuant to the "Fair Housing
34 Act," P.L.1985, c.222 (C.52:27D-301 et al.).

35 "Eligible property expenditures" means capital expenditures
36 incurred by the taxpayer in connection with the construction of a
37 new affordable housing development owned by the taxpayer.

38 "Non-affordable housing" means housing that does not qualify as
39 affordable housing.

40

41 2. a. Notwithstanding section 26 of P.L.2004, c.65 (C.54A:5-
42 1.2), for purposes of calculating the depreciation deduction allowed
43 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
44 seq., a taxpayer shall be allowed to depreciate a percentage of
45 eligible property expenditures, as that percentage is determined and
46 computed pursuant to subsection b. of this section, over a ten-year
47 period.

48 b. For purposes of calculating the percentage of eligible
49 property expenditures depreciated by a taxpayer pursuant to

1 subsection a. of this section, the taxpayer shall apply the following
2 formula: $2 \times (\text{the number of affordable housing units in the}$
3 $\text{development} / \text{the number of non-affordable housing units in the}$
4 $\text{development})$.

5 c. The Director of the Division of Taxation in the Department of
6 the Treasury shall prescribe the rules and regulations necessary to
7 carry out the provisions of this section.

8 d. As used in this section:

9 "Affordable housing development" means a development that
10 includes one or more units of housing, at least 20 percent of which
11 qualify as affordable housing.

12 "Affordable housing" means housing occupied or restricted to
13 occupancy by households with income no greater than 80 percent of
14 the regional median income, including, but not limited to, housing
15 that is deed restricted as affordable pursuant to the "Fair Housing
16 Act," P.L.1985, c.222 (C.52:27D-301 et al.).

17 "Eligible property expenditures" means capital expenditures
18 incurred by the taxpayer in connection with the construction of a
19 new affordable housing development owned by the taxpayer.

20 "Non-affordable housing" means housing that does not qualify as
21 affordable housing.

22
23 3. This act shall take effect immediately and shall apply to
24 eligible property expenditures incurred on and after the effective
25 date of P.L. , c. (C.) (pending before the Legislature as this
26 bill).

27

28

29

STATEMENT

30

31 This bill allows taxpayers to depreciate a percentage of eligible
32 property expenditures, meaning capital expenditures incurred by the
33 taxpayer in connection with the construction of a new affordable
34 housing development owned by the taxpayer, over a ten-year
35 period.

36 For purposes of calculating the percentage of eligible property
37 expenditures that may be depreciated by a taxpayer pursuant to the
38 bill, the taxpayer is to apply the following formula: $2 \times (\text{the number}$
39 $\text{of affordable housing units in the development} / \text{the number of non-}$
40 $\text{affordable housing units in the development})$.

41 Under the bill, "affordable housing development" means a
42 development that includes one or more units of housing, at least 20
43 percent of which qualify as affordable housing. The bill defines
44 "affordable housing" as housing occupied or restricted to occupancy
45 by households with income no greater than 80 percent of the
46 regional median income, including, but not limited to, housing that
47 is deed restricted as affordable pursuant to the "Fair Housing Act,"
48 P.L.1985, c.222 (C.52:27D-301 et al.).

[First Reprint]

ASSEMBLY, No. 3365

STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED JANUARY 9, 2024

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

Assemblywoman SHANIQUE SPEIGHT

District 29 (Essex and Hudson)

Assemblyman CLINTON CALABRESE

District 36 (Bergen and Passaic)

SYNOPSIS

Allows taxpayers to utilize alternative method of depreciation of certain expenditures in connection with construction of new affordable housing developments.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on February 8, 2024, with amendments.



(Sponsorship Updated As Of: 3/18/2024)

1 AN ACT allowing taxpayers to utilize alternative method of
 2 depreciation for certain expenditures under corporation business
 3 and gross income taxes, supplementing P.L.1945, c.162
 4 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

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

8
 9 1. a. Notwithstanding paragraph (12) of subsection (k) of
 10 section 4 of P.L.1945, c.162 (C.54:10A-4), for purposes of
 11 calculating the depreciation deduction allowed pursuant to the
 12 Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1
 13 et seq.), a taxpayer shall be allowed to depreciate a percentage of
 14 eligible property expenditures, as that percentage is determined and
 15 computed pursuant to subsection b. of this section, over a ¹~~ten-~~
 16 ~~year~~ 10-year¹ period.

17 b. For purposes of calculating the percentage of eligible
 18 property expenditures depreciated by a taxpayer pursuant to
 19 subsection a. of this section, the taxpayer shall apply the following
 20 formula: $2 \times (\text{the number of affordable housing units in the}$
 21 $\text{development} / \text{the } ^1\text{total}^1 \text{ number of } ^1\text{non-affordable}^1 \text{ housing}$
 22 $\text{units in the development}).$

23 c. The Director of the Division of Taxation in the Department of
 24 the Treasury shall prescribe the rules and regulations necessary to
 25 carry out the provisions of this section.

26 d. As used in this section:

27 ¹“Affordable housing” means housing occupied or restricted to
 28 occupancy by households with income no greater than 80 percent of
 29 the regional median income, including, but not limited to, housing
 30 that is deed restricted as affordable pursuant to the “Fair Housing
 31 Act,” P.L.1985, c.222 (C.52:27D-301 et al.).¹

32 “Affordable housing development” means a development ¹:

33 (1) for which construction commences on or after the effective
 34 date of P.L. , c. (C.) (pending before the Legislature as this
 35 bill);

36 (2) for which taxes are not abated or exempted pursuant to the
 37 terms of a financial agreement under the “Long Term Tax
 38 Exemption Law,” P.L.1991, c.431 (C.40A:20-1 et seq.) or does not
 39 receive an affordable housing subsidy for the construction of low-
 40 and moderate-income housing; and

41 (3)¹ that includes one or more units of housing, at least 20
 42 percent of which qualify as affordable housing.

43 ¹“Affordable housing subsidy” means any financing that is
 44 intended to support the development of affordable housing and is
 45 provided by the Department of Community Affairs, the New Jersey
 46 Housing and Mortgage Finance Agency, or a municipal 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:

¹Assembly AAP committee amendments adopted February 8, 2024.

1 housing trust fund, except that the term shall not include any rebates
2 or incentives that are intended to promote energy efficiency
3 standards.¹

4 ¹["Affordable housing" means housing occupied or restricted to
5 occupancy by households with income no greater than 80 percent of
6 the regional median income, including, but not limited to, housing
7 that is deed restricted as affordable pursuant to the "Fair Housing
8 Act," P.L.1985, c.222 (C.52:27D-301 et al.).]¹

9 "Eligible property expenditures" means capital expenditures
10 incurred by the taxpayer in connection with the construction of a
11 new affordable housing development owned by the taxpayer.

12 ¹["Non-affordable housing" means housing that does not qualify
13 as affordable housing.]¹

14

15 2. a. Notwithstanding section 26 of P.L.2004, c.65
16 (C.54A:5-1.2), for purposes of calculating the depreciation
17 deduction allowed under the "New Jersey Gross Income Tax Act,"
18 N.J.S.54A:1-1 et seq., a taxpayer shall be allowed to depreciate a
19 percentage of eligible property expenditures, as that percentage is
20 determined and computed pursuant to subsection b. of this section,
21 over a ¹[ten-year] 10-year¹ period.

22 b. For purposes of calculating the percentage of eligible property
23 expenditures depreciated by a taxpayer pursuant to subsection a. of
24 this section, the taxpayer shall apply the following formula: 2 x (the
25 number of affordable housing units in the development / the ¹total¹
26 number of ¹[non-affordable]¹ housing units in the development).

27 c. The Director of the Division of Taxation in the Department of
28 the Treasury shall prescribe the rules and regulations necessary to
29 carry out the provisions of this section.

30 d. As used in this section:

31 "Affordable housing" means housing occupied or restricted to
32 occupancy by households with income no greater than 80 percent of
33 the regional median income, including, but not limited to, housing
34 that is deed restricted as affordable pursuant to the "Fair Housing
35 Act," P.L.1985, c.222 (C.52:27D-301 et al.).¹

36 "Affordable housing development" means a development ¹:

37 (1) for which construction commences on or after the effective
38 date of P.L. , c. (C.) (pending before the Legislature as this
39 bill);

40 (2) for which taxes are not abated or exempted pursuant to the
41 terms of a financial agreement under the "Long Term Tax
42 Exemption Law," P.L.1991, c.431 (C.40A:20-1 et seq.) or does not
43 receive an affordable housing subsidy for the construction of low-
44 and moderate-income housing; and

45 (3)¹ that includes one or more units of housing, at least 20
46 percent of which qualify as affordable housing.

47 ¹"Affordable housing subsidy" means any financing that is
48 intended to support the development of affordable housing and is

1 provided by the Department of Community Affairs, the New Jersey
2 Housing and Mortgage Finance Agency, or a municipal affordable
3 housing trust fund, except that the term shall not include any rebates
4 or incentives that are intended to promote energy efficiency
5 standards.¹

6 ¹["Affordable housing" means housing occupied or restricted to
7 occupancy by households with income no greater than 80 percent of
8 the regional median income, including, but not limited to, housing
9 that is deed restricted as affordable pursuant to the "Fair Housing
10 Act," P.L.1985, c.222 (C.52:27D-301 et al.).]¹

11 "Eligible property expenditures" means capital expenditures
12 incurred by the taxpayer in connection with the construction of a
13 new affordable housing development owned by the taxpayer.

14 ¹["Non-affordable housing" means housing that does not qualify
15 as affordable housing.]¹

16

17 3. This act shall take effect immediately and shall apply to
18 eligible property expenditures ¹["incurred on and after the effective
19 date of P.L. , c. (C.) (pending before the Legislature as this
20 bill)"] for affordable housing developments placed in service during
21 any tax year or privilege period beginning January 1, 2025 and
22 thereafter¹.

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3365

STATE OF NEW JERSEY

DATED: JANUARY 29, 2024

The Assembly Housing Committee reports favorably Assembly Bill No. 3365.

This bill allows taxpayers to depreciate a percentage of eligible property expenditures, meaning capital expenditures incurred by the taxpayer in connection with the construction of a new affordable housing development owned by the taxpayer, over a ten-year period.

For purposes of calculating the percentage of eligible property expenditures that may be depreciated by a taxpayer pursuant to the bill, the taxpayer is to apply the following formula: $2 \times (\text{the number of affordable housing units in the development} / \text{the number of non-affordable housing units in the development})$.

Under the bill, “affordable housing development” means a development that includes one or more units of housing, at least 20 percent of which qualify as affordable housing. The bill defines “affordable housing” as housing occupied or restricted to occupancy by households with income no greater than 80 percent of the regional median income, including, but not limited to, housing that is deed restricted as affordable pursuant to the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.).

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3365

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 8, 2024

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 3365.

As amended, this bill allows a taxpayer to claim a depreciation deduction under the “Corporation Business Tax Act,” P.L.1945, c.162 (C.54:10A-1 et seq.) and the “New Jersey Gross Income Tax Act,” (N.J.S.54A:1-1 et seq.) for eligible property expenditures incurred by the taxpayer for the construction of a new affordable housing development owned by the taxpayer. The bill permits a taxpayer to claim the deduction over a 10-year period.

Deprecation is an annual deduction from income that allows a taxpayer to recover the cost or other basis of certain property over the time that they use the property. To calculate the percentage of eligible property expenditures that may be depreciated, the taxpayer would be required to apply the following formula: 2 times (the number of affordable housing units in the development divided by the total number of housing units in the development).

The bill defines an “affordable housing development” as a development: (1) for which construction commences on or after the effective date of the bill; (2) for which taxes are not abated or exempted pursuant to the “Long Term Tax Exemption Law,” P.L.1991, c.431 (C.40A:20-1 et seq.), or does not receive an affordable housing subsidy for the construction of low- and moderate-income housing; and (3) that includes one or more units of housing, at least 20 percent of which qualify as affordable housing, as defined in the bill.

As amended, the bill allows a depreciation deduction to be claimed for affordable housing developments placed in service during any tax year or privilege period beginning January 1, 2025, or thereafter.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) adjust the calculation of the depreciation allowance to be based on the percentage of affordable housing units in each development. As introduced, the bill calculation of the depreciation allowance was based on the proportion of affordable housing units to non-affordable housing units in each development;

(2) revise the definition of “affordable housing development” to also include developments: (i) for which construction commenced on or after the effective date of the bill and (ii) for which taxes are not abated or exempted pursuant to the “Long Term Tax Exemption Law,” P.L.1991, c.431 (C.40A:20-1 et seq.), or that do not receive an affordable housing subsidy for the construction of low- and moderate-income housing;

(3) define an “affordable housing subsidy” as any financing that is intended to support the development of affordable housing and that is provided by the Department of Community Affairs, the New Jersey Housing and Mortgage Finance Agency, or a municipal affordable housing trust fund, except not including rebates or incentives to promote energy efficiency standards;

(4) provide that the bill allows a depreciation deduction to be claimed for affordable housing developments placed in service in tax years and privilege periods beginning January 1, 2025 and thereafter; and

(5) make technical changes.

FISCAL IMPACT:

The Office of Legislative Services (OLS) projects that the bill will result in annual State revenue losses incurred by the General Fund and Property Tax Relief Fund in the range of \$5.0 million to \$8.5 million in the first year of implementation.

State revenue losses thereafter will be dependent on several factors that may influence the amount of depreciation that is deducted from income using the new method provided by the bill, including the pace of affordable housing construction, the value of new affordable housing developments, and the proportion of affordable to non-affordable housing units in each development.

The alternate method of depreciating the value of new housing construction under the bill would allow taxpayers to accelerate the depreciation of property sooner than is the case under current law, thereby lowering the amount of income that is subject to taxation. This would, in turn, reduce State revenue collections from the Corporation Business Tax and Gross Income Tax.

There are several factors, such as the proportion of affordable housing units in an affordable housing development, and differences in the methods of calculating depreciation under current law and the bill, that may cause State revenue losses to be higher or lower than anticipated in this estimate.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3365
STATE OF NEW JERSEY
221st LEGISLATURE

DATED: FEBRUARY 12, 2024

SUMMARY

Synopsis: Allows taxpayers to utilize alternative method of depreciation of certain expenditures in connection with construction of new affordable housing developments.

Type of Impact: Annual State revenue loss to the State General Fund and Property Tax Relief Fund.

Agencies Affected: Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>First Year of Implementation</u>	<u>Thereafter</u>
State Revenue Loss	\$5.0 million to \$8.5 million	Indeterminate

- The Office of Legislative Services (OLS) projects that the bill will result in annual State revenue losses incurred by the General Fund and Property Tax Relief Fund in the range of \$5.0 million to \$8.5 million in the first year of implementation. State revenue losses thereafter will be dependent on several factors that may influence the amount of depreciation that is deducted from income using the new method provided by the bill, including the pace of affordable housing construction, the value of new affordable housing developments, and the proportion of affordable to non-affordable housing units in each development.
- The alternate method of depreciating the value of new housing construction under the bill would allow taxpayers to accelerate the depreciation of property sooner than is the case under current law, thereby lowering the amount of income that is subject to taxation. This would, in turn, reduce State revenue collections from the Corporation Business Tax and Gross Income Tax.
- There are several factors, such as the proportion of affordable housing units in an affordable housing development, and differences in the methods of calculating depreciation under current law and the bill, that may cause State revenue losses to be higher or lower than anticipated in this estimate.

BILL DESCRIPTION

The bill allows taxpayers to depreciate a percentage of eligible property expenditures to depreciate a percentage of eligible property expenditures incurred by the taxpayer in connection with the construction of a new affordable housing development owned by the taxpayer over a ten-year period.

For purposes of calculating the percentage of eligible property expenditures that may be depreciated, the taxpayer is to apply the following formula: two times (the number of affordable housing units in the development divided by the number of non-affordable housing units in the development).

Under the bill, an “affordable housing development” is a development that includes one or more units of housing, at least 20 percent of which qualify as affordable housing. The bill defines “affordable housing” as housing occupied or restricted for occupancy by households with income no greater than 80 percent of the regional median income, including, but not limited to housing that is deed restricted as affordable housing pursuant to the Fair Housing Act.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill will result in will result in annual State revenue losses incurred by the General Fund and Property Tax Relief Fund in the range of \$5.0 million to \$8.5 million in the first year of implementation. State revenue losses thereafter will be dependent on several factors that may influence the amount of depreciation that is deducted from income using the new method provided by the bill, including the pace of affordable housing construction, the value of new affordable housing developments, and the proportion of affordable to non-affordable housing units in each development. This estimate has been calculated using data published by the Department of Community Affairs in the New Jersey Construction Reporter and is based on certain assumptions regarding housing construction activity.

Depreciation is an annual deduction from income that allows a taxpayer to recover the cost or other basis of certain property over the time that they use the property. Except as otherwise provided under current law, New Jersey follows the rules for depreciation set forth in the federal Internal Revenue Code. The approaches used to depreciate the value of different types of property and determine the amount a taxpayer may deduct from income due to the decline in a property’s value are prescribed by the Internal Revenue Code. Taxpayers may claim depreciation as a deduction from income, thereby lowering their State and federal tax liabilities.

Although the Internal Revenue Code does not specifically reference affordable housing, it does establish a method used to determine depreciation for residential rental property (defined as any building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units). The code requires residential rental property to be depreciated over a period of 27.5 years using a straight-line method of depreciation. The straight-line method of depreciation allows a taxpayer to deduct the same amount of depreciation each year over the useful life of the property. Residential real property depreciates by about 3.636 percent annually.

The bill establishes an alternate formula for calculating the amount that may be depreciated for affordable housing developments and requires that amount to be depreciated over a period of 10 years. Under this new formula, the amount of depreciation is based on the number of affordable housing units and non-affordable housing units in an affordable housing development. The new method of calculating the depreciation deduction is similar to the straight-line method of depreciation because it requires the same percentage of asset value to be depreciated over the period during which the formula is applied.

The Construction Reporter contains statistics on the construction activity in New Jersey from data submitted by construction officials who administer the State Uniform Construction Code. According to the Construction Reporter, about 30,900 building permits for the construction of new housing units were issued in 2022. The estimated cost of construction of these new units was approximately \$5.74 billion. Under the bill, a development qualifies as an affordable housing development if 20 percent of the housing units are affordable housing. Thus, if all 30,900 new housing units authorized by building permit for new construction in 2022 were located in affordable housing developments, then at least 6,180 units would have to qualify as affordable housing in order for the taxpayer to utilize the new depreciation method.

The bill provides that the amount to be depreciated would use the following formula: two times the quotient of the number of affordable housing units in the development, divided by the number of non-affordable housing units in the development. Applying this formula to the 2022 housing unit data yields a product of 50 percent $[(6,180/24,720) \times 2 = .50]$. The total amount to be depreciated is determined by multiplying the total amount of eligible property expenditures by the depreciation percentage. The OLS assumes that the \$5.74 billion in constructions costs for new housing units would also qualify as eligible property expenditures. Multiplying that amount by the depreciation percentage yields a depreciation amount of \$2.87 billion over 10 years, or \$287 million per year. As noted above, the current depreciation method provides that real property depreciate by 3.636 percent annually over 27.5 years. If all 30,900 new housing units were to qualify as residential real property and the \$5.74 billion in associated construction costs were depreciable, then taxpayers would currently be able to deduct about \$208.7 million annually. In each circumstance, the impact of the depreciation on State revenue collections would be proportional to the marginal income tax rate of the entity claiming the deduction.

A taxpayer subject to the bill's provisions would be subject to Corporation Business Tax, Gross Income Tax, or the Pass-Through Business Alternative Income Tax, depending on the structure of the taxpayer's business. However, information regarding the corporate structure of those taxpayers most likely to use the alternate depreciation method is not available. For purposes of this estimate, the OLS assumes that those taxpayers are subject to State tax rates ranging from 5.675 percent to 10.9 percent. The State revenue loss is equal to the difference between each taxpayer's tax liability after accounting for the amounts that would be deducted from income using each method of depreciation. Applying these rates to the estimated amounts of depreciation in the first year of the bill's implementation (\$287 million and \$208.74 million) yields projected State revenue losses of \$5.0 million to \$8.5 million.

The OLS notes that there are factors that may cause actual State revenue losses to differ from than these amounts. First, this estimate presumes that 20 percent of new housing units will be affordable housing. This is the minimum amount required for a taxpayer to be allowed to use the alternate depreciation method under the provisions of the bill. If an affordable housing development contains a greater proportion of affordable housing, a taxpayer would be able to depreciate a higher amount of eligible property expenditures, thereby increasing the amount they may deduct from income and the State's revenue losses. Second, this estimate is based on a dollar amount of construction, \$5.74 billion, indicated in the Construction Reporter. The Construction Reporter defines the "dollar amount of construction" as the estimated cost of work as reported by

a permit applicant to the construction official. There are likely construction costs reported on a permit application that are not depreciable, and therefore, deductible from income. In these instances, the State revenue loss would be lower than anticipated. Third, this estimate assumes that all housing units authorized for construction in 2022 were part of an affordable housing development, as defined in the bill. As such, this estimate may overstate the total amount of eligible property expenditures that may be subject to the depreciation allowance. Lastly, federal Internal Revenue Service guidance provides that a taxpayer may deduct depreciation only on that part of their property used for rental purposes. The bill allows a taxpayer to deduct depreciable costs for eligible capital expenditures associated with the construction of an entire housing development, thereby permitting a deduction for depreciation for a potentially larger amount of expenditures.

The application of the new formula may cause certain taxpayers to claim the deduction for depreciation over a shorter time-frame, thereby resulting in higher amounts of taxable income in the years after its application. The new formula may also incentivize some taxpayers to make deductible investments in the construction of new affordable housing developments they may not otherwise make. To the extent that these factors might contribute to higher business earnings and increase economic activity overall, State tax collections may increase by an indeterminate amount.

Section: Revenue, Finance, and Appropriations
Analyst: Scott A. Brodsky
Staff Fiscal and Budget 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

[First Reprint]

ASSEMBLY, No. 3365

STATE OF NEW JERSEY 221st LEGISLATURE

DATED: FEBRUARY 21, 2024

SUMMARY

- Synopsis:** Allows taxpayers to utilize alternative method of depreciation of certain expenditures in connection with construction of new affordable housing developments.
- Type of Impact:** Annual State revenue loss to the State General Fund and Property Tax Relief Fund.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>First Year of Implementation</u>	<u>Thereafter</u>
State Revenue Loss	\$1.2 million to \$2.3 million	Indeterminate

- The Office of Legislative Services (OLS) projects that the bill will result in annual State revenue losses incurred by the General Fund and Property Tax Relief Fund in the range of \$1.2 million to \$2.3 million in the first year of implementation.
- State revenue losses thereafter will be dependent on several factors that may influence the amount of depreciation that is deducted from income using the new method provided by the bill, including the pace of affordable housing construction, the value of new affordable housing developments, and whether an affordable housing development has received an affordable housing subsidy or a property tax abatement or exemption.
- The alternate method of depreciating the value of new housing construction under the bill would allow taxpayers to accelerate the depreciation of property sooner than is the case under current law, and potentially claim larger depreciation deductions, thereby lowering the amount of income that is subject to taxation. This would, in turn, reduce State revenue collections from the corporation business tax and gross income tax.
- There are several factors, such as the percentage of affordable housing units in an affordable housing development, and differences in the methods of calculating depreciation under current

law and the bill, that may cause State revenue losses to be higher or lower than anticipated in this estimate.

BILL DESCRIPTION

This bill allows a taxpayer to claim a depreciation deduction under the corporation business tax and the gross income tax for eligible property expenditures incurred by the taxpayer for the construction of a new affordable housing development owned by the taxpayer. The bill permits a taxpayer to claim the deduction over a 10-year period.

To calculate the percentage of eligible property expenditures that may be depreciated, the taxpayer would be required to apply the following formula: 2 times (the number of affordable housing units in the development divided by the total number of housing units in the development).

The bill defines an “affordable housing development” as a development: (1) for which construction commences on or after the effective date of the bill; (2) for which taxes are not abated or exempted pursuant to the Long Term Tax Exemption Law, P.L.1991, c.431, or does not receive an affordable housing subsidy for the construction of low- and moderate-income housing; and (3) that includes one or more units of housing, at least 20 percent of which qualify as affordable housing, as defined in the bill.

The bill allows a depreciation deduction to be claimed for affordable housing developments placed in service during any tax year or privilege period beginning January 1, 2025, or thereafter.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill will result in annual State revenue losses incurred by the General Fund and Property Tax Relief Fund in the range of \$1.2 million to \$2.3 million in the first year of implementation. State revenue losses thereafter will be dependent on several factors that may influence the amount of depreciation that is deducted from income using the new method provided by the bill, including the pace of affordable housing construction, the value of new affordable housing developments, and the percentage of affordable housing units in each development. This estimate has been calculated using data published by the Department of Community Affairs in the New Jersey Construction Reporter and is based on certain assumptions regarding housing construction activity.

Depreciation is an annual deduction from income that allows a taxpayer to recover the cost or other basis of certain property over the time that they use the property. Except as otherwise provided under current law, New Jersey follows the rules for depreciation set forth in the federal Internal Revenue Code. The approaches used to depreciate the value of different types of property and determine the amount a taxpayer may deduct from income due to the decline in a property’s value are prescribed by the Internal Revenue Code. Taxpayers may claim depreciation as a deduction from income, thereby lowering their State and federal tax liabilities.

Although the Internal Revenue Code does not specifically reference affordable housing, it does establish a method used to determine depreciation for residential rental property (defined as any

building or structure if 80 percent or more of the gross rental income from such building or structure for the taxable year is rental income from dwelling units). The code requires residential rental property to be depreciated over a period of 27.5 years using a straight-line method of depreciation. The straight-line method of depreciation allows a taxpayer to deduct the same amount of depreciation each year over the useful life of the property. Residential real property depreciates by about 3.636 percent annually. The bill establishes an alternate formula for calculating the amount that may be depreciated for affordable housing developments and requires that amount to be depreciated over a period of 10 years. Under this new formula, the amount of depreciation is based on the number of affordable housing units in a development.

The Construction Reporter contains statistics on the construction activity in New Jersey from data submitted by construction officials who administer the State Uniform Construction Code. According to the Construction Reporter, about 30,900 building permits for the construction of new housing units were issued in 2022. The estimated cost of construction of these new units was approximately \$5.74 billion. Under the bill, a development qualifies as an affordable housing development if 20 percent of the housing units are affordable housing. Thus, if all 30,900 new housing units authorized by building permit for new construction in 2022 were located in affordable housing developments, then at least 6,180 units would have to qualify as affordable housing in order for the taxpayer to utilize the new depreciation method.

The bill provides that the amount to be depreciated would use the following formula: two times the quotient of the number of affordable housing units in the development, divided by the number of housing units in the development. Applying this formula to the 2022 housing unit data yields a product of 40 percent $[(6,180/30,898) \times 2 = .40]$. The total amount to be depreciated is determined by multiplying the total amount of eligible property expenditures by the depreciation percentage. The OLS assumes that the \$5.74 billion in construction costs for new housing units would also qualify as eligible property expenditures. Multiplying that amount by the depreciation percentage yields a depreciation amount of \$2.3 billion over 10 years, or \$230 million per year. As noted above, the current depreciation method provides that real property depreciate by 3.636 percent annually over 27.5 years. If all 30,900 new housing units were to qualify as residential real property and the \$5.74 billion in associated construction costs were depreciable, then taxpayers would currently be able to deduct about \$208.7 million annually. In each circumstance, the impact of the depreciation on State revenue collections would be proportional to the marginal income tax rate of the entity claiming the deduction.

A taxpayer subject to the bill's provisions would be subject to corporation business tax, gross income tax, or the pass-through business alternative income tax, depending on the structure of the taxpayer's business. However, information regarding the corporate structure of those taxpayers most likely to use the alternate depreciation method is not available. For purposes of this estimate, the OLS assumes that those taxpayers are subject to State tax rates ranging from 5.675 percent to 10.9 percent. The State revenue loss is equal to the difference between each taxpayer's tax liability after accounting for the amounts that would be deducted from income using each method of depreciation. Applying these rates to the estimated amounts of depreciation in the first year of the bill's implementation (\$230 million and \$208.74 million) yields projected State revenue losses of \$1.2 million to \$2.3 million.

The OLS notes that the bill does not allow a taxpayer to employ the alternate depreciation formula if the property tax liability for an affordable housing development has received a property tax abatement or exemption or an affordable housing subsidy. The bill broadly defines an affordable housing subsidy as financing that is intended to support the development of affordable housing and provided by the Department of Community Affairs, New Jersey Housing and Mortgage and Finance Agency, or a municipal affordable housing trust fund. This restriction will limit the State's revenue losses because it reduces the number of affordable housing developments

for which the alternate depreciation may be utilized. Information regarding the number of affordable housing developments that have received an affordable housing subsidy is not readily available.

However, the OLS notes that there are additional factors that may cause actual State revenue losses to differ from these amounts. First, this estimate presumes that 20 percent of new housing units will be affordable housing. This is the minimum amount required for a taxpayer to be allowed to use the alternate depreciation method under the provisions of the bill. If an affordable housing development contains a greater proportion of affordable housing, a taxpayer would be able to depreciate a higher amount of eligible property expenditures, thereby increasing the amount they may deduct from income and the State's revenue losses. Second, this estimate is based on a dollar amount of construction, \$5.74 billion, indicated in the Construction Reporter. The Construction Reporter defines the "dollar amount of construction" as the estimated cost of work as reported by a permit applicant to the construction official. There are likely construction costs reported on a permit application that are not depreciable, and therefore, deductible from income. In these instances, the State revenue loss would be lower than anticipated. Third, this estimate assumes that all housing units authorized for construction in 2022 were part of an affordable housing development, as defined in the bill. As such, this estimate may overstate the total amount of eligible property expenditures that may be subject to the depreciation allowance. Lastly, federal Internal Revenue Service guidance provides that a taxpayer may deduct depreciation only on that part of their property used for rental purposes. The bill allows a taxpayer to deduct depreciable costs for eligible capital expenditures associated with the construction of an entire housing development, thereby permitting a deduction for depreciation for a potentially larger amount of expenditures.

The application of the new formula may cause certain taxpayers to claim the deduction for depreciation over a shorter time-frame, thereby resulting in higher amounts of taxable income in the years after its application. The new formula may also incentivize some taxpayers to make deductible investments in the construction of new affordable housing developments they may not otherwise make. To the extent that these factors might contribute to higher business earnings and increase economic activity overall, State tax collections may increase by an indeterminate amount.

Section: Revenue, Finance, and Appropriations

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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."