

S2312 (1R)

INTRODUCED BILL: (Includes sponsor(s) statement)	Yes	
REPRINT(S)	Yes	SBA 3/11/24 1R
TECHNICAL REVIEW OF BILL	No	
COMMITTEE STATEMENT:		
ASSEMBLY:	No	
SENATE:	Yes	Community & Urban Affairs Budget & Appropriations

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

FLOOR AMENDMENT STATEMENT:	No
LEGISLATIVE FISCAL ESTIMATE:	No
VETO MESSAGE:	No
GOVERNOR'S PRESS RELEASE ON SIGNING:	Yes

FOLLOWING WERE PRINTED:

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REPORTS:	No
HEARINGS:	No
NEWSPAPER ARTICLES:	Yes

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

CL/MM

P.L. 2024, CHAPTER 6, *approved March 20, 2024*
Assembly, No. 3337 (*First Reprint*)

1 AN ACT authorizing municipalities to grant tax exemptions and
2 negotiate payments in lieu of taxation for housing projects and
3 programs supported by the State or municipal affordable housing
4 trust fund, and amending P.L.1985, c.222 and P.L.2008, c.46.

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

8
9 1. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to
10 read as follows:

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

35 a. Except as permitted pursuant to subsection g. of this section,
36 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the
37 commissioner shall award grants or loans from this fund for housing
38 projects and programs in municipalities whose housing elements have
39 received substantive certification from the council, in municipalities
40 receiving State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.),

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 in municipalities subject to a builder's remedy as defined in section 28
2 of P.L.1985, c.222 (C.52:27D-328), or in receiving municipalities in
3 cases where the council has approved a regional contribution
4 agreement and a project plan developed by the receiving municipality.

5 Of those monies deposited into the "New Jersey Affordable
6 Housing Trust Fund" that are derived from municipal development fee
7 trust funds, or from available collections of Statewide non-residential
8 development fees, a priority for funding shall be established for
9 projects in municipalities that have petitioned the council for
10 substantive certification.

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

14 b. (1) The commissioner shall establish rules and regulations
15 governing the qualifications of applicants, the application procedures,
16 and the criteria for awarding grants and loans and the standards for
17 establishing the amount, terms, and conditions of each grant or loan.

18 (2) The governing body of a municipality in which a housing
19 project or program is located, and which is awarded a grant or loan
20 from the fund for a housing project or program, may provide, by
21 ordinance ¹[or resolution as appropriate]¹, that the units of affordable
22 housing being developed ¹or preserved¹ pursuant to a housing project
23 or program being funded, in whole or in part, through the "New Jersey
24 Affordable Housing Trust Fund" shall be exempt from real property
25 taxation if the housing sponsor enters into an agreement with the
26 municipality for payments to the municipality in lieu of taxes for
27 municipal services. Any such agreement may require the housing
28 sponsor to pay to the municipality an amount up to 20 percent of the
29 annual gross revenue from each housing project situated on such real
30 property for each year of operation of the agreement following the
31 substantial completion of the housing project. ¹Any such agreement
32 shall require the housing sponsor to pay the municipality an amount
33 not less than the greater of four percent of the annual gross revenue or
34 the amount of the taxes attributable to the land value component of the
35 property comprising the project site for the year preceding the
36 recording of the mortgage, if applicable. In the case of a property
37 assessed under the "Farmland Assessment Act of 1964," P.L.1964,
38 c.48 (C.54:4-23.1 et seq.), the minimum amount the housing sponsor
39 shall be required to pay to the municipality shall be four percent of the
40 annual gross revenue.¹ For the purpose of this subsection, "annual
41 gross revenue" means the total annual gross rental or carrying charge
42 and other income of a housing sponsor from a housing project. If an
43 agreement is entered into from the date of recording the mortgage on
44 the housing project to the date of substantial completion of the housing
45 project, the annual amount payable to the municipality as taxes or as
46 payments in lieu of taxes in respect of the project site shall not be in
47 excess of the amount of taxes on the project site for the year preceding
48 the recording of the mortgage. ¹[An agreement between a housing

1 sponsor and a municipality entered into pursuant to this subsection
2 shall be submitted to the commissioner for review in order to avoid
3 duplicating, overlapping or inconsistent regulations or provisions.]
4 Within 30 calendar days following: the effective date of an ordinance
5 adopted by a municipal governing body approving a tax exemption
6 under this subsection; or the execution of a financial agreement
7 between a housing sponsor and a municipality entered into pursuant to
8 this subsection, whichever is later, the municipal clerk shall
9 electronically transmit a certified copy of the ordinance and the
10 agreement to the Director of the Division of Local Government
11 Services in such a manner as may be specified by the director.¹ An
12 exemption from taxation provided pursuant to this subsection shall not
13 extend beyond the date on which an eligible loan made for the project
14 is paid in full.

15 (3) Notwithstanding the provisions of any law or regulation ¹[in]
16 to¹ the contrary, the governing body of a municipality may agree to
17 continue a tax exemption for a State, federally, or municipally
18 subsidized housing project beyond the date on which an eligible loan
19 made for the project is fully paid, or beyond the date upon which a tax
20 exemption expires, ¹[if] for any period¹ the project remains subject to
21 affordability controls pursuant to:

22 (a) project-based federal rental assistance, authorized pursuant to
23 section 8 of the United States Housing Act of 1937 (42 U.S.C.
24 s.1437f), or other federal or State project-based assistance;

25 (b) the Uniform Housing Affordability Controls promulgated by
26 the New Jersey Housing and Mortgage Finance Agency; or

27 (c) the rent and income limits established by the federal Low
28 Income Housing Tax Credit program pursuant to section 42 of the
29 Internal Revenue Code (26 U.S.C. s.42).

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

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

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

44 (2) Creation of accessory apartments to be occupied by low and
45 moderate income households;

46 (3) Conversion of non-residential space to residential purposes;
47 provided a substantial percentage of the resulting housing units are to
48 be occupied by low and moderate income households;

- 1 (4) Acquisition of real property, demolition and removal of
2 buildings, or construction of new housing that will be occupied by low
3 and moderate income households, or any combination thereof;
- 4 (5) Grants of assistance to eligible municipalities for costs of
5 necessary studies, surveys, plans, and permits; engineering,
6 architectural, and other technical services; costs of land acquisition and
7 any buildings thereon; and costs of site preparation, demolition, and
8 infrastructure development for projects undertaken pursuant to an
9 approved regional contribution agreement;
- 10 (6) Assistance to a local housing authority, nonprofit or limited
11 dividend housing corporation, or association or a qualified entity
12 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for
13 rehabilitation or restoration of housing units which it administers
14 which: (a) are unusable or in a serious state of disrepair; (b) can be
15 restored in an economically feasible and sound manner; and (c) can be
16 retained in a safe, decent, and sanitary manner, upon completion of
17 rehabilitation or restoration; and
- 18 (7) Other housing programs for low and moderate income housing,
19 including, without limitation, (a) infrastructure projects directly
20 facilitating the construction of low and moderate income housing not
21 to exceed a reasonable percentage of the construction costs of the low
22 and moderate income housing to be provided and (b) alteration of
23 dwelling units occupied or to be occupied by households of low or
24 moderate income and the common areas of the premises in which they
25 are located in order to make them accessible to persons with
26 disabilities.
- 27 e. Any grant or loan agreement entered into pursuant to this
28 section shall incorporate contractual guarantees and procedures by
29 which the division will ensure that any unit of housing provided for
30 low and moderate income households shall continue to be occupied by
31 low and moderate income households for at least 20 years following
32 the award of the loan or grant, except that the division may approve a
33 guarantee for a period of less than 20 years where necessary to ensure
34 project feasibility.
- 35 f. Notwithstanding the provisions of any other law, rule, or
36 regulation to the contrary, in making grants or loans under this section,
37 the department shall not require that tenants be certified as low or
38 moderate income or that contractual guarantees or deed restrictions be
39 in place to ensure continued low and moderate income occupancy as a
40 condition of providing housing assistance from any program
41 administered by the department, when that assistance is provided for a
42 project of moderate rehabilitation if the project: (1) contains 30 or
43 fewer rental units; and (2) is located in a census tract in which the
44 median household income is 60 percent or less of the median income
45 for the housing region in which the census tract is located, as
46 determined for a three person household by the council in accordance
47 with the latest federal decennial census. A list of eligible census tracts
48 shall be maintained by the department and shall be adjusted upon

1 publication of median income figures by census tract after each federal
2 decennial census.

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

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

30 i. The commissioner may award or grant the amount of any
31 appropriation deposited in the "New Jersey Affordable Housing Trust
32 Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-320.1) to
33 municipalities pursuant to the provisions of section 39 of P.L.2009,
34 c.90 (C.40:55D-8.8).

35 (cf: P.L.2017, c.131, s.200)

36

37 2. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to
38 read as follows:

39 8. a. (1) The council may authorize a municipality that has
40 petitioned for substantive certification, or that has been so authorized
41 by a court of competent jurisdiction, and which has adopted a
42 municipal development fee ordinance to impose and collect
43 development fees from developers of residential property, in
44 accordance with rules promulgated by the council. Each amount
45 collected shall be deposited and shall be accounted for separately, by
46 payer and date of deposit.

47 (2) A municipality may not spend or commit to spend any
48 affordable housing development fees, including Statewide non-
49 residential fees collected and deposited into the municipal affordable

1 housing trust fund, without first obtaining the council's approval of the
2 expenditure. The council shall promulgate regulations regarding the
3 establishment, administration and enforcement of the expenditure of
4 affordable housing development fees by municipalities. The council
5 shall have exclusive jurisdiction regarding the enforcement of these
6 regulations, provided that any municipality which is not in compliance
7 with the regulations adopted by the council may be subject to
8 forfeiture of any or all funds remaining within its municipal trust fund.
9 Any funds so forfeited shall be deposited into the "New Jersey
10 Affordable Housing Trust Fund" established pursuant to section 20 of
11 P.L.1985, c.222 (C.52:27D-320).

12 (3) The governing body of a municipality which is spending or
13 committing to spend affordable housing development fees may
14 provide, by ordinance ¹[or resolution as appropriate]¹, that the units
15 of affordable housing being developed ¹or preserved¹ pursuant to a
16 housing project or program being funded, in whole or in part, through
17 affordable housing development fees shall be exempt from real
18 property taxation if the housing sponsor enters into an agreement with
19 the municipality for payments to the municipality in lieu of taxes for
20 municipal services. Any such agreement may require the housing
21 sponsor to pay to the municipality an amount up to 20 percent of the
22 annual gross revenue from each housing project situated on such real
23 property for each year of operation of the agreement following the
24 substantial completion of the housing project. ¹Any such agreement
25 shall require the housing sponsor to pay the municipality an amount
26 not less than the greater of four percent of the annual gross revenue or
27 the amount of the taxes attributable to the land value component of the
28 property comprising the project site for the year preceding the
29 recording of the mortgage, if applicable. In the case of a property
30 assessed under the "Farmland Assessment Act of 1964," P.L.1964,
31 c.48 (C.54:4-23.1 et seq.), the minimum amount the housing sponsor
32 shall be required to pay to the municipality shall be four percent of the
33 annual gross revenue.¹ For the purpose of this subsection, "annual
34 gross revenue" means the total annual gross rental or carrying charge
35 and other income of a housing sponsor from a housing project. If an
36 agreement is entered into from the date of recording the mortgage on
37 the housing project to the date of substantial completion of the housing
38 project, the annual amount payable to the municipality as taxes or as
39 payments in lieu of taxes in respect of the project site shall not be in
40 excess of the amount of taxes on the project site for the year preceding
41 the recording of the mortgage. ¹[An agreement between a housing
42 sponsor and a municipality entered into pursuant to this subsection
43 shall be submitted to the commissioner for review in order to avoid
44 duplicating, overlapping or inconsistent regulations or provisions.]
45 Within 30 calendar days following: the effective date of an ordinance
46 adopted by a municipal governing body approving a tax exemption
47 under this subsection; or the execution of a financial agreement
48 between a housing sponsor and a municipality entered into pursuant to

1 this subsection, whichever is later, the municipal clerk shall
2 electronically transmit a certified copy of the ordinance and the
3 agreement to the Director of the Division of Local Government
4 Services in such a manner as may be specified by the director.¹ An
5 exemption from taxation provided in accordance with this subsection
6 shall not extend beyond the date on which an eligible loan made for
7 the project is paid in full.

8 (4) Notwithstanding the provisions of any law or regulation ¹[in]
9 to¹ the contrary, the governing body of a municipality may agree to
10 continue ¹or grant¹ a ¹new¹ tax exemption for a State, federally, or
11 municipally subsidized housing project beyond the date on which an
12 eligible loan made for the project is fully paid, or beyond the date upon
13 which a tax exemption expires, ¹[if] for any period¹ the project
14 remains subject to affordability controls pursuant to:

15 (a) project-based federal rental assistance, authorized pursuant to
16 section 8 of the United States Housing Act of 1937 (42 U.S.C.
17 s.1437f), or other federal or State project-based assistance;

18 (b) the Uniform Housing Affordability Controls promulgated by
19 the New Jersey Housing and Mortgage Finance Agency; or

20 (c) the rent and income limits established by the federal Low
21 Income Housing Tax Credit program pursuant to section 42 of the
22 Internal Revenue Code (26 U.S.C. s.42).

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

28 c. (1) A municipality may only spend development fees for an
29 activity approved by the council to address the municipal fair share
30 obligation.

31 (2) Municipal development trust funds shall not be expended to
32 reimburse municipalities for activities which occurred prior to the
33 authorization of a municipality to collect development fees.

34 (3) A municipality shall set aside a portion of its development fee
35 trust fund for the purpose of providing affordability assistance to low
36 and moderate income households in affordable units included in a
37 municipal fair share plan, in accordance with rules of the council.

38 (a) Affordability assistance programs may include down payment
39 assistance, security deposit assistance, low interest loans, common
40 maintenance expenses for units located in condominiums, rental
41 assistance, and any other program authorized by the council.

42 (b) Affordability assistance to households earning 30 percent or
43 less of median income may include buying down the cost of low
44 income units in a municipal fair share plan to make them affordable to
45 households earning 30 percent or less of median income. The use of
46 development fees in this manner shall not entitle a municipality to
47 bonus credits except as may be provided by the rules of the council.

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

6 (5) Not more than 20 percent of the revenues collected from
7 development fees shall be expended on administration, in accordance
8 with rules of the council.

9 d. The council shall establish a time by which all development
10 fees collected within a calendar year shall be expended; provided,
11 however, that all fees shall be committed for expenditure within four
12 years from the date of collection. A municipality that fails to commit
13 to expend the balance required in the development fee trust fund by the
14 time set forth in this section shall be required by the council to transfer
15 the remaining unspent balance at the end of the four-year period to the
16 "New Jersey Affordable Housing Trust Fund," established pursuant to
17 section 20 of P.L.1985, c.222 (C.52:27D-320), as amended by
18 P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in the housing
19 region of the transferring municipality for the authorized purposes of
20 that fund.

21 e. Notwithstanding any provision of this section, or regulations of
22 the council, a municipality shall not collect a development fee from a
23 developer whenever that developer is providing for the construction of
24 affordable units, either on-site or elsewhere within the municipality.

25 This section shall not apply to the collection of a Statewide
26 development fee imposed upon non-residential development pursuant
27 to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 et seq.) by
28 the State Treasurer, when such collection is not authorized to be
29 retained by a municipality.

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

31

32 3. This act shall take effect immediately.

33

34

35

36

37 _____
38 Allows projects supported by State or municipal affordable
39 housing trust fund to be exempt from property tax and to instead
40 contribute to municipal services by making payments in lieu of
taxation.

CHAPTER 6

AN ACT authorizing municipalities to grant tax exemptions and negotiate payments in lieu of taxation for housing projects and programs supported by the State or municipal affordable housing trust fund, and amending P.L.1985, c.222 and P.L.2008, c.46.

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

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

C.52:27D-320 "New Jersey Affordable Housing Trust Fund."

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

a. (1) Except as permitted pursuant to subsection g. of this section, and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the commissioner shall award grants or loans from this fund for housing projects and programs in municipalities whose housing elements obtained compliance certification pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) or in municipalities receiving State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.).

(2) Of those monies deposited into the "New Jersey Affordable Housing Trust Fund" that are derived from municipal development fee trust funds, or from available collections of Statewide non-residential development fees, a priority for funding shall be established for projects in municipalities that have received compliance certification.

(3) Programs and projects in any municipality shall be funded only after receipt by the commissioner of either:

(a) a written statement in support of the program or project from the municipal governing body; or

(b) a written statement in support of the program or project from the municipal clerk, if the municipality has enacted an ordinance pursuant to section 1 of P.L.2024, c.5 (C.52:27D-304.1a).

b. (1) The commissioner shall establish rules and regulations governing the qualifications of applicants, the application procedures, and the criteria for awarding grants and loans and the standards for establishing the amount, terms, and conditions of each grant or loan.

(2) The governing body of a municipality in which a housing project or program is located, and which is awarded a grant or loan from the fund for a housing project or program, may

provide, by ordinance , that the units of affordable housing being developed or preserved pursuant to a housing project or program being funded, in whole or in part, through the "New Jersey Affordable Housing Trust Fund" shall be exempt from real property taxation if the housing sponsor enters into an agreement with the municipality for payments to the municipality in lieu of taxes for municipal services. Any such agreement may require the housing sponsor to pay to the municipality an amount up to 20 percent of the annual gross revenue from each housing project situated on such real property for each year of operation of the agreement following the substantial completion of the housing project. Any such agreement shall require the housing sponsor to pay the municipality an amount not less than the greater of four percent of the annual gross revenue or the amount of the taxes attributable to the land value component of the property comprising the project site for the year preceding the recording of the mortgage, if applicable. In the case of a property assessed under the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), the minimum amount the housing sponsor shall be required to pay to the municipality shall be four percent of the annual gross revenue. For the purpose of this subsection, "annual gross revenue" means the total annual gross rental or carrying charge and other income of a housing sponsor from a housing project. If an agreement is entered into from the date of recording the mortgage on the housing project to the date of substantial completion of the housing project, the annual amount payable to the municipality as taxes or as payments in lieu of taxes in respect of the project site shall not be in excess of the amount of taxes on the project site for the year preceding the recording of the mortgage. Within 30 calendar days following: the effective date of an ordinance adopted by a municipal governing body approving a tax exemption under this subsection, or the execution of a financial agreement between a housing sponsor and a municipality entered into pursuant to this subsection, whichever is later, the municipal clerk shall electronically transmit a certified copy of the ordinance and the agreement to the Director of the Division of Local Government Services in such a manner as may be specified by the director. An exemption from taxation provided pursuant to this subsection shall not extend beyond the date on which an eligible loan made for the project is paid in full.

(3) Notwithstanding the provisions of any law or regulation to the contrary, the governing body of a municipality may agree to continue a tax exemption for a State, federally, or municipally subsidized housing project beyond the date on which an eligible loan made for the project is fully paid, or beyond the date upon which a tax exemption expires, for any period the project remains subject to affordability controls pursuant to:

(a) project-based federal rental assistance, authorized pursuant to section 8 of the United States Housing Act of 1937 (42 U.S.C. s.1437f) or other federal or State project-based assistance;

(b) the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency; or

(c) the rent and income limits established by the federal Low Income Housing Tax Credit program pursuant to section 42 of the Internal Revenue Code (26 U.S.C. s.42).

c. For any period which the commissioner may approve, the commissioner may assist affordable housing programs that are located in municipalities that have a pending request for compliance certification, provided that the affordable housing program will meet all or part of a municipal low- and moderate-income housing obligation.

d. Amounts deposited in the "New Jersey Affordable Housing Trust Fund" shall be targeted to regions based on the region's percentage of the State's low- and moderate-income housing need as determined pursuant to the low- and moderate-income household growth over

the prior 10 years, as calculated pursuant to section 6 of P.L.2024, c.2 (C.52:27D-304.2). Amounts in the fund shall be applied for the following purposes in designated neighborhoods:

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

(2) Creation of accessory dwelling units to be occupied by low- and moderate-income households;

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

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

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

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

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

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

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

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

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

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

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

C.52:27D-329.2 Authorization of municipality to impose, collect development fees.

8. a. (1) A municipality that is in the process of seeking compliance certification, has obtained compliance certification, is a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), or that has been so authorized by a court of competent jurisdiction, and which has adopted a municipal development fee ordinance shall be authorized to impose and collect development fees from developers of residential property, in accordance with rules promulgated by the department. Each amount collected shall be deposited and shall be accounted for separately, by payer and date of deposit.

(2) No later than 180 days following the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), any municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended since the inception of the municipal authorization to collect the fees.

(3) Beginning with the year after the enactment of P.L.2024, c.2 (C.52:27D-304.1 et al.), by February 15, every municipality that is or has been authorized to impose and collect development fees from developers of residential property, or payments in lieu of constructing affordable housing, shall provide the Department of Community Affairs with a detailed accounting of all such fees that have been collected and expended the previous year.

(4) A municipality may not spend or commit to spend any affordable housing development fees, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the approval of the expenditure as part of its compliance certification or by the department. A municipality shall include in its housing element and fair share plan adopted pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1) (pending before the Legislature as this bill) a spending plan for current funds in the municipal affordable housing trust fund and projected funds through the current round. Review of that spending plan for consistency with applicable law and the municipality's housing element and fair share plan shall be part of the process specified in section 3 of P.L.2024, c.2 (C.52:27D-304.1). The department shall promulgate updated regulations no later than nine months following the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.) regarding the establishment, administration, reporting, and enforcement of the expenditure of affordable housing development fees by municipalities, which shall include establishing an expedited process for approving spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification and procedures for monitoring the collection and expenditure of trust funds. The department shall develop and publish on the department's Internet website a detailed summary of the municipal affordable housing trust fund expenditures for each municipality and shall update each summary on an annual basis. As part of the regulations adopted pursuant to this section and section 10 of P.L.2008, c.46 (C.52:27D-329.4), the department shall adopt reporting requirements applicable to municipal affordable housing trust funds to facilitate fulfillment of the department's obligations pursuant to this section. Municipalities may continue to rely on regulations on development fees and spending plans previously adopted by the council until new rules and regulations are adopted by the department. The department shall have jurisdiction regarding the enforcement of these regulations, provided that any municipality which is not in compliance with the regulations adopted by the department may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

(5) The governing body of a municipality which is spending or committing to spend affordable housing development fees may provide, by ordinance, that the units of affordable housing being developed or preserved pursuant to a housing project or program being funded, in whole or in part, through affordable housing development fees shall be exempt from real property taxation if the housing sponsor enters into an agreement with the municipality for payments to the municipality in lieu of taxes for municipal services. Any such agreement may require the housing sponsor to pay to the municipality an amount up to 20 percent of the annual gross revenue from each housing project situated on such real property for each year of operation of the agreement following the substantial completion of the housing project. Any such agreement shall require the housing sponsor to pay the municipality an amount not less than the greater of four percent of the annual gross revenue or the amount of the taxes attributable to the land value component of the property comprising the project site for the year preceding the recording of the mortgage, if applicable. In the case of a property assessed under the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), the minimum amount the housing sponsor shall be required to pay to the municipality shall be four percent of the annual gross revenue. For the purpose of this subsection, "annual gross revenue" means the total annual gross rental or carrying charge and other income of a housing sponsor from a housing project. If an agreement is entered into from the date of recording the mortgage on the housing project to the date of substantial completion of the housing project, the annual

amount payable to the municipality as taxes or as payments in lieu of taxes in respect of the project site shall not be in excess of the amount of taxes on the project site for the year preceding the recording of the mortgage. Within 30 calendar days following: the effective date of an ordinance adopted by a municipal governing body approving a tax exemption under this subsection, or the execution of a financial agreement between a housing sponsor and a municipality entered into pursuant to this subsection, whichever is later, the municipal clerk shall electronically transmit a certified copy of the ordinance and the agreement to the Director of the Division of Local Government Services in such a manner as may be specified by the director. An exemption from taxation provided in accordance with this subsection shall not extend beyond the date on which an eligible loan made for the project is paid in full.

(6) Notwithstanding the provisions of any law or regulation to the contrary, the governing body of a municipality may agree to continue or grant a new tax exemption for a State, federally, or municipally subsidized housing project beyond the date on which an eligible loan made for the project is fully paid, or beyond the date upon which a tax exemption expires, for any period the project remains subject to affordability controls pursuant to:

(a) project-based federal rental assistance, authorized pursuant to section 8 of the United States Housing Act of 1937 (42 U.S.C. s.1437f), or other federal or State project-based assistance;

(b) the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency; or

(c) the rent and income limits established by the federal Low Income Housing Tax Credit program pursuant to section 42 of the Internal Revenue Code (26 U.S.C. s.42).

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

c. (1) A municipality, other than a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3) may only spend development fees for an activity approved by the department to address the municipal fair share obligation or approved as part of compliance certification.

(2) Municipal development trust funds shall not be expended unless the municipality has immunity from exclusionary zoning litigation at the time of the expenditure or said municipality has previously collected such funds while under the protection of presumptive validity or immunity from exclusionary zoning litigation and in accordance with an approved spending plan. However, municipal development trust funds may be expended by a municipality if the municipality is a qualified urban aid municipality, as determined pursuant to paragraph (1) of subsection c. of section 7 of P.L.2024, c.2 (C.52:27D-304.3), with a development fee ordinance and spending plan approved by the department or a court of competent jurisdiction, regardless of whether this approval occurs prior to or subsequent to the effective date of P.L.2024, c.2 (C.52:27D-304.1 et al.). Municipal development fee trust funds shall not be expended:

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

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

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

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

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

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

(5) Not more than 20 percent of the revenues collected from development fees shall be expended on administration, in accordance with rules of the department. Such administration may include expending a portion of its affordable housing trust fund on actions and efforts reasonably related to the determination of its fair share obligation and the development of its housing element and fair share plan pursuant to paragraphs (1) and (2) of subsection f. of section 3 of P.L.2024, c.2 (C.52:27D-304.1) and for expenses that are reasonably necessary for compliance with the processes of the program, including, but not limited to, the costs to the municipality of resolving a challenge under the program..

d. The department shall establish a time by which all development fees collected within a calendar year shall be expended; provided, however, that all fees shall be committed for expenditure within four years from the date of collection. A municipality that fails to commit to expend the balance required in the development fee trust fund by the time set forth in this section shall be required by the council to transfer the remaining unspent balance at the end of the four-year period to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in the housing region of the transferring municipality for the authorized purposes of that fund.

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

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

3. This act shall take effect immediately.

Approved March 20, 2024.

ASSEMBLY, No. 3337

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

Allows projects supported by State or municipal affordable housing trust fund to be exempt from property tax and to instead contribute to municipal services by making payments in lieu of taxation.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 1/29/2024)

1 AN ACT authorizing municipalities to grant tax exemptions and
2 negotiate payments in lieu of taxation for housing projects and
3 programs supported by the State or municipal affordable housing
4 trust fund, and amending P.L.1985, c.222 and P.L.2008, c.46.

5

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

8

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

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

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

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

Matter underlined thus is new matter.

1 Of those monies deposited into the "New Jersey Affordable
2 Housing Trust Fund" that are derived from municipal development fee
3 trust funds, or from available collections of Statewide non-residential
4 development fees, a priority for funding shall be established for
5 projects in municipalities that have petitioned the council for
6 substantive certification.

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

10 b. (1) The commissioner shall establish rules and regulations
11 governing the qualifications of applicants, the application procedures,
12 and the criteria for awarding grants and loans and the standards for
13 establishing the amount, terms, and conditions of each grant or loan.

14 (2) The governing body of a municipality in which a housing
15 project or program is located, and which is awarded a grant or loan
16 from the fund for a housing project or program, may provide, by
17 ordinance or resolution as appropriate, that the units of affordable
18 housing being developed pursuant to a housing project or program
19 being funded, in whole or in part, through the "New Jersey Affordable
20 Housing Trust Fund" shall be exempt from real property taxation if the
21 housing sponsor enters into an agreement with the municipality for
22 payments to the municipality in lieu of taxes for municipal services.
23 Any such agreement may require the housing sponsor to pay to the
24 municipality an amount up to 20 percent of the annual gross revenue
25 from each housing project situated on such real property for each year
26 of operation of the agreement following the substantial completion of
27 the housing project. For the purpose of this subsection, "annual gross
28 revenue" means the total annual gross rental or carrying charge and
29 other income of a housing sponsor from a housing project. If an
30 agreement is entered into from the date of recording the mortgage on
31 the housing project to the date of substantial completion of the housing
32 project, the annual amount payable to the municipality as taxes or as
33 payments in lieu of taxes in respect of the project site shall not be in
34 excess of the amount of taxes on the project site for the year preceding
35 the recording of the mortgage. An agreement between a housing
36 sponsor and a municipality entered into pursuant to this subsection
37 shall be submitted to the commissioner for review in order to avoid
38 duplicating, overlapping or inconsistent regulations or provisions. An
39 exemption from taxation provided pursuant to this subsection shall not
40 extend beyond the date on which an eligible loan made for the project
41 is paid in full.

42 (3) Notwithstanding the provisions of any law or regulation in the
43 contrary, the governing body of a municipality may agree to continue a
44 tax exemption for a State, federally, or municipally subsidized housing
45 project beyond the date on which an eligible loan made for the project
46 is fully paid, or beyond the date upon which a tax exemption expires,
47 if the project remains subject to affordability controls pursuant to:

1 (a) project-based federal rental assistance, authorized pursuant to
2 section 8 of the United States Housing Act of 1937 (42 U.S.C.
3 s.1437f), or other federal or State project-based assistance;

4 (b) the Uniform Housing Affordability Controls promulgated by
5 the New Jersey Housing and Mortgage Finance Agency; or

6 (c) the rent and income limits established by the federal Low
7 Income Housing Tax Credit program pursuant to section 42 of the
8 Internal Revenue Code (26 U.S.C. s.42).

9 c. For any period which the council may approve, the
10 commissioner may assist affordable housing programs which are not
11 located in municipalities whose housing elements have been granted
12 substantive certification or which are not in furtherance of a regional
13 contribution agreement; provided that the affordable housing program
14 will meet all or part of a municipal low and moderate income housing
15 obligation.

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

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

23 (2) Creation of accessory apartments to be occupied by low and
24 moderate income households;

25 (3) Conversion of non-residential space to residential purposes;
26 provided a substantial percentage of the resulting housing units are to
27 be occupied by low and moderate income households;

28 (4) Acquisition of real property, demolition and removal of
29 buildings, or construction of new housing that will be occupied by low
30 and moderate income households, or any combination thereof;

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

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

45 (7) Other housing programs for low and moderate income housing,
46 including, without limitation, (a) infrastructure projects directly
47 facilitating the construction of low and moderate income housing not
48 to exceed a reasonable percentage of the construction costs of the low

1 and moderate income housing to be provided and (b) alteration of
2 dwelling units occupied or to be occupied by households of low or
3 moderate income and the common areas of the premises in which they
4 are located in order to make them accessible to persons with
5 disabilities.

6 e. Any grant or loan agreement entered into pursuant to this
7 section shall incorporate contractual guarantees and procedures by
8 which the division will ensure that any unit of housing provided for
9 low and moderate income households shall continue to be occupied by
10 low and moderate income households for at least 20 years following
11 the award of the loan or grant, except that the division may approve a
12 guarantee for a period of less than 20 years where necessary to ensure
13 project feasibility.

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

30 g. In addition to other grants or loans awarded pursuant to this
31 section, and without regard to any limitations on such grants or loans
32 for any other purposes herein imposed, the commissioner shall
33 annually allocate such amounts as may be necessary in the
34 commissioner's discretion, and in accordance with section 3 of
35 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
36 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
37 287.1 et al.). Such rental assistance grants shall be deemed necessary
38 and authorized pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), in
39 order to meet the housing needs of certain low income households who
40 may not be eligible to occupy other housing produced pursuant to
41 P.L.1985, c.222 (C.52:27D-301 et al.).

42 h. The department and the State Treasurer shall submit the "New
43 Jersey Affordable Housing Trust Fund" for an audit annually by the
44 State Auditor or State Comptroller, at the discretion of the Treasurer.
45 In addition, the department shall prepare an annual report for each
46 fiscal year, and submit it by November 30th of each year to the
47 Governor and the Legislature, and the Joint Committee on Housing
48 Affordability, or its successor, and post the information to its web site,

1 of all activity of the fund, including details of the grants and loans by
2 number of units, number and income ranges of recipients of grants or
3 loans, location of the housing renovated or constructed using monies
4 from the fund, the number of units upon which affordability controls
5 were placed, and the length of those controls. The report also shall
6 include details pertaining to those monies allocated from the fund for
7 use by the State rental assistance program pursuant to section 3 of
8 P.L.2004, c.140 (C.52:27D-287.3) and subsection g. of this section.

9 i. The commissioner may award or grant the amount of any
10 appropriation deposited in the "New Jersey Affordable Housing Trust
11 Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-320.1) to
12 municipalities pursuant to the provisions of section 39 of P.L.2009,
13 c.90 (C.40:55D-8.8).

14 (cf: P.L.2017, c.131, s.200)

15
16 2. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to
17 read as follows:

18 8. a. (1) The council may authorize a municipality that has
19 petitioned for substantive certification, or that has been so
20 authorized by a court of competent jurisdiction, and which has
21 adopted a municipal development fee ordinance to impose and
22 collect development fees from developers of residential property, in
23 accordance with rules promulgated by the council. Each amount
24 collected shall be deposited and shall be accounted for separately,
25 by payer and date of deposit.

26 (2) A municipality may not spend or commit to spend any
27 affordable housing development fees, including Statewide non-
28 residential fees collected and deposited into the municipal
29 affordable housing trust fund, without first obtaining the council's
30 approval of the expenditure. The council shall promulgate
31 regulations regarding the establishment, administration and
32 enforcement of the expenditure of affordable housing development
33 fees by municipalities. The council shall have exclusive
34 jurisdiction regarding the enforcement of these regulations,
35 provided that any municipality which is not in compliance with the
36 regulations adopted by the council may be subject to forfeiture of
37 any or all funds remaining within its municipal trust fund. Any
38 funds so forfeited shall be deposited into the "New Jersey
39 Affordable Housing Trust Fund" established pursuant to section 20
40 of P.L.1985, c.222 (C.52:27D-320).

41 (3) The governing body of a municipality which is spending or
42 committing to spend affordable housing development fees may
43 provide, by ordinance or resolution as appropriate, that the units of
44 affordable housing being developed pursuant to a housing project or
45 program being funded, in whole or in part, through affordable
46 housing development fees shall be exempt from real property
47 taxation if the housing sponsor enters into an agreement with the
48 municipality for payments to the municipality in lieu of taxes for

1 municipal services. Any such agreement may require the housing
2 sponsor to pay to the municipality an amount up to 20 percent of the
3 annual gross revenue from each housing project situated on such
4 real property for each year of operation of the agreement following
5 the substantial completion of the housing project. For the purpose
6 of this subsection, "annual gross revenue" means the total annual
7 gross rental or carrying charge and other income of a housing
8 sponsor from a housing project. If an agreement is entered into
9 from the date of recording the mortgage on the housing project to
10 the date of substantial completion of the housing project, the annual
11 amount payable to the municipality as taxes or as payments in lieu
12 of taxes in respect of the project site shall not be in excess of the
13 amount of taxes on the project site for the year preceding the
14 recording of the mortgage. An agreement between a housing
15 sponsor and a municipality entered into in accordance with this
16 subsection shall be submitted to the commissioner for review in
17 order to avoid duplicating, overlapping or inconsistent regulations
18 or provisions. An exemption from taxation provided in accordance
19 with this subsection shall not extend beyond the date on which an
20 eligible loan made for the project is paid in full.

21 (4) Notwithstanding the provisions of any law or regulation in
22 the contrary, the governing body of a municipality may agree to
23 continue a tax exemption for a State, federally, or municipally
24 subsidized housing project beyond the date on which an eligible
25 loan made for the project is fully paid, or beyond the date upon
26 which a tax exemption expires, if the project remains subject to
27 affordability controls pursuant to:

28 (a) project-based federal rental assistance, authorized pursuant
29 to section 8 of the United States Housing Act of 1937 (42 U.S.C.
30 s.1437f), or other federal or State project-based assistance;

31 (b) the Uniform Housing Affordability Controls promulgated by
32 the New Jersey Housing and Mortgage Finance Agency; or

33 (c) the rent and income limits established by the federal Low
34 Income Housing Tax Credit program pursuant to section 42 of the
35 Internal Revenue Code (26 U.S.C. s.42).

36 b. A municipality shall deposit all fees collected, whether or
37 not such collections were derived from fees imposed upon non-
38 residential or residential construction into a trust fund dedicated to
39 those purposes as required under this section, and such additional
40 purposes as may be approved by the council.

41 c. (1) A municipality may only spend development fees for an
42 activity approved by the council to address the municipal fair share
43 obligation.

44 (2) Municipal development trust funds shall not be expended to
45 reimburse municipalities for activities which occurred prior to the
46 authorization of a municipality to collect development fees.

47 (3) A municipality shall set aside a portion of its development
48 fee trust fund for the purpose of providing affordability assistance

1 to low and moderate income households in affordable units
2 included in a municipal fair share plan, in accordance with rules of
3 the council.

4 (a) Affordability assistance programs may include down
5 payment assistance, security deposit assistance, low interest loans,
6 common maintenance expenses for units located in condominiums,
7 rental assistance, and any other program authorized by the council.

8 (b) Affordability assistance to households earning 30 percent or
9 less of median income may include buying down the cost of low
10 income units in a municipal fair share plan to make them affordable
11 to households earning 30 percent or less of median income. The use
12 of development fees in this manner shall not entitle a municipality
13 to bonus credits except as may be provided by the rules of the
14 council.

15 (4) A municipality may contract with a private or public entity
16 to administer any part of its housing element and fair share plan,
17 including the requirement for affordability assistance, or any
18 program or activity for which the municipality expends
19 development fee proceeds, in accordance with rules of the council.

20 (5) Not more than 20 percent of the revenues collected from
21 development fees shall be expended on administration, in
22 accordance with rules of the council.

23 d. The council shall establish a time by which all development
24 fees collected within a calendar year shall be expended; provided,
25 however, that all fees shall be committed for expenditure within
26 four years from the date of collection. A municipality that fails to
27 commit to expend the balance required in the development fee trust
28 fund by the time set forth in this section shall be required by the
29 council to transfer the remaining unspent balance at the end of the
30 four-year period to the "New Jersey Affordable Housing Trust
31 Fund," established pursuant to section 20 of P.L.1985, c.222
32 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et
33 al.), to be used in the housing region of the transferring
34 municipality for the authorized purposes of that fund.

35 e. Notwithstanding any provision of this section, or regulations
36 of the council, a municipality shall not collect a development fee
37 from a developer whenever that developer is providing for the
38 construction of affordable units, either on-site or elsewhere within
39 the municipality.

40 This section shall not apply to the collection of a Statewide
41 development fee imposed upon non-residential
42 development pursuant to sections 32 through 38 of P.L.2008, c.46
43 (C.40:55D-8.1 et seq.) by the State Treasurer, when such collection
44 is not authorized to be retained by a municipality.

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

46

47 3. This act shall take effect immediately.

STATEMENT

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This bill would amend the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), to authorize the governing body of a municipality in which a housing project or program is located, and which is granted or loaned monies from the "New Jersey Affordable Housing Trust Fund," or a municipal development fee trust fund, to fund a housing project or program, to provide that the project is exempt from real property taxation and to allow the municipality and the housing sponsor to instead negotiate an agreement providing for payments to the municipality in lieu of taxes for municipal services. The bill would also authorize the governing body of a municipality to provide that a housing project or program is exempt from real property taxation and to allow the municipality and the housing sponsor to instead negotiate an agreement providing for payments to the municipality in lieu of taxes for municipal services if the housing project or program is funded through municipal affordable housing development fees, or the "New Jersey Affordable Housing Trust Fund."

The bill provides that any such agreement may require the housing sponsor to pay to the municipality an amount up to 20 percent of the annual gross revenue from each housing project for each year of operation of the agreement following the substantial completion of the housing project. Agreements negotiated between a housing sponsor and a municipality are to be submitted to the Commissioner of Community Affairs for review. While allowing some exception, the bill would provide that a tax exemption granted under the bill could extend no longer than the date on which an eligible loan made for the project is paid in full.

[First Reprint]

ASSEMBLY, No. 3337

STATE OF NEW JERSEY
221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Senator BRIAN P. STACK

District 33 (Hudson)

Senator TROY SINGLETON

District 7 (Burlington)

Co-Sponsored by:

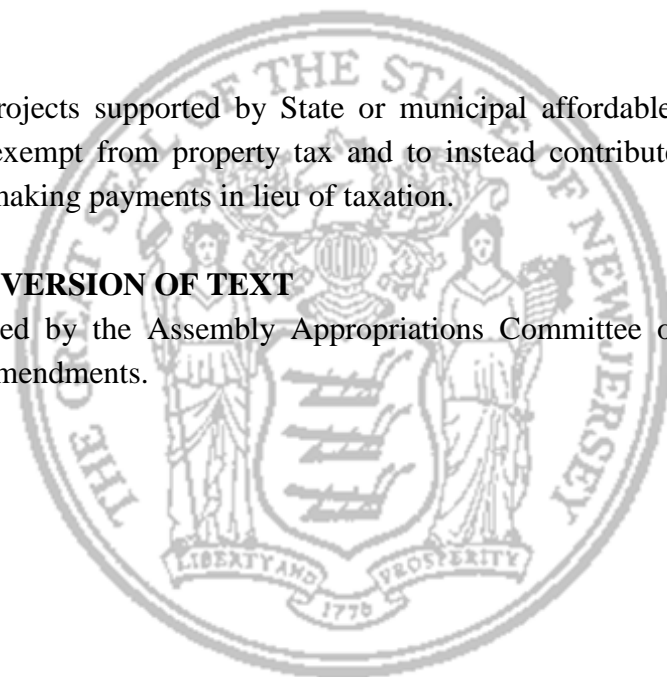
Assemblyman Stanley

SYNOPSIS

Allows projects supported by State or municipal affordable housing trust fund to be exempt from property tax and to instead contribute to municipal services by making payments in lieu of taxation.

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 authorizing municipalities to grant tax exemptions and
2 negotiate payments in lieu of taxation for housing projects and
3 programs supported by the State or municipal affordable housing
4 trust fund, and amending P.L.1985, c.222 and P.L.2008, c.46.

5

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

8

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

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

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

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 Of those monies deposited into the "New Jersey Affordable
2 Housing Trust Fund" that are derived from municipal development fee
3 trust funds, or from available collections of Statewide non-residential
4 development fees, a priority for funding shall be established for
5 projects in municipalities that have petitioned the council for
6 substantive certification.

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

10 b. (1) The commissioner shall establish rules and regulations
11 governing the qualifications of applicants, the application procedures,
12 and the criteria for awarding grants and loans and the standards for
13 establishing the amount, terms, and conditions of each grant or loan.

14 (2) The governing body of a municipality in which a housing
15 project or program is located, and which is awarded a grant or loan
16 from the fund for a housing project or program, may provide, by
17 ordinance ¹[or resolution as appropriate]¹, that the units of affordable
18 housing being developed ¹or preserved¹ pursuant to a housing project
19 or program being funded, in whole or in part, through the "New Jersey
20 Affordable Housing Trust Fund" shall be exempt from real property
21 taxation if the housing sponsor enters into an agreement with the
22 municipality for payments to the municipality in lieu of taxes for
23 municipal services. Any such agreement may require the housing
24 sponsor to pay to the municipality an amount up to 20 percent of the
25 annual gross revenue from each housing project situated on such real
26 property for each year of operation of the agreement following the
27 substantial completion of the housing project. ¹Any such agreement
28 shall require the housing sponsor to pay the municipality an amount
29 not less than the greater of four percent of the annual gross revenue or
30 the amount of the taxes attributable to the land value component of the
31 property comprising the project site for the year preceding the
32 recording of the mortgage, if applicable. In the case of a property
33 assessed under the "Farmland Assessment Act of 1964," P.L.1964,
34 c.48 (C.54:4-23.1 et seq.), the minimum amount the housing sponsor
35 shall be required to pay to the municipality shall be four percent of the
36 annual gross revenue.¹ For the purpose of this subsection, "annual
37 gross revenue" means the total annual gross rental or carrying charge
38 and other income of a housing sponsor from a housing project. If an
39 agreement is entered into from the date of recording the mortgage on
40 the housing project to the date of substantial completion of the housing
41 project, the annual amount payable to the municipality as taxes or as
42 payments in lieu of taxes in respect of the project site shall not be in
43 excess of the amount of taxes on the project site for the year preceding
44 the recording of the mortgage. ¹[An agreement between a housing
45 sponsor and a municipality entered into pursuant to this subsection
46 shall be submitted to the commissioner for review in order to avoid
47 duplicating, overlapping or inconsistent regulations or provisions.]

1 Within 30 calendar days following: the effective date of an ordinance
2 adopted by a municipal governing body approving a tax exemption
3 under this subsection; or the execution of a financial agreement
4 between a housing sponsor and a municipality entered into pursuant to
5 this subsection, whichever is later, the municipal clerk shall
6 electronically transmit a certified copy of the ordinance and the
7 agreement to the Director of the Division of Local Government
8 Services in such a manner as may be specified by the director.¹ An
9 exemption from taxation provided pursuant to this subsection shall not
10 extend beyond the date on which an eligible loan made for the project
11 is paid in full.

12 (3) Notwithstanding the provisions of any law or regulation¹ [in]
13 to¹ the contrary, the governing body of a municipality may agree to
14 continue a tax exemption for a State, federally, or municipally
15 subsidized housing project beyond the date on which an eligible loan
16 made for the project is fully paid, or beyond the date upon which a tax
17 exemption expires,¹ [if] for any period¹ the project remains subject to
18 affordability controls pursuant to:

19 (a) project-based federal rental assistance, authorized pursuant to
20 section 8 of the United States Housing Act of 1937 (42 U.S.C.
21 s.1437f), or other federal or State project-based assistance;

22 (b) the Uniform Housing Affordability Controls promulgated by
23 the New Jersey Housing and Mortgage Finance Agency; or

24 (c) the rent and income limits established by the federal Low
25 Income Housing Tax Credit program pursuant to section 42 of the
26 Internal Revenue Code (26 U.S.C. s.42).

27 c. For any period which the council may approve, the
28 commissioner may assist affordable housing programs which are not
29 located in municipalities whose housing elements have been granted
30 substantive certification or which are not in furtherance of a regional
31 contribution agreement; provided that the affordable housing program
32 will meet all or part of a municipal low and moderate income housing
33 obligation.

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

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

41 (2) Creation of accessory apartments to be occupied by low and
42 moderate income households;

43 (3) Conversion of non-residential space to residential purposes;
44 provided a substantial percentage of the resulting housing units are to
45 be occupied by low and moderate income households;

46 (4) Acquisition of real property, demolition and removal of
47 buildings, or construction of new housing that will be occupied by low
48 and moderate income households, or any combination thereof;

1 (5) Grants of assistance to eligible municipalities for costs of
2 necessary studies, surveys, plans, and permits; engineering,
3 architectural, and other technical services; costs of land acquisition and
4 any buildings thereon; and costs of site preparation, demolition, and
5 infrastructure development for projects undertaken pursuant to an
6 approved regional contribution agreement;

7 (6) Assistance to a local housing authority, nonprofit or limited
8 dividend housing corporation, or association or a qualified entity
9 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for
10 rehabilitation or restoration of housing units which it administers
11 which: (a) are unusable or in a serious state of disrepair; (b) can be
12 restored in an economically feasible and sound manner; and (c) can be
13 retained in a safe, decent, and sanitary manner, upon completion of
14 rehabilitation or restoration; and

15 (7) Other housing programs for low and moderate income housing,
16 including, without limitation, (a) infrastructure projects directly
17 facilitating the construction of low and moderate income housing not
18 to exceed a reasonable percentage of the construction costs of the low
19 and moderate income housing to be provided and (b) alteration of
20 dwelling units occupied or to be occupied by households of low or
21 moderate income and the common areas of the premises in which they
22 are located in order to make them accessible to persons with
23 disabilities.

24 e. Any grant or loan agreement entered into pursuant to this
25 section shall incorporate contractual guarantees and procedures by
26 which the division will ensure that any unit of housing provided for
27 low and moderate income households shall continue to be occupied by
28 low and moderate income households for at least 20 years following
29 the award of the loan or grant, except that the division may approve a
30 guarantee for a period of less than 20 years where necessary to ensure
31 project feasibility.

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

1 g. In addition to other grants or loans awarded pursuant to this
2 section, and without regard to any limitations on such grants or loans
3 for any other purposes herein imposed, the commissioner shall
4 annually allocate such amounts as may be necessary in the
5 commissioner's discretion, and in accordance with section 3 of
6 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
7 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
8 287.1 et al.). Such rental assistance grants shall be deemed necessary
9 and authorized pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), in
10 order to meet the housing needs of certain low income households who
11 may not be eligible to occupy other housing produced pursuant to
12 P.L.1985, c.222 (C.52:27D-301 et al.).

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

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

33 (cf: P.L.2017, c.131, s.200)

34

35 2. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to
36 read as follows:

37 8. a. (1) The council may authorize a municipality that has
38 petitioned for substantive certification, or that has been so authorized
39 by a court of competent jurisdiction, and which has adopted a
40 municipal development fee ordinance to impose and collect
41 development fees from developers of residential property, in
42 accordance with rules promulgated by the council. Each amount
43 collected shall be deposited and shall be accounted for separately, by
44 payer and date of deposit.

45 (2) A municipality may not spend or commit to spend any
46 affordable housing development fees, including Statewide non-
47 residential fees collected and deposited into the municipal affordable
48 housing trust fund, without first obtaining the council's approval of the

1 expenditure. The council shall promulgate regulations regarding the
2 establishment, administration and enforcement of the expenditure of
3 affordable housing development fees by municipalities. The council
4 shall have exclusive jurisdiction regarding the enforcement of these
5 regulations, provided that any municipality which is not in compliance
6 with the regulations adopted by the council may be subject to
7 forfeiture of any or all funds remaining within its municipal trust fund.
8 Any funds so forfeited shall be deposited into the "New Jersey
9 Affordable Housing Trust Fund" established pursuant to section 20 of
10 P.L.1985, c.222 (C.52:27D-320).

11 (3) The governing body of a municipality which is spending or
12 committing to spend affordable housing development fees may
13 provide, by ordinance ¹[or resolution as appropriate]¹, that the units
14 of affordable housing being developed ¹or preserved¹ pursuant to a
15 housing project or program being funded, in whole or in part, through
16 affordable housing development fees shall be exempt from real
17 property taxation if the housing sponsor enters into an agreement with
18 the municipality for payments to the municipality in lieu of taxes for
19 municipal services. Any such agreement may require the housing
20 sponsor to pay to the municipality an amount up to 20 percent of the
21 annual gross revenue from each housing project situated on such real
22 property for each year of operation of the agreement following the
23 substantial completion of the housing project. ¹Any such agreement
24 shall require the housing sponsor to pay the municipality an amount
25 not less than the greater of four percent of the annual gross revenue or
26 the amount of the taxes attributable to the land value component of the
27 property comprising the project site for the year preceding the
28 recording of the mortgage, if applicable. In the case of a property
29 assessed under the "Farmland Assessment Act of 1964," P.L.1964,
30 c.48 (C.54:4-23.1 et seq.), the minimum amount the housing sponsor
31 shall be required to pay to the municipality shall be four percent of the
32 annual gross revenue.¹ For the purpose of this subsection, "annual
33 gross revenue" means the total annual gross rental or carrying charge
34 and other income of a housing sponsor from a housing project. If an
35 agreement is entered into from the date of recording the mortgage on
36 the housing project to the date of substantial completion of the housing
37 project, the annual amount payable to the municipality as taxes or as
38 payments in lieu of taxes in respect of the project site shall not be in
39 excess of the amount of taxes on the project site for the year preceding
40 the recording of the mortgage. ¹[An agreement between a housing
41 sponsor and a municipality entered into pursuant to this subsection
42 shall be submitted to the commissioner for review in order to avoid
43 duplicating, overlapping or inconsistent regulations or provisions.]
44 Within 30 calendar days following: the effective date of an ordinance
45 adopted by a municipal governing body approving a tax exemption
46 under this subsection; or the execution of a financial agreement
47 between a housing sponsor and a municipality entered into pursuant to

1 this subsection, whichever is later, the municipal clerk shall
2 electronically transmit a certified copy of the ordinance and the
3 agreement to the Director of the Division of Local Government
4 Services in such a manner as may be specified by the director.¹ An
5 exemption from taxation provided in accordance with this subsection
6 shall not extend beyond the date on which an eligible loan made for
7 the project is paid in full.

8 (4) Notwithstanding the provisions of any law or regulation ¹[in]
9 to¹ the contrary, the governing body of a municipality may agree to
10 continue ¹or grant¹ a ¹new¹ tax exemption for a State, federally, or
11 municipally subsidized housing project beyond the date on which an
12 eligible loan made for the project is fully paid, or beyond the date upon
13 which a tax exemption expires, ¹[if] for any period¹ the project
14 remains subject to affordability controls pursuant to:

15 (a) project-based federal rental assistance, authorized pursuant to
16 section 8 of the United States Housing Act of 1937 (42 U.S.C.
17 s.1437f), or other federal or State project-based assistance;

18 (b) the Uniform Housing Affordability Controls promulgated by
19 the New Jersey Housing and Mortgage Finance Agency; or

20 (c) the rent and income limits established by the federal Low
21 Income Housing Tax Credit program pursuant to section 42 of the
22 Internal Revenue Code (26 U.S.C. s.42).

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

28 c. (1) A municipality may only spend development fees for an
29 activity approved by the council to address the municipal fair share
30 obligation.

31 (2) Municipal development trust funds shall not be expended to
32 reimburse municipalities for activities which occurred prior to the
33 authorization of a municipality to collect development fees.

34 (3) A municipality shall set aside a portion of its development fee
35 trust fund for the purpose of providing affordability assistance to low
36 and moderate income households in affordable units included in a
37 municipal fair share plan, in accordance with rules of the council.

38 (a) Affordability assistance programs may include down payment
39 assistance, security deposit assistance, low interest loans, common
40 maintenance expenses for units located in condominiums, rental
41 assistance, and any other program authorized by the council.

42 (b) Affordability assistance to households earning 30 percent or
43 less of median income may include buying down the cost of low
44 income units in a municipal fair share plan to make them affordable to
45 households earning 30 percent or less of median income. The use of
46 development fees in this manner shall not entitle a municipality to
47 bonus credits except as may be provided by the rules of the council.

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

6 (5) Not more than 20 percent of the revenues collected from
7 development fees shall be expended on administration, in accordance
8 with rules of the council.

9 d. The council shall establish a time by which all development
10 fees collected within a calendar year shall be expended; provided,
11 however, that all fees shall be committed for expenditure within four
12 years from the date of collection. A municipality that fails to commit
13 to expend the balance required in the development fee trust fund by the
14 time set forth in this section shall be required by the council to transfer
15 the remaining unspent balance at the end of the four-year period to the
16 "New Jersey Affordable Housing Trust Fund," established pursuant to
17 section 20 of P.L.1985, c.222 (C.52:27D-320), as amended by
18 P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in the housing
19 region of the transferring municipality for the authorized purposes of
20 that fund.

21 e. Notwithstanding any provision of this section, or regulations of
22 the council, a municipality shall not collect a development fee from a
23 developer whenever that developer is providing for the construction of
24 affordable units, either on-site or elsewhere within the municipality.

25 This section shall not apply to the collection of a Statewide
26 development fee imposed upon non-residential development pursuant
27 to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 et seq.) by
28 the State Treasurer, when such collection is not authorized to be
29 retained by a municipality.

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

31

32 3. This act shall take effect immediately.

ASSEMBLY, No. 3337

STATE OF NEW JERSEY 221st LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2024 SESSION

Sponsored by:

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

SYNOPSIS

Allows projects supported by State or municipal affordable housing trust fund to be exempt from property tax and to instead contribute to municipal services by making payments in lieu of taxation.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing Committee with technical review.



(Sponsorship Updated As Of: 1/29/2024)

1 AN ACT authorizing municipalities to grant tax exemptions and
2 negotiate payments in lieu of taxation for housing projects and
3 programs supported by the State or municipal affordable housing
4 trust fund, and amending P.L.1985, c.222 and P.L.2008, c.46.

5

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

8

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

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

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

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

Matter underlined thus is new matter.

1 Of those monies deposited into the "New Jersey Affordable
2 Housing Trust Fund" that are derived from municipal development fee
3 trust funds, or from available collections of Statewide non-residential
4 development fees, a priority for funding shall be established for
5 projects in municipalities that have petitioned the council for
6 substantive certification.

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

10 b. (1) The commissioner shall establish rules and regulations
11 governing the qualifications of applicants, the application procedures,
12 and the criteria for awarding grants and loans and the standards for
13 establishing the amount, terms, and conditions of each grant or loan.

14 (2) The governing body of a municipality in which a housing
15 project or program is located, and which is awarded a grant or loan
16 from the fund for a housing project or program, may provide, by
17 ordinance or resolution as appropriate, that the units of affordable
18 housing being developed pursuant to a housing project or program
19 being funded, in whole or in part, through the "New Jersey Affordable
20 Housing Trust Fund" shall be exempt from real property taxation if the
21 housing sponsor enters into an agreement with the municipality for
22 payments to the municipality in lieu of taxes for municipal services.
23 Any such agreement may require the housing sponsor to pay to the
24 municipality an amount up to 20 percent of the annual gross revenue
25 from each housing project situated on such real property for each year
26 of operation of the agreement following the substantial completion of
27 the housing project. For the purpose of this subsection, "annual gross
28 revenue" means the total annual gross rental or carrying charge and
29 other income of a housing sponsor from a housing project. If an
30 agreement is entered into from the date of recording the mortgage on
31 the housing project to the date of substantial completion of the housing
32 project, the annual amount payable to the municipality as taxes or as
33 payments in lieu of taxes in respect of the project site shall not be in
34 excess of the amount of taxes on the project site for the year preceding
35 the recording of the mortgage. An agreement between a housing
36 sponsor and a municipality entered into pursuant to this subsection
37 shall be submitted to the commissioner for review in order to avoid
38 duplicating, overlapping or inconsistent regulations or provisions. An
39 exemption from taxation provided pursuant to this subsection shall not
40 extend beyond the date on which an eligible loan made for the project
41 is paid in full.

42 (3) Notwithstanding the provisions of any law or regulation in the
43 contrary, the governing body of a municipality may agree to continue a
44 tax exemption for a State, federally, or municipally subsidized housing
45 project beyond the date on which an eligible loan made for the project
46 is fully paid, or beyond the date upon which a tax exemption expires,
47 if the project remains subject to affordability controls pursuant to:

1 (a) project-based federal rental assistance, authorized pursuant to
2 section 8 of the United States Housing Act of 1937 (42 U.S.C.
3 s.1437f), or other federal or State project-based assistance;

4 (b) the Uniform Housing Affordability Controls promulgated by
5 the New Jersey Housing and Mortgage Finance Agency; or

6 (c) the rent and income limits established by the federal Low
7 Income Housing Tax Credit program pursuant to section 42 of the
8 Internal Revenue Code (26 U.S.C. s.42).

9 c. For any period which the council may approve, the
10 commissioner may assist affordable housing programs which are not
11 located in municipalities whose housing elements have been granted
12 substantive certification or which are not in furtherance of a regional
13 contribution agreement; provided that the affordable housing program
14 will meet all or part of a municipal low and moderate income housing
15 obligation.

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

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

23 (2) Creation of accessory apartments to be occupied by low and
24 moderate income households;

25 (3) Conversion of non-residential space to residential purposes;
26 provided a substantial percentage of the resulting housing units are to
27 be occupied by low and moderate income households;

28 (4) Acquisition of real property, demolition and removal of
29 buildings, or construction of new housing that will be occupied by low
30 and moderate income households, or any combination thereof;

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

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

45 (7) Other housing programs for low and moderate income housing,
46 including, without limitation, (a) infrastructure projects directly
47 facilitating the construction of low and moderate income housing not
48 to exceed a reasonable percentage of the construction costs of the low

1 and moderate income housing to be provided and (b) alteration of
2 dwelling units occupied or to be occupied by households of low or
3 moderate income and the common areas of the premises in which they
4 are located in order to make them accessible to persons with
5 disabilities.

6 e. Any grant or loan agreement entered into pursuant to this
7 section shall incorporate contractual guarantees and procedures by
8 which the division will ensure that any unit of housing provided for
9 low and moderate income households shall continue to be occupied by
10 low and moderate income households for at least 20 years following
11 the award of the loan or grant, except that the division may approve a
12 guarantee for a period of less than 20 years where necessary to ensure
13 project feasibility.

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

30 g. In addition to other grants or loans awarded pursuant to this
31 section, and without regard to any limitations on such grants or loans
32 for any other purposes herein imposed, the commissioner shall
33 annually allocate such amounts as may be necessary in the
34 commissioner's discretion, and in accordance with section 3 of
35 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
36 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
37 287.1 et al.). Such rental assistance grants shall be deemed necessary
38 and authorized pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), in
39 order to meet the housing needs of certain low income households who
40 may not be eligible to occupy other housing produced pursuant to
41 P.L.1985, c.222 (C.52:27D-301 et al.).

42 h. The department and the State Treasurer shall submit the "New
43 Jersey Affordable Housing Trust Fund" for an audit annually by the
44 State Auditor or State Comptroller, at the discretion of the Treasurer.
45 In addition, the department shall prepare an annual report for each
46 fiscal year, and submit it by November 30th of each year to the
47 Governor and the Legislature, and the Joint Committee on Housing
48 Affordability, or its successor, and post the information to its web site,

1 of all activity of the fund, including details of the grants and loans by
2 number of units, number and income ranges of recipients of grants or
3 loans, location of the housing renovated or constructed using monies
4 from the fund, the number of units upon which affordability controls
5 were placed, and the length of those controls. The report also shall
6 include details pertaining to those monies allocated from the fund for
7 use by the State rental assistance program pursuant to section 3 of
8 P.L.2004, c.140 (C.52:27D-287.3) and subsection g. of this section.

9 i. The commissioner may award or grant the amount of any
10 appropriation deposited in the "New Jersey Affordable Housing Trust
11 Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-320.1) to
12 municipalities pursuant to the provisions of section 39 of P.L.2009,
13 c.90 (C.40:55D-8.8).

14 (cf: P.L.2017, c.131, s.200)

15
16 2. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to
17 read as follows:

18 8. a. (1) The council may authorize a municipality that has
19 petitioned for substantive certification, or that has been so
20 authorized by a court of competent jurisdiction, and which has
21 adopted a municipal development fee ordinance to impose and
22 collect development fees from developers of residential property, in
23 accordance with rules promulgated by the council. Each amount
24 collected shall be deposited and shall be accounted for separately,
25 by payer and date of deposit.

26 (2) A municipality may not spend or commit to spend any
27 affordable housing development fees, including Statewide non-
28 residential fees collected and deposited into the municipal
29 affordable housing trust fund, without first obtaining the council's
30 approval of the expenditure. The council shall promulgate
31 regulations regarding the establishment, administration and
32 enforcement of the expenditure of affordable housing development
33 fees by municipalities. The council shall have exclusive
34 jurisdiction regarding the enforcement of these regulations,
35 provided that any municipality which is not in compliance with the
36 regulations adopted by the council may be subject to forfeiture of
37 any or all funds remaining within its municipal trust fund. Any
38 funds so forfeited shall be deposited into the "New Jersey
39 Affordable Housing Trust Fund" established pursuant to section 20
40 of P.L.1985, c.222 (C.52:27D-320).

41 (3) The governing body of a municipality which is spending or
42 committing to spend affordable housing development fees may
43 provide, by ordinance or resolution as appropriate, that the units of
44 affordable housing being developed pursuant to a housing project or
45 program being funded, in whole or in part, through affordable
46 housing development fees shall be exempt from real property
47 taxation if the housing sponsor enters into an agreement with the
48 municipality for payments to the municipality in lieu of taxes for

1 municipal services. Any such agreement may require the housing
2 sponsor to pay to the municipality an amount up to 20 percent of the
3 annual gross revenue from each housing project situated on such
4 real property for each year of operation of the agreement following
5 the substantial completion of the housing project. For the purpose
6 of this subsection, "annual gross revenue" means the total annual
7 gross rental or carrying charge and other income of a housing
8 sponsor from a housing project. If an agreement is entered into
9 from the date of recording the mortgage on the housing project to
10 the date of substantial completion of the housing project, the annual
11 amount payable to the municipality as taxes or as payments in lieu
12 of taxes in respect of the project site shall not be in excess of the
13 amount of taxes on the project site for the year preceding the
14 recording of the mortgage. An agreement between a housing
15 sponsor and a municipality entered into in accordance with this
16 subsection shall be submitted to the commissioner for review in
17 order to avoid duplicating, overlapping or inconsistent regulations
18 or provisions. An exemption from taxation provided in accordance
19 with this subsection shall not extend beyond the date on which an
20 eligible loan made for the project is paid in full.

21 (4) Notwithstanding the provisions of any law or regulation in
22 the contrary, the governing body of a municipality may agree to
23 continue a tax exemption for a State, federally, or municipally
24 subsidized housing project beyond the date on which an eligible
25 loan made for the project is fully paid, or beyond the date upon
26 which a tax exemption expires, if the project remains subject to
27 affordability controls pursuant to:

28 (a) project-based federal rental assistance, authorized pursuant
29 to section 8 of the United States Housing Act of 1937 (42 U.S.C.
30 s.1437f), or other federal or State project-based assistance;

31 (b) the Uniform Housing Affordability Controls promulgated by
32 the New Jersey Housing and Mortgage Finance Agency; or

33 (c) the rent and income limits established by the federal Low
34 Income Housing Tax Credit program pursuant to section 42 of the
35 Internal Revenue Code (26 U.S.C. s.42).

36 b. A municipality shall deposit all fees collected, whether or
37 not such collections were derived from fees imposed upon non-
38 residential or residential construction into a trust fund dedicated to
39 those purposes as required under this section, and such additional
40 purposes as may be approved by the council.

41 c. (1) A municipality may only spend development fees for an
42 activity approved by the council to address the municipal fair share
43 obligation.

44 (2) Municipal development trust funds shall not be expended to
45 reimburse municipalities for activities which occurred prior to the
46 authorization of a municipality to collect development fees.

47 (3) A municipality shall set aside a portion of its development
48 fee trust fund for the purpose of providing affordability assistance

1 to low and moderate income households in affordable units
2 included in a municipal fair share plan, in accordance with rules of
3 the council.

4 (a) Affordability assistance programs may include down
5 payment assistance, security deposit assistance, low interest loans,
6 common maintenance expenses for units located in condominiums,
7 rental assistance, and any other program authorized by the council.

8 (b) Affordability assistance to households earning 30 percent or
9 less of median income may include buying down the cost of low
10 income units in a municipal fair share plan to make them affordable
11 to households earning 30 percent or less of median income. The use
12 of development fees in this manner shall not entitle a municipality
13 to bonus credits except as may be provided by the rules of the
14 council.

15 (4) A municipality may contract with a private or public entity
16 to administer any part of its housing element and fair share plan,
17 including the requirement for affordability assistance, or any
18 program or activity for which the municipality expends
19 development fee proceeds, in accordance with rules of the council.

20 (5) Not more than 20 percent of the revenues collected from
21 development fees shall be expended on administration, in
22 accordance with rules of the council.

23 d. The council shall establish a time by which all development
24 fees collected within a calendar year shall be expended; provided,
25 however, that all fees shall be committed for expenditure within
26 four years from the date of collection. A municipality that fails to
27 commit to expend the balance required in the development fee trust
28 fund by the time set forth in this section shall be required by the
29 council to transfer the remaining unspent balance at the end of the
30 four-year period to the "New Jersey Affordable Housing Trust
31 Fund," established pursuant to section 20 of P.L.1985, c.222
32 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et
33 al.), to be used in the housing region of the transferring
34 municipality for the authorized purposes of that fund.

35 e. Notwithstanding any provision of this section, or regulations
36 of the council, a municipality shall not collect a development fee
37 from a developer whenever that developer is providing for the
38 construction of affordable units, either on-site or elsewhere within
39 the municipality.

40 This section shall not apply to the collection of a Statewide
41 development fee imposed upon non-residential
42 development pursuant to sections 32 through 38 of P.L.2008, c.46
43 (C.40:55D-8.1 et seq.) by the State Treasurer, when such collection
44 is not authorized to be retained by a municipality.

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

46

47 3. This act shall take effect immediately.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3337

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 8, 2024

The Assembly Appropriations Committee reports favorably and with committee amendments Assembly Bill No. 3337.

This bill allows a municipal governing body to provide that an affordable housing unit, developed or preserved pursuant to a housing project or program supported by State or municipal affordable housing trust funds, is exempt from property taxation if the housing sponsor contributes to municipal services by providing for payment in lieu of taxation (PILOT).

The bill amends the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), to authorize the governing body of a municipality in which a housing project or program is located, and which is granted or loaned monies from the "New Jersey Affordable Housing Trust Fund," to provide that the project is exempt from real property taxation if the municipality and the housing sponsor negotiate a PILOT agreement, as specified in the bill.

The bill also authorizes the governing body of a municipality to provide that a housing project or program which is funded through municipal affordable housing development fees is exempt from real property taxation if the municipality and the housing sponsor negotiate a PILOT agreement, as specified in the bill.

The bill provides that a PILOT agreement may require the housing sponsor to pay to the municipality an amount up to 20 percent of the annual gross revenue from each housing project for each year of operation of the agreement following the substantial completion of the housing project. Agreements negotiated between a housing sponsor and a municipality are to be submitted to the Commissioner of Community Affairs for review. While allowing some exception, the bill provides that a tax exemption granted under the bill could extend no longer than the date on which an eligible loan made for the project is paid in full.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

- provide that a municipal governing body is to provide for a tax abatement and a PILOT by adoption of an ordinance, rather than an ordinance or resolution;

- extend the bill's provisions to apply to the preservation of affordable housing as well as the production of affordable housing;
- require a PILOT agreement to require the housing sponsor to pay the municipality an amount not less than the greater of either four percent of the annual gross revenue or the amount of the taxes attributable to the land value component of the project site for the year preceding the recording of the mortgage, if applicable;
- provide that, in the case of a property assessed under the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), the minimum amount paid to the municipality would be four percent of the annual gross revenue;
- make changes related to notices provided by the municipality under the bill; and
- make other limited and technical changes.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3337

STATE OF NEW JERSEY

DATED: MARCH 11, 2024

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 3337 (1R).

This bill allows a municipal governing body to provide that an affordable housing unit, developed or preserved pursuant to a housing project or program supported by State or municipal affordable housing trust funds, is exempt from property taxation if the housing sponsor contributes to municipal services by providing for payment in lieu of taxation (PILOT).

The bill amends the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), to authorize the governing body of a municipality in which a housing project or program is located, and which is granted or loaned monies from the "New Jersey Affordable Housing Trust Fund," to provide that the project is exempt from real property taxation if the municipality and the housing sponsor negotiate a PILOT agreement, as specified in the bill.

The bill also authorizes the governing body of a municipality to provide that a housing project or program which is funded through municipal affordable housing development fees is exempt from real property taxation if the municipality and the housing sponsor negotiate a PILOT agreement, as specified in the bill.

The bill provides that a PILOT agreement may require the housing sponsor to pay to the municipality an amount up to 20 percent of the annual gross revenue from each housing project for each year of operation of the agreement following the substantial completion of the housing project. Agreements negotiated between a housing sponsor and a municipality are to be submitted to the Commissioner of Community Affairs for review. While allowing some exception, the bill provides that a tax exemption granted under the bill could extend no longer than the date on which an eligible loan made for the project is paid in full.

As reported by the committee, Assembly Bill No. 3337 (1R) is identical to Senate Bill No. 2312, which was amended and reported by the committee on this date.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3337

STATE OF NEW JERSEY

DATED: MARCH 11, 2024

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 3337 (1R).

This bill allows a municipal governing body to provide that an affordable housing unit, developed or preserved pursuant to a housing project or program supported by State or municipal affordable housing trust funds, is exempt from property taxation if the housing sponsor contributes to municipal services by providing for payment in lieu of taxation (PILOT).

The bill amends the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), to authorize the governing body of a municipality in which a housing project or program is located, and which is granted or loaned monies from the "New Jersey Affordable Housing Trust Fund," to provide that the project is exempt from real property taxation if the municipality and the housing sponsor negotiate a PILOT agreement, as specified in the bill.

The bill also authorizes the governing body of a municipality to provide that a housing project or program which is funded through municipal affordable housing development fees is exempt from real property taxation if the municipality and the housing sponsor negotiate a PILOT agreement, as specified in the bill.

The bill provides that a PILOT agreement may require the housing sponsor to pay to the municipality an amount up to 20 percent of the annual gross revenue from each housing project for each year of operation of the agreement following the substantial completion of the housing project. Agreements negotiated between a housing sponsor and a municipality are to be submitted to the Commissioner of Community Affairs for review. While allowing some exception, the bill provides that a tax exemption granted under the bill could extend no longer than the date on which an eligible loan made for the project is paid in full.

As reported by the committee, Assembly Bill No. 3337 (1R) is identical to Senate Bill No. 2312, which was amended and reported by the committee on this date.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

SENATE, No. 2312

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JANUARY 25, 2024

Senator BRIAN P. STACK
District 33 (Hudson)
Senator TROY SINGLETON
District 7 (Burlington)

SYNOPSIS

Allows projects supported by State or municipal affordable housing trust fund to be exempt from property tax and to instead contribute to municipal services by making payments in lieu of taxation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/25/2024)

S2312 STACK, SINGLETON

2

1 AN ACT authorizing municipalities to grant tax exemptions and
2 negotiate payments in lieu of taxation for housing projects and
3 programs supported by the State or municipal affordable housing
4 trust fund, and amending P.L.1985, c.222 and P.L.2008, c.46.

5

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

8

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

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

37 a. Except as permitted pursuant to subsection g. of this section,
38 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the
39 commissioner shall award grants or loans from this fund for
40 housing projects and programs in municipalities whose housing
41 elements have received substantive certification from the council, in
42 municipalities receiving State aid pursuant to P.L.1978, c.14
43 (C.52:27D-178 et seq.), in municipalities subject to a builder's
44 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328),
45 or in receiving municipalities in cases where the council has

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

Matter underlined thus is new matter.

1 approved a regional contribution agreement and a project plan
2 developed by the receiving municipality.

3 Of those monies deposited into the "New Jersey Affordable
4 Housing Trust Fund" that are derived from municipal development
5 fee trust funds, or from available collections of Statewide non-
6 residential development fees, a priority for funding shall be
7 established for projects in municipalities that have petitioned the
8 council for substantive certification.

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

12 b. (1) The commissioner shall establish rules and regulations
13 governing the qualifications of applicants, the application
14 procedures, and the criteria for awarding grants and loans and the
15 standards for establishing the amount, terms, and conditions of each
16 grant or loan.

17 (2) The governing body of a municipality in which a housing
18 project or program is located, and which is awarded a grant or loan
19 from the fund for a housing project or program, may provide, by
20 ordinance or resolution as appropriate, that the units of affordable
21 housing being developed pursuant to a housing project or program
22 being funded, in whole or in part, through the "New Jersey
23 Affordable Housing Trust Fund" shall be exempt from real property
24 taxation if the housing sponsor enters into an agreement with the
25 municipality for payments to the municipality in lieu of taxes for
26 municipal services. Any such agreement may require the housing
27 sponsor to pay to the municipality an amount up to 20 percent of the
28 annual gross revenue from each housing project situated on such
29 real property for each year of operation of the agreement following
30 the substantial completion of the housing project. For the purpose
31 of this subsection, "annual gross revenue" means the total annual
32 gross rental or carrying charge and other income of a housing
33 sponsor from a housing project. If an agreement is entered into
34 from the date of recording the mortgage on the housing project to
35 the date of substantial completion of the housing project, the annual
36 amount payable to the municipality as taxes or as payments in lieu
37 of taxes in respect of the project site shall not be in excess of the
38 amount of taxes on the project site for the year preceding the
39 recording of the mortgage. An agreement between a housing
40 sponsor and a municipality entered into pursuant to this subsection
41 shall be submitted to the commissioner for review in order to avoid
42 duplicating, overlapping or inconsistent regulations or provisions.
43 An exemption from taxation provided pursuant to this subsection
44 shall not extend beyond the date on which an eligible loan made for
45 the project is paid in full.

46 (3) Notwithstanding the provisions of any law or regulation in
47 the contrary, the governing body of a municipality may agree to
48 continue a tax exemption for a State, federally, or municipally

1 subsidized housing project beyond the date on which an eligible
2 loan made for the project is fully paid, or beyond the date upon
3 which a tax exemption expires, if the project remains subject to
4 affordability controls pursuant to:

5 (a) project-based federal rental assistance, authorized pursuant
6 to section 8 of the United States Housing Act of 1937 (42 U.S.C.
7 s.1437f), or other federal or State project-based assistance;

8 (b) the Uniform Housing Affordability Controls promulgated by
9 the New Jersey Housing and Mortgage Finance Agency; or

10 (c) the rent and income limits established by the federal Low
11 Income Housing Tax Credit program pursuant to section 42 of the
12 Internal Revenue Code (26 U.S.C. s.42).

13 c. For any period which the council may approve, the
14 commissioner may assist affordable housing programs which are
15 not located in municipalities whose housing elements have been
16 granted substantive certification or which are not in furtherance of a
17 regional contribution agreement; provided that the affordable
18 housing program will meet all or part of a municipal low and
19 moderate income housing obligation.

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

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

27 (2) Creation of accessory apartments to be occupied by low and
28 moderate income households;

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

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

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

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

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

10 e. Any grant or loan agreement entered into pursuant to this
11 section shall incorporate contractual guarantees and procedures by
12 which the division will ensure that any unit of housing provided for
13 low and moderate income households shall continue to be occupied
14 by low and moderate income households for at least 20 years
15 following the award of the loan or grant, except that the division
16 may approve a guarantee for a period of less than 20 years where
17 necessary to ensure project feasibility.

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

34 g. In addition to other grants or loans awarded pursuant to this
35 section, and without regard to any limitations on such grants or
36 loans for any other purposes herein imposed, the commissioner
37 shall annually allocate such amounts as may be necessary in the
38 commissioner's discretion, and in accordance with section 3 of
39 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
40 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
41 287.1 et al.). Such rental assistance grants shall be deemed
42 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
43 301 et al.), in order to meet the housing needs of certain low income
44 households who may not be eligible to occupy other housing
45 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

46 h. The department and the State Treasurer shall submit the
47 "New Jersey Affordable Housing Trust Fund" for an audit annually
48 by the State Auditor or State Comptroller, at the discretion of the

1 Treasurer. In addition, the department shall prepare an annual
2 report for each fiscal year, and submit it by November 30th of each
3 year to the Governor and the Legislature, and the Joint Committee
4 on Housing Affordability, or its successor, and post the information
5 to its web site, of all activity of the fund, including details of the
6 grants and loans by number of units, number and income ranges of
7 recipients of grants or loans, location of the housing renovated or
8 constructed using monies from the fund, the number of units upon
9 which affordability controls were placed, and the length of those
10 controls. The report also shall include details pertaining to those
11 monies allocated from the fund for use by the State rental assistance
12 program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3)
13 and subsection g. of this section.

14 i. The commissioner may award or grant the amount of any
15 appropriation deposited in the "New Jersey Affordable Housing
16 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
17 320.1) to municipalities pursuant to the provisions of section 39 of
18 P.L.2009, c.90 (C.40:55D-8.8).
19 (cf: P.L.2017, c.131, s.200)

20

21 2. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to
22 read as follows:

23 8. a. (1) The council may authorize a municipality that has
24 petitioned for substantive certification, or that has been so
25 authorized by a court of competent jurisdiction, and which has
26 adopted a municipal development fee ordinance to impose and
27 collect development fees from developers of residential property, in
28 accordance with rules promulgated by the council. Each amount
29 collected shall be deposited and shall be accounted for separately,
30 by payer and date of deposit.

31 (2) A municipality may not spend or commit to spend any
32 affordable housing development fees, including Statewide non-
33 residential fees collected and deposited into the municipal
34 affordable housing trust fund, without first obtaining the council's
35 approval of the expenditure. The council shall promulgate
36 regulations regarding the establishment, administration and
37 enforcement of the expenditure of affordable housing development
38 fees by municipalities. The council shall have exclusive
39 jurisdiction regarding the enforcement of these regulations,
40 provided that any municipality which is not in compliance with the
41 regulations adopted by the council may be subject to forfeiture of
42 any or all funds remaining within its municipal trust fund. Any
43 funds so forfeited shall be deposited into the "New Jersey
44 Affordable Housing Trust Fund" established pursuant to section 20
45 of P.L.1985, c.222 (C.52:27D-320).

46 (3) The governing body of a municipality which is spending or
47 committing to spend affordable housing development fees may
48 provide, by ordinance or resolution as appropriate, that the units of

1 affordable housing being developed pursuant to a housing project or
2 program being funded, in whole or in part, through affordable
3 housing development fees shall be exempt from real property
4 taxation if the housing sponsor enters into an agreement with the
5 municipality for payments to the municipality in lieu of taxes for
6 municipal services. Any such agreement may require the housing
7 sponsor to pay to the municipality an amount up to 20 percent of the
8 annual gross revenue from each housing project situated on such
9 real property for each year of operation of the agreement following
10 the substantial completion of the housing project. For the purpose
11 of this subsection, "annual gross revenue" means the total annual
12 gross rental or carrying charge and other income of a housing
13 sponsor from a housing project. If an agreement is entered into
14 from the date of recording the mortgage on the housing project to
15 the date of substantial completion of the housing project, the annual
16 amount payable to the municipality as taxes or as payments in lieu
17 of taxes in respect of the project site shall not be in excess of the
18 amount of taxes on the project site for the year preceding the
19 recording of the mortgage. An agreement between a housing
20 sponsor and a municipality entered into in accordance with this
21 subsection shall be submitted to the commissioner for review in
22 order to avoid duplicating, overlapping or inconsistent regulations
23 or provisions. An exemption from taxation provided in accordance
24 with this subsection shall not extend beyond the date on which an
25 eligible loan made for the project is paid in full.

26 (4) Notwithstanding the provisions of any law or regulation in
27 the contrary, the governing body of a municipality may agree to
28 continue a tax exemption for a State, federally, or municipally
29 subsidized housing project beyond the date on which an eligible
30 loan made for the project is fully paid, or beyond the date upon
31 which a tax exemption expires, if the project remains subject to
32 affordability controls pursuant to:

33 (a) project-based federal rental assistance, authorized pursuant
34 to section 8 of the United States Housing Act of 1937 (42 U.S.C.
35 s.1437f), or other federal or State project-based assistance;

36 (b) the Uniform Housing Affordability Controls promulgated by
37 the New Jersey Housing and Mortgage Finance Agency; or

38 (c) the rent and income limits established by the federal Low
39 Income Housing Tax Credit program pursuant to section 42 of the
40 Internal Revenue Code (26 U.S.C. s.42).

41 b. A municipality shall deposit all fees collected, whether or
42 not such collections were derived from fees imposed upon non-
43 residential or residential construction into a trust fund dedicated to
44 those purposes as required under this section, and such additional
45 purposes as may be approved by the council.

46 c. (1) A municipality may only spend development fees for an
47 activity approved by the council to address the municipal fair share
48 obligation.

1 (2) Municipal development trust funds shall not be expended to
2 reimburse municipalities for activities which occurred prior to the
3 authorization of a municipality to collect development fees.

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

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

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

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

25 (5) Not more than 20 percent of the revenues collected from
26 development fees shall be expended on administration, in
27 accordance with rules of the council.

28 d. The council shall establish a time by which all development
29 fees collected within a calendar year shall be expended; provided,
30 however, that all fees shall be committed for expenditure within
31 four years from the date of collection. A municipality that fails to
32 commit to expend the balance required in the development fee trust
33 fund by the time set forth in this section shall be required by the
34 council to transfer the remaining unspent balance at the end of the
35 four-year period to the "New Jersey Affordable Housing Trust
36 Fund," established pursuant to section 20 of P.L.1985, c.222
37 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et
38 al.), to be used in the housing region of the transferring
39 municipality for the authorized purposes of that fund.

40 e. Notwithstanding any provision of this section, or regulations
41 of the council, a municipality shall not collect a development fee
42 from a developer whenever that developer is providing for the
43 construction of affordable units, either on-site or elsewhere within
44 the municipality.

45 This section shall not apply to the collection of a Statewide
46 development fee imposed upon non-residential development

1 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1
2 et seq.) by the State Treasurer, when such collection is not
3 authorized to be retained by a municipality.
4 (cf: P.L.2008, c.46, s.8)

5

6 3. This act shall take effect immediately.

7

8

9

STATEMENT

10

11

12 This bill would amend the "Fair Housing Act," P.L.1985, c.222
13 (C.52:27D-301 et al.), to authorize the governing body of a
14 municipality in which a housing project or program is located, and
15 which is granted or loaned monies from the "New Jersey Affordable
16 Housing Trust Fund," or a municipal development fee trust fund, to
17 fund a housing project or program, to provide that the project is
18 exempt from real property taxation and to allow the municipality
19 and the housing sponsor to instead negotiate an agreement
20 providing for payments to the municipality in lieu of taxes for
21 municipal services. The bill would also authorize the governing
22 body of a municipality, which is spending or committing to spend
23 affordable housing development fees, to provide that a housing
24 project or program is exempt from real property taxation and to
25 allow the municipality and the housing sponsor to instead negotiate
26 an agreement providing for payments to the municipality in lieu of
27 taxes for municipal services if the housing project or program is
28 funded through municipal affordable housing development fees, or
29 the "New Jersey Affordable Housing Trust Fund."

30 The bill provides that any such agreement may require the
31 housing sponsor to pay to the municipality an amount up to 20
32 percent of the annual gross revenue from each housing project for
33 each year of operation of the agreement following the substantial
34 completion of the housing project. Agreements negotiated between
35 a housing sponsor and a municipality are to be submitted to the
36 Commissioner of Community Affairs for review. While allowing
37 some exception, the bill would provide that a tax exemption granted
38 under the bill could extend no longer than the date on which an
39 eligible loan made for the project is paid in full.

[First Reprint]

SENATE, No. 2312

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JANUARY 25, 2024

Senator BRIAN P. STACK

District 33 (Hudson)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Allows projects supported by State or municipal affordable housing trust fund to be exempt from property tax and to instead contribute to municipal services by making payments in lieu of taxation.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on March 11, 2024, with amendments.



(Sponsorship Updated As Of: 1/25/2024)

1 AN ACT authorizing municipalities to grant tax exemptions and
2 negotiate payments in lieu of taxation for housing projects and
3 programs supported by the State or municipal affordable housing
4 trust fund, and amending P.L.1985, c.222 and P.L.2008, c.46.

5

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

8

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

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

37 a. Except as permitted pursuant to subsection g. of this section,
38 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the
39 commissioner shall award grants or loans from this fund for
40 housing projects and programs in municipalities whose housing
41 elements have received substantive certification from the council, in
42 municipalities receiving State aid pursuant to P.L.1978, c.14
43 (C.52:27D-178 et seq.), in municipalities subject to a builder's
44 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328),
45 or in receiving municipalities in cases where the council has

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 SBA committee amendments adopted March 11, 2024.

1 approved a regional contribution agreement and a project plan
2 developed by the receiving municipality.

3 Of those monies deposited into the "New Jersey Affordable
4 Housing Trust Fund" that are derived from municipal development
5 fee trust funds, or from available collections of Statewide non-
6 residential development fees, a priority for funding shall be
7 established for projects in municipalities that have petitioned the
8 council for substantive certification.

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

12 b. (1) The commissioner shall establish rules and regulations
13 governing the qualifications of applicants, the application
14 procedures, and the criteria for awarding grants and loans and the
15 standards for establishing the amount, terms, and conditions of each
16 grant or loan.

17 (2) The governing body of a municipality in which a housing
18 project or program is located, and which is awarded a grant or loan
19 from the fund for a housing project or program, may provide, by
20 ordinance ¹[or resolution as appropriate]¹, that the units of
21 affordable housing being developed ¹or preserved¹ pursuant to a
22 housing project or program being funded, in whole or in part,
23 through the "New Jersey Affordable Housing Trust Fund" shall be
24 exempt from real property taxation if the housing sponsor enters
25 into an agreement with the municipality for payments to the
26 municipality in lieu of taxes for municipal services. Any such
27 agreement may require the housing sponsor to pay to the
28 municipality an amount up to 20 percent of the annual gross
29 revenue from each housing project situated on such real property
30 for each year of operation of the agreement following the
31 substantial completion of the housing project. ¹Any such agreement
32 shall require the housing sponsor to pay the municipality an amount
33 not less than the greater of four percent of the annual gross revenue
34 or the amount of the taxes attributable to the land value component
35 of the property comprising the project site for the year preceding
36 the recording of the mortgage, if applicable. In the case of a
37 property assessed under the "Farmland Assessment Act of 1964,"
38 P.L.1964, c.48 (C.54:4-23.1 et seq.), the minimum amount the
39 housing sponsor shall be required to pay to the municipality shall be
40 four percent of the annual gross revenue.¹ For the purpose of this
41 subsection, "annual gross revenue" means the total annual gross
42 rental or carrying charge and other income of a housing sponsor
43 from a housing project. If an agreement is entered into from the
44 date of recording the mortgage on the housing project to the date of
45 substantial completion of the housing project, the annual amount
46 payable to the municipality as taxes or as payments in lieu of taxes
47 in respect of the project site shall not be in excess of the amount of
48 taxes on the project site for the year preceding the recording of the

1 mortgage. ¹[An agreement between a housing sponsor and a
2 municipality entered into pursuant to this subsection shall be
3 submitted to the commissioner for review in order to avoid
4 duplicating, overlapping or inconsistent regulations or provisions.]
5 Within 30 calendar days following: the effective date of an
6 ordinance adopted by a municipal governing body approving a tax
7 exemption under this subsection; or the execution of a financial
8 agreement between a housing sponsor and a municipality entered
9 into pursuant to this subsection, whichever is later, the municipal
10 clerk shall electronically transmit a certified copy of the ordinance
11 and the agreement to the Director of the Division of Local
12 Government Services in such a manner as may be specified by the
13 director.¹ An exemption from taxation provided pursuant to this
14 subsection shall not extend beyond the date on which an eligible
15 loan made for the project is paid in full.

16 (3) Notwithstanding the provisions of any law or regulation
17 '[in] to' the contrary, the governing body of a municipality may
18 agree to continue a tax exemption for a State, federally, or
19 municipally subsidized housing project beyond the date on which
20 an eligible loan made for the project is fully paid, or beyond the
21 date upon which a tax exemption expires, '[if] for any period' the
22 project remains subject to affordability controls pursuant to:

23 (a) project-based federal rental assistance, authorized pursuant
24 to section 8 of the United States Housing Act of 1937 (42 U.S.C.
25 s.1437f), or other federal or State project-based assistance;

26 (b) the Uniform Housing Affordability Controls promulgated by
27 the New Jersey Housing and Mortgage Finance Agency; or

28 (c) the rent and income limits established by the federal Low
29 Income Housing Tax Credit program pursuant to section 42 of the
30 Internal Revenue Code (26 U.S.C. s.42).

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

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

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

45 (2) Creation of accessory apartments to be occupied by low and
46 moderate income households;

1 (3) Conversion of non-residential space to residential purposes;
2 provided a substantial percentage of the resulting housing units are
3 to be occupied by low and moderate income households;

4 (4) Acquisition of real property, demolition and removal of
5 buildings, or construction of new housing that will be occupied by
6 low and moderate income households, or any combination thereof;

7 (5) Grants of assistance to eligible municipalities for costs of
8 necessary studies, surveys, plans, and permits; engineering,
9 architectural, and other technical services; costs of land acquisition
10 and any buildings thereon; and costs of site preparation, demolition,
11 and infrastructure development for projects undertaken pursuant to
12 an approved regional contribution agreement;

13 (6) Assistance to a local housing authority, nonprofit or limited
14 dividend housing corporation, or association or a qualified entity
15 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for
16 rehabilitation or restoration of housing units which it administers
17 which: (a) are unusable or in a serious state of disrepair; (b) can be
18 restored in an economically feasible and sound manner; and (c) can
19 be retained in a safe, decent, and sanitary manner, upon completion
20 of rehabilitation or restoration; and

21 (7) Other housing programs for low and moderate income
22 housing, including, without limitation, (a) infrastructure projects
23 directly facilitating the construction of low and moderate income
24 housing not to exceed a reasonable percentage of the construction
25 costs of the low and moderate income housing to be provided and
26 (b) alteration of dwelling units occupied or to be occupied by
27 households of low or moderate income and the common areas of the
28 premises in which they are located in order to make them accessible
29 to persons with disabilities.

30 e. Any grant or loan agreement entered into pursuant to this
31 section shall incorporate contractual guarantees and procedures by
32 which the division will ensure that any unit of housing provided for
33 low and moderate income households shall continue to be occupied
34 by low and moderate income households for at least 20 years
35 following the award of the loan or grant, except that the division
36 may approve a guarantee for a period of less than 20 years where
37 necessary to ensure project feasibility.

38 f. Notwithstanding the provisions of any other law, rule, or
39 regulation to the contrary, in making grants or loans under this
40 section, the department shall not require that tenants be certified as
41 low or moderate income or that contractual guarantees or deed
42 restrictions be in place to ensure continued low and moderate
43 income occupancy as a condition of providing housing assistance
44 from any program administered by the department, when that
45 assistance is provided for a project of moderate rehabilitation if the
46 project: (1) contains 30 or fewer rental units; and (2) is located in a
47 census tract in which the median household income is 60 percent or
48 less of the median income for the housing region in which the

1 census tract is located, as determined for a three person household
2 by the council in accordance with the latest federal decennial
3 census. A list of eligible census tracts shall be maintained by the
4 department and shall be adjusted upon publication of median
5 income figures by census tract after each federal decennial census.

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

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

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

41

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

44 8. a. (1) The council may authorize a municipality that has
45 petitioned for substantive certification, or that has been so
46 authorized by a court of competent jurisdiction, and which has
47 adopted a municipal development fee ordinance to impose and
48 collect development fees from developers of residential property, in

1 accordance with rules promulgated by the council. Each amount
2 collected shall be deposited and shall be accounted for separately,
3 by payer and date of deposit.

4 (2) A municipality may not spend or commit to spend any
5 affordable housing development fees, including Statewide non-
6 residential fees collected and deposited into the municipal
7 affordable housing trust fund, without first obtaining the council's
8 approval of the expenditure. The council shall promulgate
9 regulations regarding the establishment, administration and
10 enforcement of the expenditure of affordable housing development
11 fees by municipalities. The council shall have exclusive
12 jurisdiction regarding the enforcement of these regulations,
13 provided that any municipality which is not in compliance with the
14 regulations adopted by the council may be subject to forfeiture of
15 any or all funds remaining within its municipal trust fund. Any
16 funds so forfeited shall be deposited into the "New Jersey
17 Affordable Housing Trust Fund" established pursuant to section 20
18 of P.L.1985, c.222 (C.52:27D-320).

19 (3) The governing body of a municipality which is spending or
20 committing to spend affordable housing development fees may
21 provide, by ordinance ¹[or resolution as appropriate]¹, that the
22 units of affordable housing being developed ¹or preserved¹ pursuant
23 to a housing project or program being funded, in whole or in part,
24 through affordable housing development fees shall be exempt from
25 real property taxation if the housing sponsor enters into an
26 agreement with the municipality for payments to the municipality in
27 lieu of taxes for municipal services. Any such agreement may
28 require the housing sponsor to pay to the municipality an amount up
29 to 20 percent of the annual gross revenue from each housing project
30 situated on such real property for each year of operation of the
31 agreement following the substantial completion of the housing
32 project. ¹Any such agreement shall require the housing sponsor to
33 pay the municipality an amount not less than the greater of four
34 percent of the annual gross revenue or the amount of the taxes
35 attributable to the land value component of the property comprising
36 the project site for the year preceding the recording of the mortgage,
37 if applicable. In the case of a property assessed under the
38 "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et
39 seq.), the minimum amount the housing sponsor shall be required to
40 pay to the municipality shall be four percent of the annual gross
41 revenue.¹ For the purpose of this subsection, "annual gross
42 revenue" means the total annual gross rental or carrying charge and
43 other income of a housing sponsor from a housing project. If an
44 agreement is entered into from the date of recording the mortgage
45 on the housing project to the date of substantial completion of the
46 housing project, the annual amount payable to the municipality as
47 taxes or as payments in lieu of taxes in respect of the project site
48 shall not be in excess of the amount of taxes on the project site for

1 the year preceding the recording of the mortgage. ¹ [An agreement
2 between a housing sponsor and a municipality entered into pursuant
3 to this subsection shall be submitted to the commissioner for review
4 in order to avoid duplicating, overlapping or inconsistent
5 regulations or provisions.] Within 30 calendar days following: the
6 effective date of an ordinance adopted by a municipal governing
7 body approving a tax exemption under this subsection; or the
8 execution of a financial agreement between a housing sponsor and a
9 municipality entered into pursuant to this subsection, whichever is
10 later, the municipal clerk shall electronically transmit a certified
11 copy of the ordinance and the agreement to the Director of the
12 Division of Local Government Services in such a manner as may be
13 specified by the director.¹ An exemption from taxation provided in
14 accordance with this subsection shall not extend beyond the date on
15 which an eligible loan made for the project is paid in full.

16 (4) Notwithstanding the provisions of any law or regulation
17 ¹[in] to¹ the contrary, the governing body of a municipality may
18 agree to continue ¹or grant¹ a ¹new¹ tax exemption for a State,
19 federally, or municipally subsidized housing project beyond the
20 date on which an eligible loan made for the project is fully paid, or
21 beyond the date upon which a tax exemption expires, ¹[if] for any
22 period¹ the project remains subject to affordability controls
23 pursuant to:

24 (a) project-based federal rental assistance, authorized pursuant
25 to section 8 of the United States Housing Act of 1937 (42 U.S.C.
26 s.1437f), or other federal or State project-based assistance;

27 (b) the Uniform Housing Affordability Controls promulgated by
28 the New Jersey Housing and Mortgage Finance Agency; or

29 (c) the rent and income limits established by the federal Low
30 Income Housing Tax Credit program pursuant to section 42 of the
31 Internal Revenue Code (26 U.S.C. s.42).

32 b. A municipality shall deposit all fees collected, whether or
33 not such collections were derived from fees imposed upon non-
34 residential or residential construction into a trust fund dedicated to
35 those purposes as required under this section, and such additional
36 purposes as may be approved by the council.

37 c. (1) A municipality may only spend development fees for an
38 activity approved by the council to address the municipal fair share
39 obligation.

40 (2) Municipal development trust funds shall not be expended to
41 reimburse municipalities for activities which occurred prior to the
42 authorization of a municipality to collect development fees.

43 (3) A municipality shall set aside a portion of its development
44 fee trust fund for the purpose of providing affordability assistance
45 to low and moderate income households in affordable units
46 included in a municipal fair share plan, in accordance with rules of
47 the council.

1 (a) Affordability assistance programs may include down
2 payment assistance, security deposit assistance, low interest loans,
3 common maintenance expenses for units located in condominiums,
4 rental assistance, and any other program authorized by the council.

5 (b) Affordability assistance to households earning 30 percent or
6 less of median income may include buying down the cost of low
7 income units in a municipal fair share plan to make them affordable
8 to households earning 30 percent or less of median income. The
9 use of development fees in this manner shall not entitle a
10 municipality to bonus credits except as may be provided by the
11 rules of the council.

12 (4) A municipality may contract with a private or public entity
13 to administer any part of its housing element and fair share plan,
14 including the requirement for affordability assistance, or any
15 program or activity for which the municipality expends
16 development fee proceeds, in accordance with rules of the council.

17 (5) Not more than 20 percent of the revenues collected from
18 development fees shall be expended on administration, in
19 accordance with rules of the council.

20 d. The council shall establish a time by which all development
21 fees collected within a calendar year shall be expended; provided,
22 however, that all fees shall be committed for expenditure within
23 four years from the date of collection. A municipality that fails to
24 commit to expend the balance required in the development fee trust
25 fund by the time set forth in this section shall be required by the
26 council to transfer the remaining unspent balance at the end of the
27 four-year period to the "New Jersey Affordable Housing Trust
28 Fund," established pursuant to section 20 of P.L.1985, c.222
29 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et
30 al.), to be used in the housing region of the transferring
31 municipality for the authorized purposes of that fund.

32 e. Notwithstanding any provision of this section, or regulations
33 of the council, a municipality shall not collect a development fee
34 from a developer whenever that developer is providing for the
35 construction of affordable units, either on-site or elsewhere within
36 the municipality.

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

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

43

44 3. This act shall take effect immediately.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 2312

STATE OF NEW JERSEY

DATED: JANUARY 25, 2024

The Senate Community and Urban Affairs Committee reports favorably Senate Bill No. 2312.

The bill allows a municipal governing body to provide that an affordable housing unit, developed pursuant to a housing project or program supported by State or municipal affordable housing trust funds, is exempt from property taxation if the housing sponsor contributes to municipal services by making payments in lieu of taxation.

The bill amends the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), to authorize the governing body of a municipality in which a housing project or program is located, and which is granted or loaned monies from the "New Jersey Affordable Housing Trust Fund," to provide that the project is exempt from real property taxation if the municipality and the housing sponsor negotiate an agreement providing for payments to the municipality in lieu of taxes for municipal services.

The bill also authorizes the governing body of a municipality to provide that a housing project or program which is funded through municipal affordable housing development fees is exempt from real property taxation if the municipality and the housing sponsor negotiate an agreement providing for payments to the municipality in lieu of taxes for municipal.

The bill provides that an agreement may require the housing sponsor to pay to the municipality an amount up to 20 percent of the annual gross revenue from each housing project for each year of operation of the agreement following the substantial completion of the housing project. Agreements negotiated between a housing sponsor and a municipality are to be submitted to the Commissioner of Community Affairs for review. While allowing some exception, the bill provides that a tax exemption granted under the bill could extend no longer than the date on which an eligible loan made for the project is paid in full.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2312

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. 2312.

As amended and reported by the committee, this bill allows a municipal governing body to provide that an affordable housing unit, developed or preserved pursuant to a housing project or program supported by State or municipal affordable housing trust funds, is exempt from property taxation if the housing sponsor contributes to municipal services by providing for payment in lieu of taxation (PILOT).

The bill amends the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), to authorize the governing body of a municipality in which a housing project or program is located, and which is granted or loaned monies from the "New Jersey Affordable Housing Trust Fund," to provide that the project is exempt from real property taxation if the municipality and the housing sponsor negotiate a PILOT agreement, as specified in the bill.

The bill also authorizes the governing body of a municipality to provide that a housing project or program which is funded through municipal affordable housing development fees is exempt from real property taxation if the municipality and the housing sponsor negotiate a PILOT agreement, as specified in the bill.

The bill provides that a PILOT agreement may require the housing sponsor to pay to the municipality an amount up to 20 percent of the annual gross revenue from each housing project for each year of operation of the agreement following the substantial completion of the housing project. Agreements negotiated between a housing sponsor and a municipality are to be submitted to the Commissioner of Community Affairs for review. While allowing some exception, the bill provides that a tax exemption granted under the bill could extend no longer than the date on which an eligible loan made for the project is paid in full. As amended and reported by the committee, Senate Bill No. 2312 is identical to Assembly Bill No. 3337 (1R), which was also reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- provide that a municipal governing body is to provide for a tax abatement and a PILOT by adoption of an ordinance, rather than an ordinance or resolution;
- extend the bill's provisions to apply to the preservation of affordable housing as well as the production of affordable housing;
- require a PILOT agreement to require the housing sponsor to pay the municipality an amount not less than the greater of either four percent of the annual gross revenue or the amount of the taxes attributable to the land value component of the project site for the year preceding the recording of the mortgage, if applicable;
- provide that, in the case of a property assessed under the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.), the minimum amount paid to the municipality would be four percent of the annual gross revenue;
- make changes related to notices provided by the municipality under the bill; and
- make other limited and technical changes.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

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."