



**SENATE, No. 1319**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED MAY 18, 2000

**Sponsored by:**  
**Senator JOHN O. BENNETT**  
**District 12 (Monmouth)**

**SYNOPSIS**

Increases certification period governing COAH from six to ten years under "Fair Housing Act."

**CURRENT VERSION OF TEXT**

As introduced.



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2

1 AN ACT concerning affordable housing, amending and supplementing  
2 P.L.1985, c.222.

3

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

6

7 1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to  
8 read as follows:

9 7. It shall be the duty of the council, seven months after the  
10 confirmation of the last member initially appointed to the council, or  
11 January 1, 1986, whichever is earlier, and from time to time thereafter,  
12 to:

13 a. Determine housing regions of the State;

14 b. Estimate the present and prospective need for low and  
15 moderate income housing at the State and regional levels;

16 c. Adopt criteria and guidelines for:

17 (1) Municipal determination of its present and prospective fair  
18 share of the housing need in a given region. Municipal fair share shall  
19 be determined after crediting on a one-to-one basis each current unit  
20 of low and moderate income housing of adequate standard, including  
21 any such housing constructed or acquired as part of a housing program  
22 specifically intended to provide housing for low and moderate income  
23 households. Notwithstanding any other law to the contrary, a  
24 municipality shall be entitled to a credit for a unit if it demonstrates  
25 that (a) the municipality issued a certificate of occupancy for the unit,  
26 which was either newly constructed or rehabilitated between April 1,  
27 1980 and December 15, 1986; (b) a construction code official certifies,  
28 based upon a visual exterior survey, that the unit is in compliance with  
29 pertinent construction code standards with respect to structural  
30 elements, roofing, siding, doors and windows; (c) the household  
31 occupying the unit certifies in writing, under penalty of perjury, that  
32 it receives no greater income than that established pursuant to section  
33 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for moderate income  
34 housing; and (d) the unit for which credit is sought is affordable to low  
35 and moderate income households under the standards established by  
36 the council at the time of filing of the petition for substantive  
37 certification. It shall be sufficient if the certification required in  
38 subparagraph (c) is signed by one member of the household. A  
39 certification submitted pursuant to this paragraph shall be reviewable  
40 only by the council or its staff and shall not be a public record;

41 Nothing in P.L.1995, c.81 shall affect the validity of substantive  
42 certification granted by the council prior to November 21, 1994, or to  
43 a judgment of compliance entered by any court of competent

**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 jurisdiction prior to that date. Additionally, any municipality that  
2 received substantive certification or a judgment of compliance prior to  
3 November 21, 1994 and filed a motion prior to November 21, 1994 to  
4 amend substantive certification or a judgment of compliance for the  
5 purpose of obtaining credits, shall be entitled to a determination of its  
6 right to credits pursuant to the standards established by the Legislature  
7 prior to P.L.1995, c.81. Any municipality that filed a motion prior to  
8 November 21, 1994 for the purpose of obtaining credits, which motion  
9 was supported by the results of a completed survey performed  
10 pursuant to council rules, shall be entitled to a determination of its  
11 right to credits pursuant to the standards established by the Legislature  
12 prior to P.L.1995, c.81;

13 (2) Municipal adjustment of the present and prospective fair share  
14 based upon available vacant and developable land, infrastructure  
15 considerations or environmental or historic preservation factors and  
16 adjustments shall be made whenever:

17 (a) The preservation of historically or important architecture and  
18 sites and their environs or environmentally sensitive lands may be  
19 jeopardized,

20 (b) The established pattern of development in the community  
21 would be drastically altered,

22 (c) Adequate land for recreational, conservation or agricultural and  
23 farmland preservation purposes would not be provided,

24 (d) Adequate open space would not be provided,

25 (e) The pattern of development is contrary to the planning  
26 designations in the State Development and Redevelopment Plan  
27 prepared pursuant to sections 1 through 12 of P.L.1985, c.398  
28 (C.52:18A-196 et seq.),

29 (f) Vacant and developable land is not available in the  
30 municipality, and

31 (g) Adequate public facilities and infrastructure capacities are not  
32 available, or would result in costs prohibitive to the public if provided;  
33 and

34 (3) (Deleted by amendment, P.L.1993, c.31);

35 d. Provide population and household projections for the State and  
36 housing regions;

37 e. In its discretion, place a limit, based on a percentage of existing  
38 housing stock in a municipality and any other criteria including  
39 employment opportunities which the council deems appropriate, upon  
40 the aggregate number of units which may be allocated to a  
41 municipality as its fair share of the region's present and prospective  
42 need for low and moderate income housing. No municipality shall be  
43 required to address a fair share beyond 1,000 units within **[six]** ten  
44 years from the grant of substantive certification, unless it is  
45 demonstrated, following objection by an interested party and an  
46 evidentiary hearing, based upon the facts and circumstances of the

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1 affected municipality that it is likely that the municipality through its  
2 zoning powers could create a realistic opportunity for more than 1,000  
3 low and moderate income units within that [six-year] ten-year period.  
4 For the purposes of this section, the facts and circumstances which  
5 shall determine whether a municipality's fair share shall exceed 1,000  
6 units, as provided above, shall be a finding that the municipality has  
7 issued more than 5,000 certificates of occupancy for residential units  
8 in the [six-year] ten-year period preceding the petition for substantive  
9 certification in connection with which the objection was filed.

10 For the purpose of crediting low and moderate income housing  
11 units in order to arrive at a determination of present and prospective  
12 fair share, as set forth in paragraph (1) of subsection c. of this section,  
13 housing units comprised in a community residence for the  
14 developmentally disabled, as defined in section 2 of P.L.1977, c.448  
15 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or  
16 to be promulgated by the council, to the extent that the units are  
17 affordable to persons of low and moderate income and are available to  
18 the general public.

19 In carrying out the above duties, including, but not limited to,  
20 present and prospective need estimations the council shall give  
21 appropriate weight to pertinent research studies, government reports,  
22 decisions of other branches of government, implementation of the  
23 State Development and Redevelopment Plan prepared pursuant to  
24 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and  
25 public comment. To assist the council, the State Planning Commission  
26 established under that act shall provide the council annually with  
27 economic growth, development and decline projections for each  
28 housing region for the next [six] ten years. The council shall develop  
29 procedures for periodically adjusting regional need based upon the low  
30 and moderate income housing that is provided in the region through  
31 any federal, State, municipal or private housing program.  
32 (cf: P.L.1995, c.344, s.1)

33  
34 2. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to  
35 read as follows:

36 10. A municipality's housing element shall be designed to achieve  
37 the goal of access to affordable housing to meet present and  
38 prospective housing needs, with particular attention to low and  
39 moderate income housing, and shall contain at least:

40 a. An inventory of the municipality's housing stock by age,  
41 condition, purchase or rental value, occupancy characteristics, and  
42 type, including the number of units affordable to low and moderate  
43 income households and substandard housing capable of being  
44 rehabilitated, and in conducting this inventory the municipality shall  
45 have access, on a confidential basis for the sole purpose of conducting  
46 the inventory, to all necessary property tax assessment records and

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- 1 information in the assessor's office, including but not limited to the  
2 property record cards;
- 3 b. A projection of the municipality's housing stock, including the  
4 probable future construction of low and moderate income housing, for  
5 the next ~~[six]~~ ten years, taking into account, but not necessarily  
6 limited to, construction permits issued, approvals of applications for  
7 development and probable residential development of lands;
- 8 c. An analysis of the municipality's demographic characteristics,  
9 including but not necessarily limited to, household size, income level  
10 and age;
- 11 d. An analysis of the existing and probable future employment  
12 characteristics of the municipality;
- 13 e. A determination of the municipality's present and prospective  
14 fair share for low and moderate income housing and its capacity to  
15 accommodate its present and prospective housing needs, including its  
16 fair share for low and moderate income housing; and
- 17 f. A consideration of the lands that are most appropriate for  
18 construction of low and moderate income housing and of the existing  
19 structures most appropriate for conversion to, or rehabilitation for,  
20 low and moderate income housing, including a consideration of lands  
21 of developers who have expressed a commitment to provide low and  
22 moderate income housing.  
23 (cf: P.L.1985, c.222, s.10)

24

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

27 11. a. In adopting its housing element, the municipality may  
28 provide for its fair share of low and moderate income housing by  
29 means of any technique or combination of techniques which provide  
30 a realistic opportunity for the provision of the fair share. The housing  
31 element shall contain an analysis demonstrating that it will provide  
32 such a realistic opportunity, and the municipality shall establish that its  
33 land use and other relevant ordinances have been revised to  
34 incorporate the provisions for low and moderate income housing. In  
35 preparing the housing element, the municipality shall consider the  
36 following techniques for providing low and moderate income housing  
37 within the municipality, as well as such other techniques as may be  
38 published by the council or proposed by the municipality:

39 (1) Rezoning for densities necessary to assure the economic  
40 viability of any inclusionary developments, either through mandatory  
41 set-asides or density bonuses, as may be necessary to meet all or part  
42 of the municipality's fair share;

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

45 (3) Determination of measures that the municipality will take to  
46 assure that low and moderate income units remain affordable to low

1 and moderate income households for an appropriate period of not less  
2 than six years;

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

6 (5) Donation or use of municipally owned land or land condemned  
7 by the municipality for purposes of providing low and moderate  
8 income housing;

9 (6) Tax abatements for purposes of providing low and moderate  
10 income housing;

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

13 (8) Utilization of municipally generated funds toward the  
14 construction of low and moderate income housing.

15 b. The municipality may provide for a phasing schedule for the  
16 achievement of its fair share of low and moderate income housing  
17 which is not inconsistent with section 23 of [this act] P.L.1985, c.222  
18 (C.52:27D-323).

19 c. The municipality may propose that a portion of its fair share be  
20 met through a regional contribution agreement. The housing element  
21 shall demonstrate, however, the manner in which that portion will be  
22 provided within the municipality if the regional contribution agreement  
23 is not entered into. The municipality shall provide a statement of its  
24 reasons for the proposal.

25 d. Nothing in [this act] P.L.1985, c.222 shall require a  
26 municipality to raise or expend municipal revenues in order to provide  
27 low and moderate income housing.

28 e. When a municipality's housing element includes the provision of  
29 rental housing units in a community residence for the developmentally  
30 disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2),  
31 which will be affordable to persons of low and moderate income, and  
32 for which adequate measures to retain such affordability pursuant to  
33 paragraph (3) of subsection a. of this section are included in the  
34 housing element, those housing units shall be fully credited as  
35 permitted under the rules of the council towards the fulfillment of the  
36 municipality's fair share of low and moderate income housing.

37 f. It having been determined by the Legislature that the provision  
38 of housing under this act is a public purpose, a municipality or  
39 municipalities may utilize public monies to make donations, grants or  
40 loans of public funds for the rehabilitation of deficient housing units  
41 and the provision of new or substantially rehabilitated housing for low  
42 and moderate income persons, providing that any private advantage is  
43 incidental.

44 (cf: P.L.1998, c.89, c.1)

45

46 4. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to

1 read as follows:

2 12. a. A municipality may propose the transfer of up to 50% of its  
3 fair share to another municipality within its housing region by means  
4 of a contractual agreement into which two municipalities voluntarily  
5 enter. A municipality may also propose a transfer by contracting with  
6 the agency or another governmental entity designated by the council  
7 if the council determines that the municipality has exhausted all  
8 possibilities within its housing region. A municipality proposing to  
9 transfer to another municipality, whether directly or by means of a  
10 contract with the agency or another governmental entity designated by  
11 the council, shall provide the council with the housing element and  
12 statement required under subsection c. of section 11 of P.L.1985,  
13 c.222 (C.52:27D-311), and shall request the council to determine a  
14 match with a municipality filing a statement of intent pursuant to  
15 subsection e. of this section. Except as provided in subsection b. of  
16 this section, the agreement may be entered into upon obtaining  
17 substantive certification under section 14 of P.L.1985, c.222  
18 (C.52:27D-314), or anytime thereafter. The regional contribution  
19 agreement entered into shall specify how the housing shall be provided  
20 by the second municipality, hereinafter the receiving municipality, and  
21 the amount of contributions to be made by the first municipality,  
22 hereinafter the sending municipality.

23 b. A municipality which is a defendant in an exclusionary zoning  
24 suit and which has not obtained substantive certification pursuant to  
25 [this act] P.L.1985, c.222 may request the court to be permitted to  
26 fulfill a portion of its fair share by entering into a regional contribution  
27 agreement. If the court believes the request to be reasonable, the  
28 court shall request the council to review the proposed agreement and  
29 to determine a match with a receiving municipality or municipalities  
30 pursuant to this section. The court may establish time limitations for  
31 the council's review, and shall retain jurisdiction over the matter during  
32 the period of council review. If the court determines that the  
33 agreement provides a realistic opportunity for the provision of low and  
34 moderate income housing within the housing region, it shall provide  
35 the sending municipality a credit against its fair share for housing to be  
36 provided through the agreement in the manner provided in this section.

37 The agreement shall be entered into prior to the entry of a final  
38 judgment in the litigation. In cases in which a final judgment was  
39 entered prior to the date [this act] P.L.1985, c.222 takes effect and  
40 in which an appeal is pending, a municipality may request  
41 consideration of a regional contribution agreement; provided that it is  
42 entered into within 120 days after [this act] P.L.1985, c.222 takes  
43 effect. In a case in which a final judgment has been entered, the court  
44 shall consider whether or not the agreement constitutes an expeditious  
45 means of providing part of the fair share.

46 c. Regional contribution agreements shall be approved by the



1 council, after review by the county planning board or agency of the  
2 county in which the receiving municipality is located. The council  
3 shall determine whether or not the agreement provides a realistic  
4 opportunity for the provision of low and moderate income housing  
5 within convenient access to employment opportunities. The council  
6 shall refer the agreement to the county planning board or agency which  
7 shall review whether or not the transfer agreement is in accordance  
8 with sound, comprehensive regional planning. In its review, the  
9 county planning board or agency shall consider the master plan and  
10 zoning ordinance of the sending and receiving municipalities, its own  
11 county master plan, and the State development and redevelopment  
12 plan. In the event that there is no county planning board or agency in  
13 the county in which the receiving municipality is located, the council  
14 shall also determine whether or not the agreement is in accordance  
15 with sound, comprehensive regional planning. After it has been  
16 determined that the agreement provides a realistic opportunity for low  
17 and moderate income housing within convenient access to employment  
18 opportunities, and that the agreement is consistent with sound,  
19 comprehensive regional planning, the council shall approve the  
20 regional contribution agreement by resolution. All determinations of  
21 a county planning board or agency shall be in writing and shall be  
22 made within such time limits as the council may prescribe, beyond  
23 which the council shall make those determinations and no fee shall be  
24 paid to the county planning board or agency pursuant to this  
25 subsection.

26 d. In approving a regional contribution agreement, the council shall  
27 set forth in its resolution a schedule of the contributions to be  
28 appropriated annually by the sending municipality. A copy of the  
29 adopted resolution shall be filed promptly with the Director of the  
30 Division of Local Government Services in the Department of  
31 Community Affairs, and the director shall thereafter not approve an  
32 annual budget of a sending municipality if it does not include  
33 appropriations necessary to meet the terms of the resolution. Amounts  
34 appropriated by a sending municipality for a regional contribution  
35 agreement pursuant to this section are exempt from the limitations or  
36 increases in final appropriations imposed under P.L.1976, c.68  
37 (C.40A:4-45.1 et seq.).

38 e. The council shall maintain current lists of municipalities which  
39 have stated an intent to enter into regional contribution agreements as  
40 receiving municipalities, and shall establish procedures for filing  
41 statements of intent with the council. No receiving municipality shall  
42 be required to accept a greater number of low and moderate income  
43 units through an agreement than it has expressed a willingness to  
44 accept in its statement, but the number stated shall not be less than a  
45 reasonable minimum number of units, not to exceed 100, as established  
46 by the council. The council shall require a project plan from a

1 receiving municipality prior to the entering into of the agreement, and  
2 shall submit the project plan to the agency for its review as to the  
3 feasibility of the plan prior to the council's approval of the agreement.  
4 The agency may recommend and the council may approve as part of  
5 the project plan a provision that the time limitations for contractual  
6 guarantees or resale controls for low and moderate income units  
7 included in the project shall be less than 30 years, if it is determined  
8 that modification is necessary to assure the economic viability of the  
9 project.

10 f. The council shall establish guidelines for the duration and  
11 amount of contributions in regional contribution agreements. In doing  
12 so, the council shall give substantial consideration to the average of:  
13 (1) the median amount required to rehabilitate a low and moderate  
14 income unit up to code enforcement standards; (2) the average internal  
15 subsidization required for a developer to provide a low income  
16 housing unit in an inclusionary development; (3) the average internal  
17 subsidization required for a developer to provide a moderate income  
18 housing unit in an inclusionary development. Contributions may be  
19 prorated in municipal appropriations occurring over a period not to  
20 exceed ~~[six]~~ ten years and may include an amount agreed upon to  
21 compensate or partially compensate the receiving municipality for  
22 infrastructure or other costs generated to the receiving municipality by  
23 the development. Appropriations shall be made and paid directly to  
24 the receiving municipality or municipalities or to the agency or other  
25 governmental entity designated by the council, as the case may be.

26 g. The council shall require receiving municipalities to file annual  
27 reports with the agency setting forth the progress in implementing a  
28 project funded under a regional contribution agreement, and the  
29 agency shall provide the council with its evaluation of each report.  
30 The council shall take such actions as may be necessary to enforce a  
31 regional contribution agreement with respect to the timely  
32 implementation of the project by the receiving municipality.

33 (cf: P.L.1995, c.83, s.2)

34

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

37 13. a. A municipality which has filed a housing element may, at  
38 any time during a two-year period following the filing of the housing  
39 element, petition the council for a ten-year substantive certification of  
40 its element and ordinances or institute an action for declaratory  
41 judgment granting it ~~[six-year]~~ ten-year repose in the Superior Court.  
42 The municipality shall publish notice of its petition in a newspaper of  
43 general circulation within the municipality and county and shall make  
44 available to the public information on the element and ordinances in  
45 accordance with such procedures as the council shall establish. The  
46 council shall also establish a procedure for providing public notice of

1 each petition which it receives.

2 b. Notwithstanding the provisions of subsection a. of this section,  
3 a municipality which filed a housing element prior to the effective date  
4 of [this 1990 amendatory act] P.L.1990, c.121, shall be permitted to  
5 petition for substantive certification at any time within two years  
6 following that filing, or within one year following the effective date of  
7 [this 1990 amendatory act] P.L.1990, c.121, whichever shall result in  
8 permitting the municipality the longer period of time within which to  
9 petition.

10 (cf: P.L.1990, c.121, s.1)

11

12 6. The change in the calculation of a municipality's determination  
13 of present and prospective share of housing need as provided in  
14 P.L. , c. (pending before the Legislature as this bill) shall apply  
15 to the methodology employed by the council for the certification  
16 period beginning June 7, 2000 and thereafter.

17

18 7. This act shall take effect immediately.

19

20

21

STATEMENT

22

23 This bill would increase from six to ten years the certification  
24 period under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
25 et al.).

26 Under the "Fair Housing Act" as originally enacted, municipalities  
27 were to be assigned fair share housing obligations by the Council on  
28 Affordable Housing on a six year cycle, consistent with the master  
29 planning cycle provided for under the "Municipal Land Use Law,"  
30 P.L.1975, c.291 (C.40:55D-1 et seq.). At that time it seemed to make  
31 logical sense to tie the planning requirements of the two laws together,  
32 given that the municipality's fair share requirement would be provided  
33 for in the housing element of the municipal master plan, as amended  
34 by the "Fair Housing Act."

35 Fifteen years after the adoption of the "Fair Housing Act," it has  
36 become clear that since COAH's calculation of fair share housing  
37 obligations is heavily dependent on census data, it makes more sense  
38 for cycles to reflect the ten year census cycle rather than the six year  
39 master planning cycle.

40 Accordingly, this bill increases the housing cycles under the "Fair  
41 Housing Act" from six to ten years.

42 The bill does not amend the duration of the housing element under  
43 the "Municipal Land Use Law," even though it will now be the only  
44 plan element readopted outside the six year planning cycle. The  
45 current COAH housing cycles, however, do not necessarily correspond  
46 perfectly to each municipality's master plan reexamination schedule

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1 pursuant to 76 of P.L.1975, c.291 (C.40:55D-89). It is anticipated  
2 that since the housing plan element ties into the substantive  
3 certification process under COAH regulations, it will be periodically  
4 reexamined and updated as necessary in accordance with those  
5 regulations.

# SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

## STATEMENT TO

### **SENATE, No. 1319**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: SEPTEMBER 14, 2000

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 1319.

This bill, as amended by the committee, would increase from six to ten years the affordable housing "fair share" certification period of municipalities under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

Under current law, municipalities are assigned fair share housing obligations by the Council on Affordable Housing (COAH) on a six year cycle, which cycle is consistent with the master planning cycle provided for under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). Current law ties these two planning requirements together because a municipality's fair share requirement is provided for in the housing element of the municipal master plan.

However, because COAH's calculation of fair share housing obligations is heavily dependent on census data, it makes more sense for cycles to reflect the ten year census cycle rather than the six year master planning cycle.

Accordingly, this bill would increase the municipal fair share housing cycles under the "Fair Housing Act" from six to ten years.

The committee amended the bill to provide that a municipality's determination of its present and prospective fair share of the housing need in a given region would be computed for a ten-year period, to correspond with the ten-year certification period under the bill. The committee also amended the bill to ensure that a grant of substantive certification could not extend beyond a ten-year period starting on the date a municipality files its housing element with the council. Finally, the committee amended the bill to require the COAH to establish procedures for a realistic opportunity review at the midpoint of the certification period, and to provide notice to the public.

As amended by the committee, this bill is identical to Assembly Bill No. 2375 [2R] which is currently awaiting consideration by the General Assembly.

[First Reprint]

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED MAY 18, 2000

**Sponsored by:**

**Senator JOHN O. BENNETT**

**District 12 (Monmouth)**

**Co-Sponsored by:**

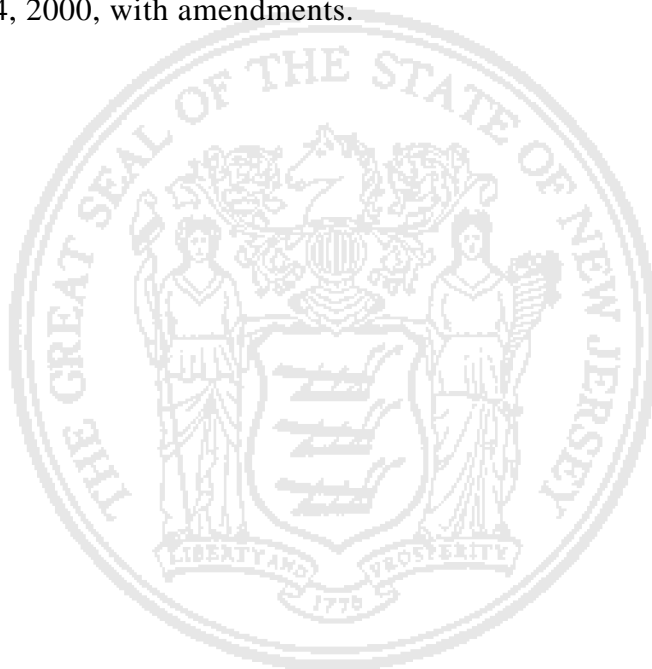
**Assemblymen Kelly, Lance and Gibson**

**SYNOPSIS**

Increases certification period governing COAH from six to ten years under "Fair Housing Act."

**CURRENT VERSION OF TEXT**

As reported by the Senate Community and Urban Affairs Committee on September 14, 2000, with amendments.



**(Sponsorship Updated As Of: 1/8/2002)**

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34 c.222 (C.52:27D-304) to qualify for moderate income housing; and (d)  
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42 Nothing in P.L.1995, c.81 shall affect the validity of substantive

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**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate SCU committee amendments adopted September 14, 2000.

1 certification granted by the council prior to November 21, 1994, or to  
2 a judgment of compliance entered by any court of competent  
3 jurisdiction prior to that date. Additionally, any municipality that  
4 received substantive certification or a judgment of compliance prior to  
5 November 21, 1994 and filed a motion prior to November 21, 1994 to  
6 amend substantive certification or a judgment of compliance for the  
7 purpose of obtaining credits, shall be entitled to a determination of its  
8 right to credits pursuant to the standards established by the Legislature  
9 prior to P.L.1995, c.81. Any municipality that filed a motion prior to  
10 November 21, 1994 for the purpose of obtaining credits, which motion  
11 was supported by the results of a completed survey performed  
12 pursuant to council rules, shall be entitled to a determination of its  
13 right to credits pursuant to the standards established by the Legislature  
14 prior to P.L.1995, c.81;

15 (2) Municipal adjustment of the present and prospective fair share  
16 based upon available vacant and developable land, infrastructure  
17 considerations or environmental or historic preservation factors and  
18 adjustments shall be made whenever:

19 (a) The preservation of historically or important architecture and  
20 sites and their environs or environmentally sensitive lands may be  
21 jeopardized,

22 (b) The established pattern of development in the community  
23 would be drastically altered,

24 (c) Adequate land for recreational, conservation or agricultural and  
25 farmland preservation purposes would not be provided,

26 (d) Adequate open space would not be provided,

27 (e) The pattern of development is contrary to the planning  
28 designations in the State Development and Redevelopment Plan  
29 prepared pursuant to sections 1 through 12 of P.L.1985, c.398  
30 (C.52:18A-196 et seq.),

31 (f) Vacant and developable land is not available in the  
32 municipality, and

33 (g) Adequate public facilities and infrastructure capacities are not  
34 available, or would result in costs prohibitive to the public if provided;  
35 and

36 (3) (Deleted by amendment, P.L.1993, c.31);

37 d. Provide population and household projections for the State and  
38 housing regions;

39 e. In its discretion, place a limit, based on a percentage of existing  
40 housing stock in a municipality and any other criteria including  
41 employment opportunities which the council deems appropriate, upon  
42 the aggregate number of units which may be allocated to a  
43 municipality as its fair share of the region's present and prospective  
44 need for low and moderate income housing. No municipality shall be  
45 required to address a fair share beyond 1,000 units within ~~[six]~~ ten  
46 years from the grant of substantive certification, unless it is



1 demonstrated, following objection by an interested party and an  
2 evidentiary hearing, based upon the facts and circumstances of the  
3 affected municipality that it is likely that the municipality through its  
4 zoning powers could create a realistic opportunity for more than 1,000  
5 low and moderate income units within that ~~[six-year]~~ ten-year period.  
6 For the purposes of this section, the facts and circumstances which  
7 shall determine whether a municipality's fair share shall exceed 1,000  
8 units, as provided above, shall be a finding that the municipality has  
9 issued more than 5,000 certificates of occupancy for residential units  
10 in the ~~[six-year]~~ ten-year period preceding the petition for substantive  
11 certification in connection with which the objection was filed.

12 For the purpose of crediting low and moderate income housing  
13 units in order to arrive at a determination of present and prospective  
14 fair share, as set forth in paragraph (1) of subsection c. of this section,  
15 housing units comprised in a community residence for the  
16 developmentally disabled, as defined in section 2 of P.L.1977, c.448  
17 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or  
18 to be promulgated by the council, to the extent that the units are  
19 affordable to persons of low and moderate income and are available to  
20 the general public.

21 In carrying out the above duties, including, but not limited to,  
22 present and prospective need estimations the council shall give  
23 appropriate weight to pertinent research studies, government reports,  
24 decisions of other branches of government, implementation of the  
25 State Development and Redevelopment Plan prepared pursuant to  
26 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and  
27 public comment. To assist the council, the State Planning Commission  
28 established under that act shall provide the council annually with  
29 economic growth, development and decline projections for each  
30 housing region for the next ~~[six]~~ ten years. The council shall develop  
31 procedures for periodically adjusting regional need based upon the low  
32 and moderate income housing that is provided in the region through  
33 any federal, State, municipal or private housing program.

34 (cf: P.L.1995, c.344, s.1)

35

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

38 10. A municipality's housing element shall be designed to achieve  
39 the goal of access to affordable housing to meet present and  
40 prospective housing needs, with particular attention to low and  
41 moderate income housing, and shall contain at least:

42 a. An inventory of the municipality's housing stock by age,  
43 condition, purchase or rental value, occupancy characteristics, and  
44 type, including the number of units affordable to low and moderate  
45 income households and substandard housing capable of being  
46 rehabilitated, and in conducting this inventory the municipality shall

1 have access, on a confidential basis for the sole purpose of conducting  
2 the inventory, to all necessary property tax assessment records and  
3 information in the assessor's office, including but not limited to the  
4 property record cards;

5 b. A projection of the municipality's housing stock, including the  
6 probable future construction of low and moderate income housing, for  
7 the next ~~[six]~~ ten years, taking into account, but not necessarily  
8 limited to, construction permits issued, approvals of applications for  
9 development and probable residential development of lands;

10 c. An analysis of the municipality's demographic characteristics,  
11 including but not necessarily limited to, household size, income level  
12 and age;

13 d. An analysis of the existing and probable future employment  
14 characteristics of the municipality;

15 e. A determination of the municipality's present and prospective  
16 fair share for low and moderate income housing and its capacity to  
17 accommodate its present and prospective housing needs, including its  
18 fair share for low and moderate income housing; and

19 f. A consideration of the lands that are most appropriate for  
20 construction of low and moderate income housing and of the existing  
21 structures most appropriate for conversion to, or rehabilitation for,  
22 low and moderate income housing, including a consideration of lands  
23 of developers who have expressed a commitment to provide low and  
24 moderate income housing.

25 (cf: P.L.1985, c.222, s.10)

26

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

29 11. a. In adopting its housing element, the municipality may  
30 provide for its fair share of low and moderate income housing by  
31 means of any technique or combination of techniques which provide  
32 a realistic opportunity for the provision of the fair share. The housing  
33 element shall contain an analysis demonstrating that it will provide  
34 such a realistic opportunity, and the municipality shall establish that its  
35 land use and other relevant ordinances have been revised to  
36 incorporate the provisions for low and moderate income housing. In  
37 preparing the housing element, the municipality shall consider the  
38 following techniques for providing low and moderate income housing  
39 within the municipality, as well as such other techniques as may be  
40 published by the council or proposed by the municipality:

41 (1) Rezoning for densities necessary to assure the economic  
42 viability of any inclusionary developments, either through mandatory  
43 set-asides or density bonuses, as may be necessary to meet all or part  
44 of the municipality's fair share;

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

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

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

8 (5) Donation or use of municipally owned land or land condemned  
9 by the municipality for purposes of providing low and moderate  
10 income housing;

11 (6) Tax abatements for purposes of providing low and moderate  
12 income housing;

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

15 (8) Utilization of municipally generated funds toward the  
16 construction of low and moderate income housing.

17 b. The municipality may provide for a phasing schedule for the  
18 achievement of its fair share of low and moderate income housing  
19 which is not inconsistent with section 23 of [this act] P.L.1985, c.222  
20 (C.52:27D-323).

21 c. The municipality may propose that a portion of its fair share be  
22 met through a regional contribution agreement. The housing element  
23 shall demonstrate, however, the manner in which that portion will be  
24 provided within the municipality if the regional contribution agreement  
25 is not entered into. The municipality shall provide a statement of its  
26 reasons for the proposal.

27 d. Nothing in [this act] P.L.1985, c.222 shall require a  
28 municipality to raise or expend municipal revenues in order to provide  
29 low and moderate income housing.

30 e. When a municipality's housing element includes the provision of  
31 rental housing units in a community residence for the developmentally  
32 disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2),  
33 which will be affordable to persons of low and moderate income, and  
34 for which adequate measures to retain such affordability pursuant to  
35 paragraph (3) of subsection a. of this section are included in the  
36 housing element, those housing units shall be fully credited as  
37 permitted under the rules of the council towards the fulfillment of the  
38 municipality's fair share of low and moderate income housing.

39 f. It having been determined by the Legislature that the provision  
40 of housing under this act is a public purpose, a municipality or  
41 municipalities may utilize public monies to make donations, grants or  
42 loans of public funds for the rehabilitation of deficient housing units  
43 and the provision of new or substantially rehabilitated housing for low  
44 and moderate income persons, providing that any private advantage is  
45 incidental.

46 (cf: P.L.1998, c.89, s.1)

1       4. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to  
2 read as follows:

3       12. a. A municipality may propose the transfer of up to 50% of its  
4 fair share to another municipality within its housing region by means  
5 of a contractual agreement into which two municipalities voluntarily  
6 enter. A municipality may also propose a transfer by contracting with  
7 the agency or another governmental entity designated by the council  
8 if the council determines that the municipality has exhausted all  
9 possibilities within its housing region. A municipality proposing to  
10 transfer to another municipality, whether directly or by means of a  
11 contract with the agency or another governmental entity designated by  
12 the council, shall provide the council with the housing element and  
13 statement required under subsection c. of section 11 of P.L.1985,  
14 c.222 (C.52:27D-311), and shall request the council to determine a  
15 match with a municipality filing a statement of intent pursuant to  
16 subsection e. of this section. Except as provided in subsection b. of  
17 this section, the agreement may be entered into upon obtaining  
18 substantive certification under section 14 of P.L.1985, c.222  
19 (C.52:27D-314), or anytime thereafter. The regional contribution  
20 agreement entered into shall specify how the housing shall be provided  
21 by the second municipality, hereinafter the receiving municipality, and  
22 the amount of contributions to be made by the first municipality,  
23 hereinafter the sending municipality.

24       b. A municipality which is a defendant in an exclusionary zoning  
25 suit and which has not obtained substantive certification pursuant to  
26 **[this act] P.L.1985, c.222** may request the court to be permitted to  
27 fulfill a portion of its fair share by entering into a regional contribution  
28 agreement. If the court believes the request to be reasonable, the  
29 court shall request the council to review the proposed agreement and  
30 to determine a match with a receiving municipality or municipalities  
31 pursuant to this section. The court may establish time limitations for  
32 the council's review, and shall retain jurisdiction over the matter during  
33 the period of council review. If the court determines that the  
34 agreement provides a realistic opportunity for the provision of low and  
35 moderate income housing within the housing region, it shall provide  
36 the sending municipality a credit against its fair share for housing to be  
37 provided through the agreement in the manner provided in this section.

38       The agreement shall be entered into prior to the entry of a final  
39 judgment in the litigation. In cases in which a final judgment was  
40 entered prior to the date **[this act] P.L.1985, c.222** takes effect and  
41 in which an appeal is pending, a municipality may request  
42 consideration of a regional contribution agreement; provided that it is  
43 entered into within 120 days after **[this act] P.L.1985, c.222** takes  
44 effect. In a case in which a final judgment has been entered, the court  
45 shall consider whether or not the agreement constitutes an expeditious  
46 means of providing part of the fair share.

1 c. Regional contribution agreements shall be approved by the  
2 council, after review by the county planning board or agency of the  
3 county in which the receiving municipality is located. The council  
4 shall determine whether or not the agreement provides a realistic  
5 opportunity for the provision of low and moderate income housing  
6 within convenient access to employment opportunities. The council  
7 shall refer the agreement to the county planning board or agency which  
8 shall review whether or not the transfer agreement is in accordance  
9 with sound, comprehensive regional planning. In its review, the  
10 county planning board or agency shall consider the master plan and  
11 zoning ordinance of the sending and receiving municipalities, its own  
12 county master plan, and the State development and redevelopment  
13 plan. In the event that there is no county planning board or agency in  
14 the county in which the receiving municipality is located, the council  
15 shall also determine whether or not the agreement is in accordance  
16 with sound, comprehensive regional planning. After it has been  
17 determined that the agreement provides a realistic opportunity for low  
18 and moderate income housing within convenient access to employment  
19 opportunities, and that the agreement is consistent with sound,  
20 comprehensive regional planning, the council shall approve the  
21 regional contribution agreement by resolution. All determinations of  
22 a county planning board or agency shall be in writing and shall be  
23 made within such time limits as the council may prescribe, beyond  
24 which the council shall make those determinations and no fee shall be  
25 paid to the county planning board or agency pursuant to this  
26 subsection.

27 d. In approving a regional contribution agreement, the council shall  
28 set forth in its resolution a schedule of the contributions to be  
29 appropriated annually by the sending municipality. A copy of the  
30 adopted resolution shall be filed promptly with the Director of the  
31 Division of Local Government Services in the Department of  
32 Community Affairs, and the director shall thereafter not approve an  
33 annual budget of a sending municipality if it does not include  
34 appropriations necessary to meet the terms of the resolution. Amounts  
35 appropriated by a sending municipality for a regional contribution  
36 agreement pursuant to this section are exempt from the limitations or  
37 increases in final appropriations imposed under P.L.1976, c.68  
38 (C.40A:4-45.1 et seq.).

39 e. The council shall maintain current lists of municipalities which  
40 have stated an intent to enter into regional contribution agreements as  
41 receiving municipalities, and shall establish procedures for filing  
42 statements of intent with the council. No receiving municipality shall  
43 be required to accept a greater number of low and moderate income  
44 units through an agreement than it has expressed a willingness to  
45 accept in its statement, but the number stated shall not be less than a  
46 reasonable minimum number of units, not to exceed 100, as established

1 by the council. The council shall require a project plan from a  
2 receiving municipality prior to the entering into of the agreement, and  
3 shall submit the project plan to the agency for its review as to the  
4 feasibility of the plan prior to the council's approval of the agreement.  
5 The agency may recommend and the council may approve as part of  
6 the project plan a provision that the time limitations for contractual  
7 guarantees or resale controls for low and moderate income units  
8 included in the project shall be less than 30 years, if it is determined  
9 that modification is necessary to assure the economic viability of the  
10 project.

11 f. The council shall establish guidelines for the duration and  
12 amount of contributions in regional contribution agreements. In doing  
13 so, the council shall give substantial consideration to the average of:  
14 (1) the median amount required to rehabilitate a low and moderate  
15 income unit up to code enforcement standards; (2) the average internal  
16 subsidization required for a developer to provide a low income  
17 housing unit in an inclusionary development; (3) the average internal  
18 subsidization required for a developer to provide a moderate income  
19 housing unit in an inclusionary development. Contributions may be  
20 prorated in municipal appropriations occurring over a period not to  
21 exceed ~~[six]~~ ten years and may include an amount agreed upon to  
22 compensate or partially compensate the receiving municipality for  
23 infrastructure or other costs generated to the receiving municipality by  
24 the development. Appropriations shall be made and paid directly to  
25 the receiving municipality or municipalities or to the agency or other  
26 governmental entity designated by the council, as the case may be.

27 g. The council shall require receiving municipalities to file annual  
28 reports with the agency setting forth the progress in implementing a  
29 project funded under a regional contribution agreement, and the  
30 agency shall provide the council with its evaluation of each report.  
31 The council shall take such actions as may be necessary to enforce a  
32 regional contribution agreement with respect to the timely  
33 implementation of the project by the receiving municipality.

34 (cf: P.L.1995, c.83, s.2)

35

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

38 13. a. A municipality which has filed a housing element may, at  
39 any time during a two-year period following the filing of the housing  
40 element, petition the council for a <sup>1</sup>~~[ten-year]~~ substantive  
41 certification of its element and ordinances or institute an action for  
42 declaratory judgment granting it ~~[six-year]~~ <sup>1</sup>~~[ten-year]~~<sup>1</sup> repose in the  
43 Superior Court <sup>1</sup>, but in no event shall a grant of substantive  
44 certification extend beyond a 10-year period starting on the date the  
45 municipality files its housing element with the council<sup>1</sup>. The  
46 municipality shall publish notice of its petition in a newspaper of

1 general circulation within the municipality and county and shall make  
2 available to the public information on the element and ordinances in  
3 accordance with such procedures as the council shall establish. The  
4 council shall also establish a procedure for providing public notice of  
5 each petition which it receives.

6 b. Notwithstanding the provisions of subsection a. of this section,  
7 a municipality which filed a housing element prior to the effective date  
8 of [this 1990 amendatory act] P.L.1990, c.121, shall be permitted to  
9 petition for substantive certification at any time within two years  
10 following that filing, or within one year following the effective date of  
11 [this 1990 amendatory act] P.L.1990, c.121, whichever shall result in  
12 permitting the municipality the longer period of time within which to  
13 petition.

14 <sup>1</sup>The Council shall establish procedures for a realistic opportunity  
15 review at the midpoint of the certification period and shall provide for  
16 notice to the public.<sup>1</sup>

17 (cf: P.L.1990, c.121, s.1)

18

19 6. The change in the calculation of a municipality's determination  
20 of present and prospective share of housing need as provided in  
21 P.L. , c. (pending before the Legislature as this bill) shall apply  
22 to the methodology employed by the council for the certification  
23 period beginning June 7, 2000 and thereafter.

24

25 7. This act shall take effect immediately.

# ASSEMBLY, No. 2375

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MAY 8, 2000

**Sponsored by:**

**Assemblyman JOHN V. KELLY**

**District 36 (Bergen, Essex and Passaic)**

**Assemblyman LEONARD LANCE**

**District 23 (Warren, Hunterdon and Mercer)**

**Co-Sponsored by:**

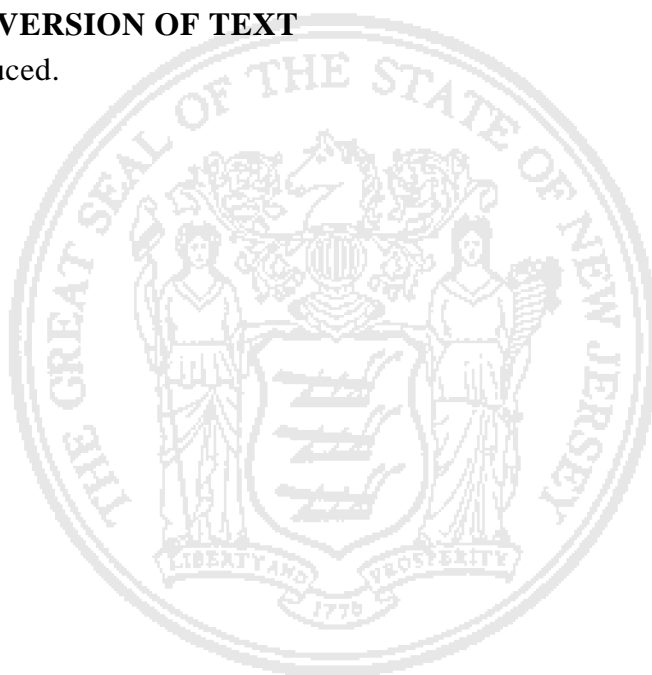
**Assemblyman Gibson**

**SYNOPSIS**

Increases certification period governing COAH from six to ten years under "Fair Housing Act."

**CURRENT VERSION OF TEXT**

As introduced.





1 AN ACT concerning affordable housing, amending and supplementing  
2 P.L.1985, c.222.

3

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

6

7 1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to  
8 read as follows:

9 7. It shall be the duty of the council, seven months after the  
10 confirmation of the last member initially appointed to the council, or  
11 January 1, 1986, whichever is earlier, and from time to time thereafter,  
12 to:

13 a. Determine housing regions of the State;

14 b. Estimate the present and prospective need for low and moderate  
15 income housing at the State and regional levels;

16 c. Adopt criteria and guidelines for:

17 (1) Municipal determination of its present and prospective fair  
18 share of the housing need in a given region. Municipal fair share shall  
19 be determined after crediting on a one-to-one basis each current unit  
20 of low and moderate income housing of adequate standard, including  
21 any such housing constructed or acquired as part of a housing program  
22 specifically intended to provide housing for low and moderate income  
23 households. Notwithstanding any other law to the contrary, a  
24 municipality shall be entitled to a credit for a unit if it demonstrates  
25 that (a) the municipality issued a certificate of occupancy for the unit,  
26 which was either newly constructed or rehabilitated between April 1,  
27 1980 and December 15, 1986; (b) a construction code official certifies,  
28 based upon a visual exterior survey, that the unit is in compliance with  
29 pertinent construction code standards with respect to structural  
30 elements, roofing, siding, doors and windows; (c) the household  
31 occupying the unit certifies in writing, under penalty of perjury, that  
32 it receives no greater income than that established pursuant to section  
33 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for moderate income  
34 housing; and (d) the unit for which credit is sought is affordable to low  
35 and moderate income households under the standards established by  
36 the council at the time of filing of the petition for substantive  
37 certification. It shall be sufficient if the certification required in  
38 subparagraph (c) is signed by one member of the household. A  
39 certification submitted pursuant to this paragraph shall be reviewable  
40 only by the council or its staff and shall not be a public record;

41 Nothing in P.L.1995, c.81 shall affect the validity of substantive  
42 certification granted by the council prior to November 21, 1994, or to  
43 a judgment of compliance entered by any court of competent

**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 jurisdiction prior to that date. Additionally, any municipality that  
2 received substantive certification or a judgment of compliance prior to  
3 November 21, 1994 and filed a motion prior to November 21, 1994 to  
4 amend substantive certification or a judgment of compliance for the  
5 purpose of obtaining credits, shall be entitled to a determination of its  
6 right to credits pursuant to the standards established by the Legislature  
7 prior to P.L.1995, c.81. Any municipality that filed a motion prior to  
8 November 21, 1994 for the purpose of obtaining credits, which motion  
9 was supported by the results of a completed survey performed  
10 pursuant to council rules, shall be entitled to a determination of its  
11 right to credits pursuant to the standards established by the Legislature  
12 prior to P.L.1995, c.81;

13 (2) Municipal adjustment of the present and prospective fair share  
14 based upon available vacant and developable land, infrastructure  
15 considerations or environmental or historic preservation factors and  
16 adjustments shall be made whenever:

17 (a) The preservation of historically or important architecture and  
18 sites and their environs or environmentally sensitive lands may be  
19 jeopardized,

20 (b) The established pattern of development in the community  
21 would be drastically altered,

22 (c) Adequate land for recreational, conservation or agricultural and  
23 farmland preservation purposes would not be provided,

24 (d) Adequate open space would not be provided,

25 (e) The pattern of development is contrary to the planning  
26 designations in the State Development and Redevelopment Plan  
27 prepared pursuant to sections 1 through 12 of P.L.1985, c.398  
28 (C.52:18A-196 et seq.),

29 (f) Vacant and developable land is not available in the municipality,  
30 and

31 (g) Adequate public facilities and infrastructure capacities are not  
32 available, or would result in costs prohibitive to the public if provided;  
33 and

34 (3) (Deleted by amendment, P.L.1993, c.31);

35 d. Provide population and household projections for the State and  
36 housing regions;

37 e. In its discretion, place a limit, based on a percentage of existing  
38 housing stock in a municipality and any other criteria including  
39 employment opportunities which the council deems appropriate, upon  
40 the aggregate number of units which may be allocated to a  
41 municipality as its fair share of the region's present and prospective  
42 need for low and moderate income housing. No municipality shall be  
43 required to address a fair share beyond 1,000 units within ~~six~~ ten  
44 years from the grant of substantive certification, unless it is  
45 demonstrated, following objection by an interested party and an  
46 evidentiary hearing, based upon the facts and circumstances of the

1 affected municipality that it is likely that the municipality through its  
2 zoning powers could create a realistic opportunity for more than 1,000  
3 low and moderate income units within that [six-year] ten-year period.  
4 For the purposes of this section, the facts and circumstances which  
5 shall determine whether a municipality's fair share shall exceed 1,000  
6 units, as provided above, shall be a finding that the municipality has  
7 issued more than 5,000 certificates of occupancy for residential units  
8 in the [six-year] ten-year period preceding the petition for substantive  
9 certification in connection with which the objection was filed.

10 For the purpose of crediting low and moderate income housing  
11 units in order to arrive at a determination of present and prospective  
12 fair share, as set forth in paragraph (1) of subsection c. of this section,  
13 housing units comprised in a community residence for the  
14 developmentally disabled, as defined in section 2 of P.L.1977, c.448  
15 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or  
16 to be promulgated by the council, to the extent that the units are  
17 affordable to persons of low and moderate income and are available to  
18 the general public.

19 In carrying out the above duties, including, but not limited to,  
20 present and prospective need estimations the council shall give  
21 appropriate weight to pertinent research studies, government reports,  
22 decisions of other branches of government, implementation of the  
23 State Development and Redevelopment Plan prepared pursuant to  
24 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and  
25 public comment. To assist the council, the State Planning Commission  
26 established under that act shall provide the council annually with  
27 economic growth, development and decline projections for each  
28 housing region for the next [six] ten years. The council shall develop  
29 procedures for periodically adjusting regional need based upon the low  
30 and moderate income housing that is provided in the region through  
31 any federal, State, municipal or private housing program.  
32 (cf: P.L.1995, c.344, s.1)

33

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

36 10. A municipality's housing element shall be designed to achieve  
37 the goal of access to affordable housing to meet present and  
38 prospective housing needs, with particular attention to low and  
39 moderate income housing, and shall contain at least:

40 a. An inventory of the municipality's housing stock by age,  
41 condition, purchase or rental value, occupancy characteristics, and  
42 type, including the number of units affordable to low and moderate  
43 income households and substandard housing capable of being  
44 rehabilitated, and in conducting this inventory the municipality shall  
45 have access, on a confidential basis for the sole purpose of conducting  
46 the inventory, to all necessary property tax assessment records and

- 1 information in the assessor's office, including but not limited to the  
2 property record cards;
- 3 b. A projection of the municipality's housing stock, including the  
4 probable future construction of low and moderate income housing, for  
5 the next [six] ten years, taking into account, but not necessarily  
6 limited to, construction permits issued, approvals of applications for  
7 development and probable residential development of lands;
- 8 c. An analysis of the municipality's demographic characteristics,  
9 including but not necessarily limited to, household size, income level  
10 and age;
- 11 d. An analysis of the existing and probable future employment  
12 characteristics of the municipality;
- 13 e. A determination of the municipality's present and prospective  
14 fair share for low and moderate income housing and its capacity to  
15 accommodate its present and prospective housing needs, including its  
16 fair share for low and moderate income housing; and
- 17 f. A consideration of the lands that are most appropriate for  
18 construction of low and moderate income housing and of the existing  
19 structures most appropriate for conversion to, or rehabilitation for,  
20 low and moderate income housing, including a consideration of lands  
21 of developers who have expressed a commitment to provide low and  
22 moderate income housing.  
23 (cf: P.L.1985, c.222, s.10)

24

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

27 11. a. In adopting its housing element, the municipality may  
28 provide for its fair share of low and moderate income housing by  
29 means of any technique or combination of techniques which provide  
30 a realistic opportunity for the provision of the fair share. The housing  
31 element shall contain an analysis demonstrating that it will provide  
32 such a realistic opportunity, and the municipality shall establish that its  
33 land use and other relevant ordinances have been revised to  
34 incorporate the provisions for low and moderate income housing. In  
35 preparing the housing element, the municipality shall consider the  
36 following techniques for providing low and moderate income housing  
37 within the municipality, as well as such other techniques as may be  
38 published by the council or proposed by the municipality:

39 (1) Rezoning for densities necessary to assure the economic  
40 viability of any inclusionary developments, either through mandatory  
41 set-asides or density bonuses, as may be necessary to meet all or part  
42 of the municipality's fair share;

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

45 (3) Determination of measures that the municipality will take to  
46 assure that low and moderate income units remain affordable to low

1 and moderate income households for an appropriate period of not less  
2 than six years;

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

6 (5) Donation or use of municipally owned land or land condemned  
7 by the municipality for purposes of providing low and moderate  
8 income housing;

9 (6) Tax abatements for purposes of providing low and moderate  
10 income housing;

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

13 (8) Utilization of municipally generated funds toward the  
14 construction of low and moderate income housing.

15 b. The municipality may provide for a phasing schedule for the  
16 achievement of its fair share of low and moderate income housing  
17 which is not inconsistent with section 23 of [this act] P.L.1985, c.222  
18 (C.52:27D-323).

19 c. The municipality may propose that a portion of its fair share be  
20 met through a regional contribution agreement. The housing element  
21 shall demonstrate, however, the manner in which that portion will be  
22 provided within the municipality if the regional contribution agreement  
23 is not entered into. The municipality shall provide a statement of its  
24 reasons for the proposal.

25 d. Nothing in [this act] P.L.1985, c.222 shall require a  
26 municipality to raise or expend municipal revenues in order to provide  
27 low and moderate income housing.

28 e. When a municipality's housing element includes the provision of  
29 rental housing units in a community residence for the developmentally  
30 disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2),  
31 which will be affordable to persons of low and moderate income, and  
32 for which adequate measures to retain such affordability pursuant to  
33 paragraph (3) of subsection a. of this section are included in the  
34 housing element, those housing units shall be fully credited as  
35 permitted under the rules of the council towards the fulfillment of the  
36 municipality's fair share of low and moderate income housing.

37 f. It having been determined by the Legislature that the provision  
38 of housing under this act is a public purpose, a municipality or  
39 municipalities may utilize public monies to make donations, grants or  
40 loans of public funds for the rehabilitation of deficient housing units  
41 and the provision of new or substantially rehabilitated housing for low  
42 and moderate income persons, providing that any private advantage is  
43 incidental.

44 (cf: P.L.1998, c.89, c.1)

45

46 4. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to

1 read as follows:

2 12. a. A municipality may propose the transfer of up to 50% of its  
3 fair share to another municipality within its housing region by means  
4 of a contractual agreement into which two municipalities voluntarily  
5 enter. A municipality may also propose a transfer by contracting with  
6 the agency or another governmental entity designated by the council  
7 if the council determines that the municipality has exhausted all  
8 possibilities within its housing region. A municipality proposing to  
9 transfer to another municipality, whether directly or by means of a  
10 contract with the agency or another governmental entity designated by  
11 the council, shall provide the council with the housing element and  
12 statement required under subsection c. of section 11 of P.L.1985,  
13 c.222 (C.52:27D-311), and shall request the council to determine a  
14 match with a municipality filing a statement of intent pursuant to  
15 subsection e. of this section. Except as provided in subsection b. of  
16 this section, the agreement may be entered into upon obtaining  
17 substantive certification under section 14 of P.L.1985, c.222  
18 (C.52:27D-314), or anytime thereafter. The regional contribution  
19 agreement entered into shall specify how the housing shall be provided  
20 by the second municipality, hereinafter the receiving municipality, and  
21 the amount of contributions to be made by the first municipality,  
22 hereinafter the sending municipality.

23 b. A municipality which is a defendant in an exclusionary zoning  
24 suit and which has not obtained substantive certification pursuant to  
25 [this act] P.L.1985, c.222 may request the court to be permitted to  
26 fulfill a portion of its fair share by entering into a regional contribution  
27 agreement. If the court believes the request to be reasonable, the  
28 court shall request the council to review the proposed agreement and  
29 to determine a match with a receiving municipality or municipalities  
30 pursuant to this section. The court may establish time limitations for  
31 the council's review, and shall retain jurisdiction over the matter during  
32 the period of council review. If the court determines that the  
33 agreement provides a realistic opportunity for the provision of low and  
34 moderate income housing within the housing region, it shall provide  
35 the sending municipality a credit against its fair share for housing to be  
36 provided through the agreement in the manner provided in this section.

37 The agreement shall be entered into prior to the entry of a final  
38 judgment in the litigation. In cases in which a final judgment was  
39 entered prior to the date [this act] P.L.1985, c.222 takes effect and  
40 in which an appeal is pending, a municipality may request  
41 consideration of a regional contribution agreement; provided that it is  
42 entered into within 120 days after [this act] P.L.1985, c.222 takes  
43 effect. In a case in which a final judgment has been entered, the court  
44 shall consider whether or not the agreement constitutes an expeditious  
45 means of providing part of the fair share.

46 c. Regional contribution agreements shall be approved by the

1 council, after review by the county planning board or agency of the  
2 county in which the receiving municipality is located. The council  
3 shall determine whether or not the agreement provides a realistic  
4 opportunity for the provision of low and moderate income housing  
5 within convenient access to employment opportunities. The council  
6 shall refer the agreement to the county planning board or agency which  
7 shall review whether or not the transfer agreement is in accordance  
8 with sound, comprehensive regional planning. In its review, the  
9 county planning board or agency shall consider the master plan and  
10 zoning ordinance of the sending and receiving municipalities, its own  
11 county master plan, and the State development and redevelopment  
12 plan. In the event that there is no county planning board or agency in  
13 the county in which the receiving municipality is located, the council  
14 shall also determine whether or not the agreement is in accordance  
15 with sound, comprehensive regional planning. After it has been  
16 determined that the agreement provides a realistic opportunity for low  
17 and moderate income housing within convenient access to employment  
18 opportunities, and that the agreement is consistent with sound,  
19 comprehensive regional planning, the council shall approve the  
20 regional contribution agreement by resolution. All determinations of  
21 a county planning board or agency shall be in writing and shall be  
22 made within such time limits as the council may prescribe, beyond  
23 which the council shall make those determinations and no fee shall be  
24 paid to the county planning board or agency pursuant to this  
25 subsection.

26 d. In approving a regional contribution agreement, the council shall  
27 set forth in its resolution a schedule of the contributions to be  
28 appropriated annually by the sending municipality. A copy of the  
29 adopted resolution shall be filed promptly with the Director of the  
30 Division of Local Government Services in the Department of  
31 Community Affairs, and the director shall thereafter not approve an  
32 annual budget of a sending municipality if it does not include  
33 appropriations necessary to meet the terms of the resolution. Amounts  
34 appropriated by a sending municipality for a regional contribution  
35 agreement pursuant to this section are exempt from the limitations or  
36 increases in final appropriations imposed under P.L.1976, c.68  
37 (C.40A:4-45.1 et seq.).

38 e. The council shall maintain current lists of municipalities which  
39 have stated an intent to enter into regional contribution agreements as  
40 receiving municipalities, and shall establish procedures for filing  
41 statements of intent with the council. No receiving municipality shall  
42 be required to accept a greater number of low and moderate income  
43 units through an agreement than it has expressed a willingness to  
44 accept in its statement, but the number stated shall not be less than a  
45 reasonable minimum number of units, not to exceed 100, as established  
46 by the council. The council shall require a project plan from a

1 receiving municipality prior to the entering into of the agreement, and  
2 shall submit the project plan to the agency for its review as to the  
3 feasibility of the plan prior to the council's approval of the agreement.  
4 The agency may recommend and the council may approve as part of  
5 the project plan a provision that the time limitations for contractual  
6 guarantees or resale controls for low and moderate income units  
7 included in the project shall be less than 30 years, if it is determined  
8 that modification is necessary to assure the economic viability of the  
9 project.

10 f. The council shall establish guidelines for the duration and  
11 amount of contributions in regional contribution agreements. In doing  
12 so, the council shall give substantial consideration to the average of:  
13 (1) the median amount required to rehabilitate a low and moderate  
14 income unit up to code enforcement standards; (2) the average internal  
15 subsidization required for a developer to provide a low income  
16 housing unit in an inclusionary development; (3) the average internal  
17 subsidization required for a developer to provide a moderate income  
18 housing unit in an inclusionary development. Contributions may be  
19 prorated in municipal appropriations occurring over a period not to  
20 exceed ~~[six]~~ ten years and may include an amount agreed upon to  
21 compensate or partially compensate the receiving municipality for  
22 infrastructure or other costs generated to the receiving municipality by  
23 the development. Appropriations shall be made and paid directly to  
24 the receiving municipality or municipalities or to the agency or other  
25 governmental entity designated by the council, as the case may be.

26 g. The council shall require receiving municipalities to file annual  
27 reports with the agency setting forth the progress in implementing a  
28 project funded under a regional contribution agreement, and the  
29 agency shall provide the council with its evaluation of each report.  
30 The council shall take such actions as may be necessary to enforce a  
31 regional contribution agreement with respect to the timely  
32 implementation of the project by the receiving municipality.

33 (cf: P.L.1995, c.83, s.2)

34

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

37 13. a. A municipality which has filed a housing element may, at  
38 any time during a two-year period following the filing of the housing  
39 element, petition the council for a ten-year substantive certification of  
40 its element and ordinances or institute an action for declaratory  
41 judgment granting it ~~[six-year]~~ ten-year repose in the Superior Court.  
42 The municipality shall publish notice of its petition in a newspaper of  
43 general circulation within the municipality and county and shall make  
44 available to the public information on the element and ordinances in  
45 accordance with such procedures as the council shall establish. The  
46 council shall also establish a procedure for providing public notice of



1 each petition which it receives.

2 b. Notwithstanding the provisions of subsection a. of this section,  
3 a municipality which filed a housing element prior to the effective date  
4 of [this 1990 amendatory act] P.L.1990, c.121, shall be permitted to  
5 petition for substantive certification at any time within two years  
6 following that filing, or within one year following the effective date of  
7 [this 1990 amendatory act] P.L.1990, c.121, whichever shall result in  
8 permitting the municipality the longer period of time within which to  
9 petition.

10 (cf: P.L.1990, c.121, s.1)

11

12 6. The change in the calculation of a municipality's determination  
13 of present and prospective share of housing need as provided in  
14 P.L. , c. (pending before the Legislature as this bill) shall apply  
15 to the methodology employed by the council for the certification  
16 period beginning June 7, 2000 and thereafter.

17

18 7. This act shall take effect immediately.

19

20

21

#### STATEMENT

22

23 This bill would increase from six to ten years the certification  
24 period under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301  
25 et al.).

26 Under the "Fair Housing Act" as originally enacted, municipalities  
27 were to be assigned fair share housing obligations by the Council on  
28 Affordable Housing on a six year cycle, consistent with the master  
29 planning cycle provided for under the "Municipal Land Use Law,"  
30 P.L.1975, c.291 (C.40:55D-1 et seq.). At that time it seemed to make  
31 logical sense to tie the planning requirements of the two laws together,  
32 given that the municipality's fair share requirement would be provided  
33 for in the housing element of the municipal master plan, as amended  
34 by the "Fair Housing Act."

35 Fifteen years after the adoption of the "Fair Housing Act," it has  
36 become clear that since COAH's calculation of fair share housing  
37 obligations is heavily dependent on census data, it makes more sense  
38 for cycles to reflect the ten year census cycle rather than the six year  
39 master planning cycle.

40 Accordingly, this bill increases the housing cycles under the "Fair  
41 Housing Act" from six to ten years.

42 The bill does not amend the duration of the housing element under  
43 the "Municipal Land Use Law," even though it will now be the only  
44 plan element readopted outside the six year planning cycle. The  
45 current COAH housing cycles, however, do not necessarily correspond  
46 perfectly to each municipality's master plan reexamination schedule

1 pursuant to 76 of P.L.1975, c.291 (C.40:55D-89). It is anticipated  
2 that since the housing plan element ties into the substantive  
3 certification process under COAH regulations, it will be periodically  
4 reexamined and updated as necessary in accordance with those  
5 regulations.

# ASSEMBLY HOUSING COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2375

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 8, 2000

The Assembly Housing Committee reports favorably Assembly Bill No. 2375.

This bill, as amended by the committee, would increase from six to ten years the certification period under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

Under the "Fair Housing Act" as originally enacted, municipalities were to be assigned fair share housing obligations by the Council on Affordable Housing on a six year cycle, consistent with the master planning cycle provided for under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). At that time it seemed to make logical sense to tie the planning requirements of the two laws together, given that the municipality's fair share requirement would be provided for in the housing element of the municipal master plan, as amended by the "Fair Housing Act."

Fifteen years after the adoption of the "Fair Housing Act," it has become clear that since COAH's calculation of fair share housing obligations is heavily dependent on census data, it makes more sense for cycles to reflect the ten year census cycle rather than the six year master planning cycle.

Accordingly, this bill increases the housing cycles under the "Fair Housing Act" from six to ten years.

The bill does not amend the duration of the housing element under the "Municipal Land Use Law," even though it will now be the only plan element readopted outside the six year master plan cycle. The current COAH housing cycles, however, do not necessarily correspond perfectly to each municipality's master plan reexamination schedule pursuant to 76 of P.L.1975, c.291 (C.40:55D-89). It is anticipated that since the housing plan element ties into the substantive certification process under COAH regulations, it will be periodically reexamined and updated as necessary in accordance with those regulations.

The committee amended the bill to require that a municipality's determination of its present and prospective fair share of the housing need in a given region be computed for a ten-year period, to correspond with the ten-year certification period under the bill. The

committee also amended the bill to ensure that a grant of substantive certification cannot extend beyond a ten-year period starting on the date a municipality files its housing element with the council.

[First Reprint]

**ASSEMBLY, No. 2375**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

INTRODUCED MAY 8, 2000

**Sponsored by:**

**Assemblyman JOHN V. KELLY**

**District 36 (Bergen, Essex and Passaic)**

**Assemblyman LEONARD LANCE**

**District 23 (Warren, Hunterdon and Mercer)**

**Co-Sponsored by:**

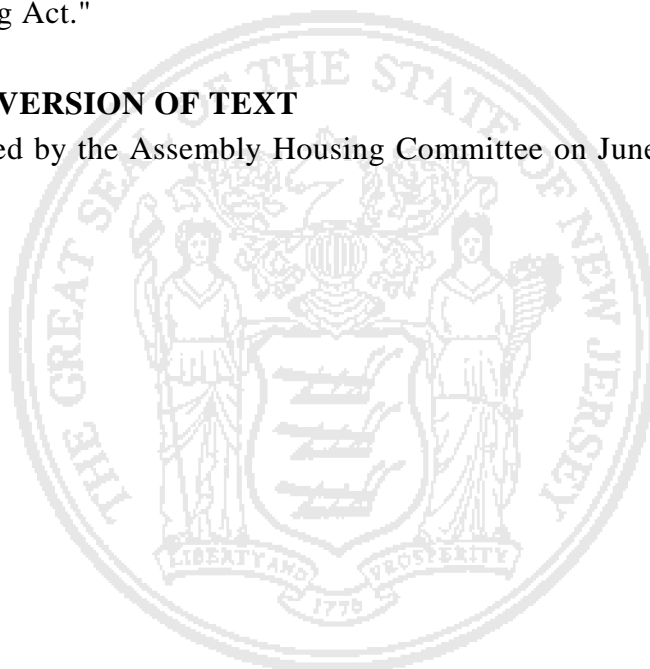
**Assemblyman Gibson**

**SYNOPSIS**

Increases certification period governing COAH from six to ten years under "Fair Housing Act."

**CURRENT VERSION OF TEXT**

As reported by the Assembly Housing Committee on June 8, 2000, with amendments.



1 AN ACT concerning affordable housing, amending and supplementing  
2 P.L.1985, c.222.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to  
8 read as follows:

9 7. It shall be the duty of the council, seven months after the  
10 confirmation of the last member initially appointed to the council, or  
11 January 1, 1986, whichever is earlier, and from time to time thereafter,  
12 to:

- 13 a. Determine housing regions of the State;  
14 b. Estimate the present and prospective need for low and moderate  
15 income housing at the State and regional levels;  
16 c. Adopt criteria and guidelines for:

17 (1) Municipal determination of its present and prospective fair  
18 share of the housing need in a given region <sup>1</sup>which shall be computed  
19 for a 10-year period<sup>1</sup>. Municipal fair share shall be determined after  
20 crediting on a one-to-one basis each current unit of low and moderate  
21 income housing of adequate standard, including any such housing  
22 constructed or acquired as part of a housing program specifically  
23 intended to provide housing for low and moderate income households.  
24 Notwithstanding any other law to the contrary, a municipality shall be  
25 entitled to a credit for a unit if it demonstrates that (a) the municipality  
26 issued a certificate of occupancy for the unit, which was either newly  
27 constructed or rehabilitated between April 1, 1980 and December 15,  
28 1986; (b) a construction code official certifies, based upon a visual  
29 exterior survey, that the unit is in compliance with pertinent  
30 construction code standards with respect to structural elements,  
31 roofing, siding, doors and windows; (c) the household occupying the  
32 unit certifies in writing, under penalty of perjury, that it receives no  
33 greater income than that established pursuant to section 4 of P.L.1985,  
34 c.222 (C.52:27D-304) to qualify for moderate income housing; and (d)  
35 the unit for which credit is sought is affordable to low and moderate  
36 income households under the standards established by the council at  
37 the time of filing of the petition for substantive certification. It shall  
38 be sufficient if the certification required in subparagraph (c) is signed  
39 by one member of the household. A certification submitted pursuant  
40 to this paragraph shall be reviewable only by the council or its staff  
41 and shall not be a public record;

42 Nothing in P.L.1995, c.81 shall affect the validity of substantive

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly AHO committee amendments adopted June 8, 2000.

1 certification granted by the council prior to November 21, 1994, or to  
2 a judgment of compliance entered by any court of competent  
3 jurisdiction prior to that date. Additionally, any municipality that  
4 received substantive certification or a judgment of compliance prior to  
5 November 21, 1994 and filed a motion prior to November 21, 1994 to  
6 amend substantive certification or a judgment of compliance for the  
7 purpose of obtaining credits, shall be entitled to a determination of its  
8 right to credits pursuant to the standards established by the Legislature  
9 prior to P.L.1995, c.81. Any municipality that filed a motion prior to  
10 November 21, 1994 for the purpose of obtaining credits, which motion  
11 was supported by the results of a completed survey performed  
12 pursuant to council rules, shall be entitled to a determination of its  
13 right to credits pursuant to the standards established by the Legislature  
14 prior to P.L.1995, c.81;

15 (2) Municipal adjustment of the present and prospective fair share  
16 based upon available vacant and developable land, infrastructure  
17 considerations or environmental or historic preservation factors and  
18 adjustments shall be made whenever:

19 (a) The preservation of historically or important architecture and  
20 sites and their environs or environmentally sensitive lands may be  
21 jeopardized,

22 (b) The established pattern of development in the community  
23 would be drastically altered,

24 (c) Adequate land for recreational, conservation or agricultural and  
25 farmland preservation purposes would not be provided,

26 (d) Adequate open space would not be provided,

27 (e) The pattern of development is contrary to the planning  
28 designations in the State Development and Redevelopment Plan  
29 prepared pursuant to sections 1 through 12 of P.L.1985, c.398  
30 (C.52:18A-196 et seq.),

31 (f) Vacant and developable land is not available in the municipality,  
32 and

33 (g) Adequate public facilities and infrastructure capacities are not  
34 available, or would result in costs prohibitive to the public if provided;  
35 and

36 (3) (Deleted by amendment, P.L.1993, c.31);

37 d. Provide population and household projections for the State and  
38 housing regions;

39 e. In its discretion, place a limit, based on a percentage of existing  
40 housing stock in a municipality and any other criteria including  
41 employment opportunities which the council deems appropriate, upon  
42 the aggregate number of units which may be allocated to a  
43 municipality as its fair share of the region's present and prospective  
44 need for low and moderate income housing. No municipality shall be  
45 required to address a fair share beyond 1,000 units within ~~[six]~~ ten  
46 years from the grant of substantive certification, unless it is

1 demonstrated, following objection by an interested party and an  
2 evidentiary hearing, based upon the facts and circumstances of the  
3 affected municipality that it is likely that the municipality through its  
4 zoning powers could create a realistic opportunity for more than 1,000  
5 low and moderate income units within that ~~[six-year]~~ ten-year period.  
6 For the purposes of this section, the facts and circumstances which  
7 shall determine whether a municipality's fair share shall exceed 1,000  
8 units, as provided above, shall be a finding that the municipality has  
9 issued more than 5,000 certificates of occupancy for residential units  
10 in the ~~[six-year]~~ ten-year period preceding the petition for substantive  
11 certification in connection with which the objection was filed.

12 For the purpose of crediting low and moderate income housing  
13 units in order to arrive at a determination of present and prospective  
14 fair share, as set forth in paragraph (1) of subsection c. of this section,  
15 housing units comprised in a community residence for the  
16 developmentally disabled, as defined in section 2 of P.L.1977, c.448  
17 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or  
18 to be promulgated by the council, to the extent that the units are  
19 affordable to persons of low and moderate income and are available to  
20 the general public.

21 In carrying out the above duties, including, but not limited to,  
22 present and prospective need estimations the council shall give  
23 appropriate weight to pertinent research studies, government reports,  
24 decisions of other branches of government, implementation of the  
25 State Development and Redevelopment Plan prepared pursuant to  
26 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and  
27 public comment. To assist the council, the State Planning Commission  
28 established under that act shall provide the council annually with  
29 economic growth, development and decline projections for each  
30 housing region for the next ~~[six]~~ ten years. The council shall develop  
31 procedures for periodically adjusting regional need based upon the low  
32 and moderate income housing that is provided in the region through  
33 any federal, State, municipal or private housing program.

34 (cf: P.L.1995, c.344, s.1)

35

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

38 10. A municipality's housing element shall be designed to achieve  
39 the goal of access to affordable housing to meet present and  
40 prospective housing needs, with particular attention to low and  
41 moderate income housing, and shall contain at least:

42 a. An inventory of the municipality's housing stock by age,  
43 condition, purchase or rental value, occupancy characteristics, and  
44 type, including the number of units affordable to low and moderate  
45 income households and substandard housing capable of being  
46 rehabilitated, and in conducting this inventory the municipality shall



1 have access, on a confidential basis for the sole purpose of conducting  
2 the inventory, to all necessary property tax assessment records and  
3 information in the assessor's office, including but not limited to the  
4 property record cards;

5 b. A projection of the municipality's housing stock, including the  
6 probable future construction of low and moderate income housing, for  
7 the next ~~[six]~~ ten years, taking into account, but not necessarily  
8 limited to, construction permits issued, approvals of applications for  
9 development and probable residential development of lands;

10 c. An analysis of the municipality's demographic characteristics,  
11 including but not necessarily limited to, household size, income level  
12 and age;

13 d. An analysis of the existing and probable future employment  
14 characteristics of the municipality;

15 e. A determination of the municipality's present and prospective  
16 fair share for low and moderate income housing and its capacity to  
17 accommodate its present and prospective housing needs, including its  
18 fair share for low and moderate income housing; and

19 f. A consideration of the lands that are most appropriate for  
20 construction of low and moderate income housing and of the existing  
21 structures most appropriate for conversion to, or rehabilitation for,  
22 low and moderate income housing, including a consideration of lands  
23 of developers who have expressed a commitment to provide low and  
24 moderate income housing.

25 (cf: P.L.1985, c.222, s.10)

26

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

29 11. a. In adopting its housing element, the municipality may  
30 provide for its fair share of low and moderate income housing by  
31 means of any technique or combination of techniques which provide  
32 a realistic opportunity for the provision of the fair share. The housing  
33 element shall contain an analysis demonstrating that it will provide  
34 such a realistic opportunity, and the municipality shall establish that its  
35 land use and other relevant ordinances have been revised to  
36 incorporate the provisions for low and moderate income housing. In  
37 preparing the housing element, the municipality shall consider the  
38 following techniques for providing low and moderate income housing  
39 within the municipality, as well as such other techniques as may be  
40 published by the council or proposed by the municipality:

41 (1) Rezoning for densities necessary to assure the economic  
42 viability of any inclusionary developments, either through mandatory  
43 set-asides or density bonuses, as may be necessary to meet all or part  
44 of the municipality's fair share;

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

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

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

8 (5) Donation or use of municipally owned land or land condemned  
9 by the municipality for purposes of providing low and moderate  
10 income housing;

11 (6) Tax abatements for purposes of providing low and moderate  
12 income housing;

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

15 (8) Utilization of municipally generated funds toward the  
16 construction of low and moderate income housing.

17 b. The municipality may provide for a phasing schedule for the  
18 achievement of its fair share of low and moderate income housing  
19 which is not inconsistent with section 23 of [this act] P.L.1985, c.222  
20 (C.52:27D-323).

21 c. The municipality may propose that a portion of its fair share be  
22 met through a regional contribution agreement. The housing element  
23 shall demonstrate, however, the manner in which that portion will be  
24 provided within the municipality if the regional contribution agreement  
25 is not entered into. The municipality shall provide a statement of its  
26 reasons for the proposal.

27 d. Nothing in [this act] P.L.1985, c.222 shall require a  
28 municipality to raise or expend municipal revenues in order to provide  
29 low and moderate income housing.

30 e. When a municipality's housing element includes the provision of  
31 rental housing units in a community residence for the developmentally  
32 disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2),  
33 which will be affordable to persons of low and moderate income, and  
34 for which adequate measures to retain such affordability pursuant to  
35 paragraph (3) of subsection a. of this section are included in the  
36 housing element, those housing units shall be fully credited as  
37 permitted under the rules of the council towards the fulfillment of the  
38 municipality's fair share of low and moderate income housing.

39 f. It having been determined by the Legislature that the provision  
40 of housing under this act is a public purpose, a municipality or  
41 municipalities may utilize public monies to make donations, grants or  
42 loans of public funds for the rehabilitation of deficient housing units  
43 and the provision of new or substantially rehabilitated housing for low  
44 and moderate income persons, providing that any private advantage is  
45 incidental.

46 (cf: P.L.1998, c.89, c.1)

1       4. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to  
2 read as follows:

3       12. a. A municipality may propose the transfer of up to 50% of its  
4 fair share to another municipality within its housing region by means  
5 of a contractual agreement into which two municipalities voluntarily  
6 enter. A municipality may also propose a transfer by contracting with  
7 the agency or another governmental entity designated by the council  
8 if the council determines that the municipality has exhausted all  
9 possibilities within its housing region. A municipality proposing to  
10 transfer to another municipality, whether directly or by means of a  
11 contract with the agency or another governmental entity designated by  
12 the council, shall provide the council with the housing element and  
13 statement required under subsection c. of section 11 of P.L.1985,  
14 c.222 (C.52:27D-311), and shall request the council to determine a  
15 match with a municipality filing a statement of intent pursuant to  
16 subsection e. of this section. Except as provided in subsection b. of  
17 this section, the agreement may be entered into upon obtaining  
18 substantive certification under section 14 of P.L.1985, c.222  
19 (C.52:27D-314), or anytime thereafter. The regional contribution  
20 agreement entered into shall specify how the housing shall be provided  
21 by the second municipality, hereinafter the receiving municipality, and  
22 the amount of contributions to be made by the first municipality,  
23 hereinafter the sending municipality.

24       b. A municipality which is a defendant in an exclusionary zoning  
25 suit and which has not obtained substantive certification pursuant to  
26 **[this act] P.L.1985, c.222** may request the court to be permitted to  
27 fulfill a portion of its fair share by entering into a regional contribution  
28 agreement. If the court believes the request to be reasonable, the  
29 court shall request the council to review the proposed agreement and  
30 to determine a match with a receiving municipality or municipalities  
31 pursuant to this section. The court may establish time limitations for  
32 the council's review, and shall retain jurisdiction over the matter during  
33 the period of council review. If the court determines that the  
34 agreement provides a realistic opportunity for the provision of low and  
35 moderate income housing within the housing region, it shall provide  
36 the sending municipality a credit against its fair share for housing to be  
37 provided through the agreement in the manner provided in this section.

38       The agreement shall be entered into prior to the entry of a final  
39 judgment in the litigation. In cases in which a final judgment was  
40 entered prior to the date **[this act] P.L.1985, c.222** takes effect and  
41 in which an appeal is pending, a municipality may request  
42 consideration of a regional contribution agreement; provided that it is  
43 entered into within 120 days after **[this act] P.L.1985, c.222** takes  
44 effect. In a case in which a final judgment has been entered, the court  
45 shall consider whether or not the agreement constitutes an expeditious  
46 means of providing part of the fair share.

1 c. Regional contribution agreements shall be approved by the  
2 council, after review by the county planning board or agency of the  
3 county in which the receiving municipality is located. The council  
4 shall determine whether or not the agreement provides a realistic  
5 opportunity for the provision of low and moderate income housing  
6 within convenient access to employment opportunities. The council  
7 shall refer the agreement to the county planning board or agency which  
8 shall review whether or not the transfer agreement is in accordance  
9 with sound, comprehensive regional planning. In its review, the  
10 county planning board or agency shall consider the master plan and  
11 zoning ordinance of the sending and receiving municipalities, its own  
12 county master plan, and the State development and redevelopment  
13 plan. In the event that there is no county planning board or agency in  
14 the county in which the receiving municipality is located, the council  
15 shall also determine whether or not the agreement is in accordance  
16 with sound, comprehensive regional planning. After it has been  
17 determined that the agreement provides a realistic opportunity for low  
18 and moderate income housing within convenient access to employment  
19 opportunities, and that the agreement is consistent with sound,  
20 comprehensive regional planning, the council shall approve the  
21 regional contribution agreement by resolution. All determinations of  
22 a county planning board or agency shall be in writing and shall be  
23 made within such time limits as the council may prescribe, beyond  
24 which the council shall make those determinations and no fee shall be  
25 paid to the county planning board or agency pursuant to this  
26 subsection.

27 d. In approving a regional contribution agreement, the council shall  
28 set forth in its resolution a schedule of the contributions to be  
29 appropriated annually by the sending municipality. A copy of the  
30 adopted resolution shall be filed promptly with the Director of the  
31 Division of Local Government Services in the Department of  
32 Community Affairs, and the director shall thereafter not approve an  
33 annual budget of a sending municipality if it does not include  
34 appropriations necessary to meet the terms of the resolution. Amounts  
35 appropriated by a sending municipality for a regional contribution  
36 agreement pursuant to this section are exempt from the limitations or  
37 increases in final appropriations imposed under P.L.1976, c.68  
38 (C.40A:4-45.1 et seq.).

39 e. The council shall maintain current lists of municipalities which  
40 have stated an intent to enter into regional contribution agreements as  
41 receiving municipalities, and shall establish procedures for filing  
42 statements of intent with the council. No receiving municipality shall  
43 be required to accept a greater number of low and moderate income  
44 units through an agreement than it has expressed a willingness to  
45 accept in its statement, but the number stated shall not be less than a  
46 reasonable minimum number of units, not to exceed 100, as established

1 by the council. The council shall require a project plan from a  
2 receiving municipality prior to the entering into of the agreement, and  
3 shall submit the project plan to the agency for its review as to the  
4 feasibility of the plan prior to the council's approval of the agreement.  
5 The agency may recommend and the council may approve as part of  
6 the project plan a provision that the time limitations for contractual  
7 guarantees or resale controls for low and moderate income units  
8 included in the project shall be less than 30 years, if it is determined  
9 that modification is necessary to assure the economic viability of the  
10 project.

11 f. The council shall establish guidelines for the duration and  
12 amount of contributions in regional contribution agreements. In doing  
13 so, the council shall give substantial consideration to the average of:  
14 (1) the median amount required to rehabilitate a low and moderate  
15 income unit up to code enforcement standards; (2) the average internal  
16 subsidization required for a developer to provide a low income  
17 housing unit in an inclusionary development; (3) the average internal  
18 subsidization required for a developer to provide a moderate income  
19 housing unit in an inclusionary development. Contributions may be  
20 prorated in municipal appropriations occurring over a period not to  
21 exceed ~~[six]~~ ten years and may include an amount agreed upon to  
22 compensate or partially compensate the receiving municipality for  
23 infrastructure or other costs generated to the receiving municipality by  
24 the development. Appropriations shall be made and paid directly to  
25 the receiving municipality or municipalities or to the agency or other  
26 governmental entity designated by the council, as the case may be.

27 g. The council shall require receiving municipalities to file annual  
28 reports with the agency setting forth the progress in implementing a  
29 project funded under a regional contribution agreement, and the  
30 agency shall provide the council with its evaluation of each report.  
31 The council shall take such actions as may be necessary to enforce a  
32 regional contribution agreement with respect to the timely  
33 implementation of the project by the receiving municipality.

34 (cf: P.L.1995, c.83, s.2)

35

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

38 13. a. A municipality which has filed a housing element may, at  
39 any time during a two-year period following the filing of the housing  
40 element, petition the council for a <sup>1</sup>~~[ten-year]~~ substantive  
41 certification of its element and ordinances or institute an action for  
42 declaratory judgment granting it ~~[six-year]~~ <sup>1</sup>~~[ten-year]~~<sup>1</sup> repose in the  
43 Superior Court <sup>1</sup>, but in no event shall a grant of substantive  
44 certification extend beyond a 10-year period starting on the date the  
45 municipality files its housing element with the council<sup>1</sup>. The  
46 municipality shall publish notice of its petition in a newspaper of

1 general circulation within the municipality and county and shall make  
2 available to the public information on the element and ordinances in  
3 accordance with such procedures as the council shall establish. The  
4 council shall also establish a procedure for providing public notice of  
5 each petition which it receives.

6 b. Notwithstanding the provisions of subsection a. of this section,  
7 a municipality which filed a housing element prior to the effective date  
8 of [this 1990 amendatory act] P.L.1990, c.121, shall be permitted to  
9 petition for substantive certification at any time within two years  
10 following that filing, or within one year following the effective date of  
11 [this 1990 amendatory act] P.L.1990, c.121, whichever shall result in  
12 permitting the municipality the longer period of time within which to  
13 petition.

14 (cf: P.L.1990, c.121, s.1)

15

16 6. The change in the calculation of a municipality's determination  
17 of present and prospective share of housing need as provided in  
18 P.L. , c. (pending before the Legislature as this bill) shall apply  
19 to the methodology employed by the council for the certification  
20 period beginning June 7, 2000 and thereafter.

21

22 7. This act shall take effect immediately.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 2375**

with Assembly Floor Amendments  
(Proposed By Assemblyman KELLY)

ADOPTED: JULY 13, 2000

These amendments require the Council on Affordable Housing (COAH) to establish procedures for a realistic opportunity review at the midpoint of the certification period, and to provide notice to the public. This amendment is necessary due to the longer period of substantive certification, from six years to 10 years, provided under the bill.

[Second Reprint]

**ASSEMBLY, No. 2375**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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INTRODUCED MAY 8, 2000

**Sponsored by:**

**Assemblyman JOHN V. KELLY**

**District 36 (Bergen, Essex and Passaic)**

**Assemblyman LEONARD LANCE**

**District 23 (Warren, Hunterdon and Mercer)**

**Co-Sponsored by:**

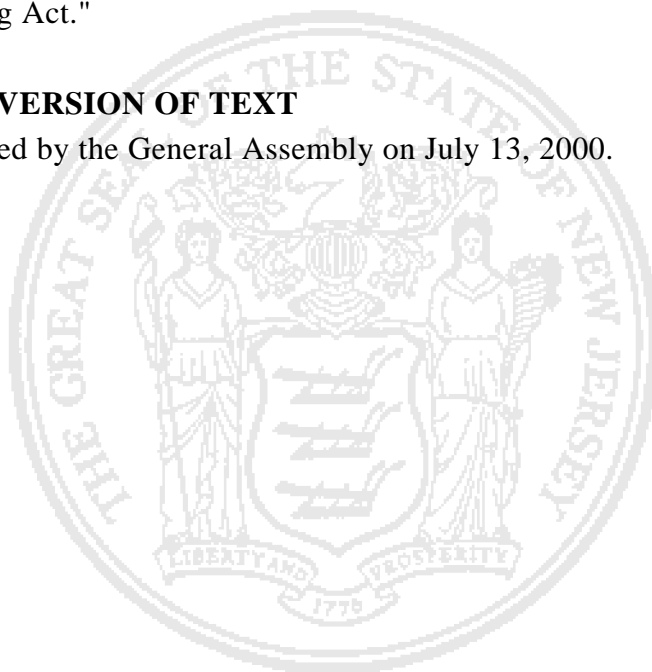
**Assemblyman Gibson**

**SYNOPSIS**

Increases certification period governing COAH from six to ten years under "Fair Housing Act."

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on July 13, 2000.





1 AN ACT concerning affordable housing, amending and supplementing  
2 P.L.1985, c.222.

3

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

6

7 1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to  
8 read as follows:

9 7. It shall be the duty of the council, seven months after the  
10 confirmation of the last member initially appointed to the council, or  
11 January 1, 1986, whichever is earlier, and from time to time thereafter,  
12 to:

13 a. Determine housing regions of the State;

14 b. Estimate the present and prospective need for low and moderate  
15 income housing at the State and regional levels;

16 c. Adopt criteria and guidelines for:

17 (1) Municipal determination of its present and prospective fair  
18 share of the housing need in a given region <sup>1</sup>which shall be computed  
19 for a 10-year period<sup>1</sup>. Municipal fair share shall be determined after  
20 crediting on a one-to-one basis each current unit of low and moderate  
21 income housing of adequate standard, including any such housing  
22 constructed or acquired as part of a housing program specifically  
23 intended to provide housing for low and moderate income households.  
24 Notwithstanding any other law to the contrary, a municipality shall be  
25 entitled to a credit for a unit if it demonstrates that (a) the municipality  
26 issued a certificate of occupancy for the unit, which was either newly  
27 constructed or rehabilitated between April 1, 1980 and December 15,  
28 1986; (b) a construction code official certifies, based upon a visual  
29 exterior survey, that the unit is in compliance with pertinent  
30 construction code standards with respect to structural elements,  
31 roofing, siding, doors and windows; (c) the household occupying the  
32 unit certifies in writing, under penalty of perjury, that it receives no  
33 greater income than that established pursuant to section 4 of P.L.1985,  
34 c.222 (C.52:27D-304) to qualify for moderate income housing; and (d)  
35 the unit for which credit is sought is affordable to low and moderate  
36 income households under the standards established by the council at  
37 the time of filing of the petition for substantive certification. It shall  
38 be sufficient if the certification required in subparagraph (c) is signed  
39 by one member of the household. A certification submitted pursuant  
40 to this paragraph shall be reviewable only by the council or its staff  
41 and shall not be a public record;

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly AHO committee amendments adopted June 8, 2000.

<sup>2</sup> Assembly floor amendments adopted July 13, 2000.

1 Nothing in P.L.1995, c.81 shall affect the validity of substantive  
2 certification granted by the council prior to November 21, 1994, or to  
3 a judgment of compliance entered by any court of competent  
4 jurisdiction prior to that date. Additionally, any municipality that  
5 received substantive certification or a judgment of compliance prior to  
6 November 21, 1994 and filed a motion prior to November 21, 1994 to  
7 amend substantive certification or a judgment of compliance for the  
8 purpose of obtaining credits, shall be entitled to a determination of its  
9 right to credits pursuant to the standards established by the Legislature  
10 prior to P.L.1995, c.81. Any municipality that filed a motion prior to  
11 November 21, 1994 for the purpose of obtaining credits, which motion  
12 was supported by the results of a completed survey performed  
13 pursuant to council rules, shall be entitled to a determination of its  
14 right to credits pursuant to the standards established by the Legislature  
15 prior to P.L.1995, c.81;

16 (2) Municipal adjustment of the present and prospective fair share  
17 based upon available vacant and developable land, infrastructure  
18 considerations or environmental or historic preservation factors and  
19 adjustments shall be made whenever:

20 (a) The preservation of historically or important architecture and  
21 sites and their environs or environmentally sensitive lands may be  
22 jeopardized,

23 (b) The established pattern of development in the community  
24 would be drastically altered,

25 (c) Adequate land for recreational, conservation or agricultural and  
26 farmland preservation purposes would not be provided,

27 (d) Adequate open space would not be provided,

28 (e) The pattern of development is contrary to the planning  
29 designations in the State Development and Redevelopment Plan  
30 prepared pursuant to sections 1 through 12 of P.L.1985, c.398  
31 (C.52:18A-196 et seq.),

32 (f) Vacant and developable land is not available in the municipality,  
33 and

34 (g) Adequate public facilities and infrastructure capacities are not  
35 available, or would result in costs prohibitive to the public if provided;  
36 and

37 (3) (Deleted by amendment, P.L.1993, c.31);

38 d. Provide population and household projections for the State and  
39 housing regions;

40 e. In its discretion, place a limit, based on a percentage of existing  
41 housing stock in a municipality and any other criteria including  
42 employment opportunities which the council deems appropriate, upon  
43 the aggregate number of units which may be allocated to a  
44 municipality as its fair share of the region's present and prospective  
45 need for low and moderate income housing. No municipality shall be  
46 required to address a fair share beyond 1,000 units within [six] ten

1 years from the grant of substantive certification, unless it is  
2 demonstrated, following objection by an interested party and an  
3 evidentiary hearing, based upon the facts and circumstances of the  
4 affected municipality that it is likely that the municipality through its  
5 zoning powers could create a realistic opportunity for more than 1,000  
6 low and moderate income units within that ~~six-year~~ ten-year period.  
7 For the purposes of this section, the facts and circumstances which  
8 shall determine whether a municipality's fair share shall exceed 1,000  
9 units, as provided above, shall be a finding that the municipality has  
10 issued more than 5,000 certificates of occupancy for residential units  
11 in the ~~six-year~~ ten-year period preceding the petition for substantive  
12 certification in connection with which the objection was filed.

13 For the purpose of crediting low and moderate income housing  
14 units in order to arrive at a determination of present and prospective  
15 fair share, as set forth in paragraph (1) of subsection c. of this section,  
16 housing units comprised in a community residence for the  
17 developmentally disabled, as defined in section 2 of P.L.1977, c.448  
18 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or  
19 to be promulgated by the council, to the extent that the units are  
20 affordable to persons of low and moderate income and are available to  
21 the general public.

22 In carrying out the above duties, including, but not limited to,  
23 present and prospective need estimations the council shall give  
24 appropriate weight to pertinent research studies, government reports,  
25 decisions of other branches of government, implementation of the  
26 State Development and Redevelopment Plan prepared pursuant to  
27 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and  
28 public comment. To assist the council, the State Planning Commission  
29 established under that act shall provide the council annually with  
30 economic growth, development and decline projections for each  
31 housing region for the next ~~six~~ ten years. The council shall develop  
32 procedures for periodically adjusting regional need based upon the low  
33 and moderate income housing that is provided in the region through  
34 any federal, State, municipal or private housing program.  
35 (cf: P.L.1995, c.344, s.1)

36  
37 2. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to  
38 read as follows:

39 10. A municipality's housing element shall be designed to achieve  
40 the goal of access to affordable housing to meet present and  
41 prospective housing needs, with particular attention to low and  
42 moderate income housing, and shall contain at least:

43 a. An inventory of the municipality's housing stock by age,  
44 condition, purchase or rental value, occupancy characteristics, and  
45 type, including the number of units affordable to low and moderate  
46 income households and substandard housing capable of being

1 rehabilitated, and in conducting this inventory the municipality shall  
2 have access, on a confidential basis for the sole purpose of conducting  
3 the inventory, to all necessary property tax assessment records and  
4 information in the assessor's office, including but not limited to the  
5 property record cards;

6 b. A projection of the municipality's housing stock, including the  
7 probable future construction of low and moderate income housing, for  
8 the next [six] ten years, taking into account, but not necessarily  
9 limited to, construction permits issued, approvals of applications for  
10 development and probable residential development of lands;

11 c. An analysis of the municipality's demographic characteristics,  
12 including but not necessarily limited to, household size, income level  
13 and age;

14 d. An analysis of the existing and probable future employment  
15 characteristics of the municipality;

16 e. A determination of the municipality's present and prospective  
17 fair share for low and moderate income housing and its capacity to  
18 accommodate its present and prospective housing needs, including its  
19 fair share for low and moderate income housing; and

20 f. A consideration of the lands that are most appropriate for  
21 construction of low and moderate income housing and of the existing  
22 structures most appropriate for conversion to, or rehabilitation for,  
23 low and moderate income housing, including a consideration of lands  
24 of developers who have expressed a commitment to provide low and  
25 moderate income housing.

26 (cf: P.L.1985, c.222, s.10)

27

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

30 11. a. In adopting its housing element, the municipality may  
31 provide for its fair share of low and moderate income housing by  
32 means of any technique or combination of techniques which provide  
33 a realistic opportunity for the provision of the fair share. The housing  
34 element shall contain an analysis demonstrating that it will provide  
35 such a realistic opportunity, and the municipality shall establish that its  
36 land use and other relevant ordinances have been revised to  
37 incorporate the provisions for low and moderate income housing. In  
38 preparing the housing element, the municipality shall consider the  
39 following techniques for providing low and moderate income housing  
40 within the municipality, as well as such other techniques as may be  
41 published by the council or proposed by the municipality:

42 (1) Rezoning for densities necessary to assure the economic  
43 viability of any inclusionary developments, either through mandatory  
44 set-asides or density bonuses, as may be necessary to meet all or part  
45 of the municipality's fair share;

46 (2) Determination of the total residential zoning necessary to

1 assure that the municipality's fair share is achieved;

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

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

9 (5) Donation or use of municipally owned land or land condemned  
10 by the municipality for purposes of providing low and moderate  
11 income housing;

12 (6) Tax abatements for purposes of providing low and moderate  
13 income housing;

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

16 (8) Utilization of municipally generated funds toward the  
17 construction of low and moderate income housing.

18 b. The municipality may provide for a phasing schedule for the  
19 achievement of its fair share of low and moderate income housing  
20 which is not inconsistent with section 23 of [this act] P.L.1985, c.222  
21 (C.52:27D-323).

22 c. The municipality may propose that a portion of its fair share be  
23 met through a regional contribution agreement. The housing element  
24 shall demonstrate, however, the manner in which that portion will be  
25 provided within the municipality if the regional contribution agreement  
26 is not entered into. The municipality shall provide a statement of its  
27 reasons for the proposal.

28 d. Nothing in [this act] P.L.1985, c.222 shall require a  
29 municipality to raise or expend municipal revenues in order to provide  
30 low and moderate income housing.

31 e. When a municipality's housing element includes the provision of  
32 rental housing units in a community residence for the developmentally  
33 disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2),  
34 which will be affordable to persons of low and moderate income, and  
35 for which adequate measures to retain such affordability pursuant to  
36 paragraph (3) of subsection a. of this section are included in the  
37 housing element, those housing units shall be fully credited as  
38 permitted under the rules of the council towards the fulfillment of the  
39 municipality's fair share of low and moderate income housing.

40 f. It having been determined by the Legislature that the provision  
41 of housing under this act is a public purpose, a municipality or  
42 municipalities may utilize public monies to make donations, grants or  
43 loans of public funds for the rehabilitation of deficient housing units  
44 and the provision of new or substantially rehabilitated housing for low  
45 and moderate income persons, providing that any private advantage is  
46 incidental.

47 (cf: P.L.1998, c.89, c.1)

1       4. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to  
2 read as follows:

3       12. a. A municipality may propose the transfer of up to 50% of its  
4 fair share to another municipality within its housing region by means  
5 of a contractual agreement into which two municipalities voluntarily  
6 enter. A municipality may also propose a transfer by contracting with  
7 the agency or another governmental entity designated by the council  
8 if the council determines that the municipality has exhausted all  
9 possibilities within its housing region. A municipality proposing to  
10 transfer to another municipality, whether directly or by means of a  
11 contract with the agency or another governmental entity designated by  
12 the council, shall provide the council with the housing element and  
13 statement required under subsection c. of section 11 of P.L.1985,  
14 c.222 (C.52:27D-311), and shall request the council to determine a  
15 match with a municipality filing a statement of intent pursuant to  
16 subsection e. of this section. Except as provided in subsection b. of  
17 this section, the agreement may be entered into upon obtaining  
18 substantive certification under section 14 of P.L.1985, c.222  
19 (C.52:27D-314), or anytime thereafter. The regional contribution  
20 agreement entered into shall specify how the housing shall be provided  
21 by the second municipality, hereinafter the receiving municipality, and  
22 the amount of contributions to be made by the first municipality,  
23 hereinafter the sending municipality.

24       b. A municipality which is a defendant in an exclusionary zoning  
25 suit and which has not obtained substantive certification pursuant to  
26 [this act] P.L.1985, c.222 may request the court to be permitted to  
27 fulfill a portion of its fair share by entering into a regional contribution  
28 agreement. If the court believes the request to be reasonable, the  
29 court shall request the council to review the proposed agreement and  
30 to determine a match with a receiving municipality or municipalities  
31 pursuant to this section. The court may establish time limitations for  
32 the council's review, and shall retain jurisdiction over the matter during  
33 the period of council review. If the court determines that the  
34 agreement provides a realistic opportunity for the provision of low and  
35 moderate income housing within the housing region, it shall provide  
36 the sending municipality a credit against its fair share for housing to be  
37 provided through the agreement in the manner provided in this section.

38       The agreement shall be entered into prior to the entry of a final  
39 judgment in the litigation. In cases in which a final judgment was  
40 entered prior to the date [this act] P.L.1985, c.222 takes effect and  
41 in which an appeal is pending, a municipality may request  
42 consideration of a regional contribution agreement; provided that it is  
43 entered into within 120 days after [this act] P.L.1985, c.222 takes  
44 effect. In a case in which a final judgment has been entered, the court  
45 shall consider whether or not the agreement constitutes an expeditious  
46 means of providing part of the fair share.

1 c. Regional contribution agreements shall be approved by the  
2 council, after review by the county planning board or agency of the  
3 county in which the receiving municipality is located. The council  
4 shall determine whether or not the agreement provides a realistic  
5 opportunity for the provision of low and moderate income housing  
6 within convenient access to employment opportunities. The council  
7 shall refer the agreement to the county planning board or agency which  
8 shall review whether or not the transfer agreement is in accordance  
9 with sound, comprehensive regional planning. In its review, the  
10 county planning board or agency shall consider the master plan and  
11 zoning ordinance of the sending and receiving municipalities, its own  
12 county master plan, and the State development and redevelopment  
13 plan. In the event that there is no county planning board or agency in  
14 the county in which the receiving municipality is located, the council  
15 shall also determine whether or not the agreement is in accordance  
16 with sound, comprehensive regional planning. After it has been  
17 determined that the agreement provides a realistic opportunity for low  
18 and moderate income housing within convenient access to employment  
19 opportunities, and that the agreement is consistent with sound,  
20 comprehensive regional planning, the council shall approve the  
21 regional contribution agreement by resolution. All determinations of  
22 a county planning board or agency shall be in writing and shall be  
23 made within such time limits as the council may prescribe, beyond  
24 which the council shall make those determinations and no fee shall be  
25 paid to the county planning board or agency pursuant to this  
26 subsection.

27 d. In approving a regional contribution agreement, the council shall  
28 set forth in its resolution a schedule of the contributions to be  
29 appropriated annually by the sending municipality. A copy of the  
30 adopted resolution shall be filed promptly with the Director of the  
31 Division of Local Government Services in the Department of  
32 Community Affairs, and the director shall thereafter not approve an  
33 annual budget of a sending municipality if it does not include  
34 appropriations necessary to meet the terms of the resolution. Amounts  
35 appropriated by a sending municipality for a regional contribution  
36 agreement pursuant to this section are exempt from the limitations or  
37 increases in final appropriations imposed under P.L.1976, c.68  
38 (C.40A:4-45.1 et seq.).

39 e. The council shall maintain current lists of municipalities which  
40 have stated an intent to enter into regional contribution agreements as  
41 receiving municipalities, and shall establish procedures for filing  
42 statements of intent with the council. No receiving municipality shall  
43 be required to accept a greater number of low and moderate income  
44 units through an agreement than it has expressed a willingness to  
45 accept in its statement, but the number stated shall not be less than a  
46 reasonable minimum number of units, not to exceed 100, as established

1 by the council. The council shall require a project plan from a  
2 receiving municipality prior to the entering into of the agreement, and  
3 shall submit the project plan to the agency for its review as to the  
4 feasibility of the plan prior to the council's approval of the agreement.  
5 The agency may recommend and the council may approve as part of  
6 the project plan a provision that the time limitations for contractual  
7 guarantees or resale controls for low and moderate income units  
8 included in the project shall be less than 30 years, if it is determined  
9 that modification is necessary to assure the economic viability of the  
10 project.

11 f. The council shall establish guidelines for the duration and  
12 amount of contributions in regional contribution agreements. In doing  
13 so, the council shall give substantial consideration to the average of:  
14 (1) the median amount required to rehabilitate a low and moderate  
15 income unit up to code enforcement standards; (2) the average internal  
16 subsidization required for a developer to provide a low income  
17 housing unit in an inclusionary development; (3) the average internal  
18 subsidization required for a developer to provide a moderate income  
19 housing unit in an inclusionary development. Contributions may be  
20 prorated in municipal appropriations occurring over a period not to  
21 exceed ~~[six]~~ ten years and may include an amount agreed upon to  
22 compensate or partially compensate the receiving municipality for  
23 infrastructure or other costs generated to the receiving municipality by  
24 the development. Appropriations shall be made and paid directly to  
25 the receiving municipality or municipalities or to the agency or other  
26 governmental entity designated by the council, as the case may be.

27 g. The council shall require receiving municipalities to file annual  
28 reports with the agency setting forth the progress in implementing a  
29 project funded under a regional contribution agreement, and the  
30 agency shall provide the council with its evaluation of each report.  
31 The council shall take such actions as may be necessary to enforce a  
32 regional contribution agreement with respect to the timely  
33 implementation of the project by the receiving municipality.

34 (cf: P.L.1995, c.83, s.2)

35

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

38 13. a. A municipality which has filed a housing element may, at  
39 any time during a two-year period following the filing of the housing  
40 element, petition the council for a <sup>1</sup>~~[ten-year]~~<sup>1</sup> substantive  
41 certification of its element and ordinances or institute an action for  
42 declaratory judgment granting it ~~[six-year]~~ <sup>1</sup>~~[ten-year]~~<sup>1</sup> repose in the  
43 Superior Court<sup>1</sup>, but in no event shall a grant of substantive  
44 certification extend beyond a 10-year period starting on the date the  
45 municipality files its housing element with the council<sup>1</sup>. The  
46 municipality shall publish notice of its petition in a newspaper of



1 general circulation within the municipality and county and shall make  
2 available to the public information on the element and ordinances in  
3 accordance with such procedures as the council shall establish. The  
4 council shall also establish a procedure for providing public notice of  
5 each petition which it receives.

6 b. Notwithstanding the provisions of subsection a. of this section,  
7 a municipality which filed a housing element prior to the effective date  
8 of [this 1990 amendatory act] P.L.1990, c.121, shall be permitted to  
9 petition for substantive certification at any time within two years  
10 following that filing, or within one year following the effective date of  
11 [this 1990 amendatory act] P.L.1990, c.121, whichever shall result in  
12 permitting the municipality the longer period of time within which to  
13 petition.

14 <sup>2</sup>The Council shall establish procedures for a realistic opportunity  
15 review at the midpoint of the certification period and shall provide for  
16 notice to the public.<sup>2</sup>

17 (cf: P.L.1990, c.121, s.1)

18

19 6. The change in the calculation of a municipality's determination  
20 of present and prospective share of housing need as provided in  
21 P.L. , c. (pending before the Legislature as this bill) shall apply  
22 to the methodology employed by the council for the certification  
23 period beginning June 7, 2000 and thereafter.

24

25 7. This act shall take effect immediately.

P.L. 2001, CHAPTER 435, *approved January 10, 2002*  
Senate, No. 1319 (*First Reprint*)

1 AN ACT concerning affordable housing, amending and supplementing  
2 P.L.1985, c.222.

3

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

6

7 1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to  
8 read as follows:

9 7. It shall be the duty of the council, seven months after the  
10 confirmation of the last member initially appointed to the council, or  
11 January 1, 1986, whichever is earlier, and from time to time thereafter,  
12 to:

13 a. Determine housing regions of the State;

14 b. Estimate the present and prospective need for low and  
15 moderate income housing at the State and regional levels;

16 c. Adopt criteria and guidelines for:

17 (1) Municipal determination of its present and prospective fair  
18 share of the housing need in a given region <sup>1</sup>which shall be computed  
19 for a 10-year period<sup>1</sup>. Municipal fair share shall be determined after  
20 crediting on a one-to-one basis each current unit of low and moderate  
21 income housing of adequate standard, including any such housing  
22 constructed or acquired as part of a housing program specifically  
23 intended to provide housing for low and moderate income households.  
24 Notwithstanding any other law to the contrary, a municipality shall be  
25 entitled to a credit for a unit if it demonstrates that (a) the municipality  
26 issued a certificate of occupancy for the unit, which was either newly  
27 constructed or rehabilitated between April 1, 1980 and December 15,  
28 1986; (b) a construction code official certifies, based upon a visual  
29 exterior survey, that the unit is in compliance with pertinent  
30 construction code standards with respect to structural elements,  
31 roofing, siding, doors and windows; (c) the household occupying the  
32 unit certifies in writing, under penalty of perjury, that it receives no  
33 greater income than that established pursuant to section 4 of P.L.1985,  
34 c.222 (C.52:27D-304) to qualify for moderate income housing; and (d)  
35 the unit for which credit is sought is affordable to low and moderate  
36 income households under the standards established by the council at  
37 the time of filing of the petition for substantive certification. It shall  
38 be sufficient if the certification required in subparagraph (c) is signed  
39 by one member of the household. A certification submitted pursuant  
40 to this paragraph shall be reviewable only by the council or its staff

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate SCU committee amendments adopted September 14, 2000.

1 and shall not be a public record;

2 Nothing in P.L.1995, c.81 shall affect the validity of substantive  
3 certification granted by the council prior to November 21, 1994, or to  
4 a judgment of compliance entered by any court of competent  
5 jurisdiction prior to that date. Additionally, any municipality that  
6 received substantive certification or a judgment of compliance prior to  
7 November 21, 1994 and filed a motion prior to November 21, 1994 to  
8 amend substantive certification or a judgment of compliance for the  
9 purpose of obtaining credits, shall be entitled to a determination of its  
10 right to credits pursuant to the standards established by the Legislature  
11 prior to P.L.1995, c.81. Any municipality that filed a motion prior to  
12 November 21, 1994 for the purpose of obtaining credits, which motion  
13 was supported by the results of a completed survey performed  
14 pursuant to council rules, shall be entitled to a determination of its  
15 right to credits pursuant to the standards established by the Legislature  
16 prior to P.L.1995, c.81;

17 (2) Municipal adjustment of the present and prospective fair share  
18 based upon available vacant and developable land, infrastructure  
19 considerations or environmental or historic preservation factors and  
20 adjustments shall be made whenever:

21 (a) The preservation of historically or important architecture and  
22 sites and their environs or environmentally sensitive lands may be  
23 jeopardized,

24 (b) The established pattern of development in the community  
25 would be drastically altered,

26 (c) Adequate land for recreational, conservation or agricultural and  
27 farmland preservation purposes would not be provided,

28 (d) Adequate open space would not be provided,

29 (e) The pattern of development is contrary to the planning  
30 designations in the State Development and Redevelopment Plan  
31 prepared pursuant to sections 1 through 12 of P.L.1985, c.398  
32 (C.52:18A-196 et seq.),

33 (f) Vacant and developable land is not available in the  
34 municipality, and

35 (g) Adequate public facilities and infrastructure capacities are not  
36 available, or would result in costs prohibitive to the public if provided;  
37 and

38 (3) (Deleted by amendment, P.L.1993, c.31);

39 d. Provide population and household projections for the State and  
40 housing regions;

41 e. In its discretion, place a limit, based on a percentage of existing  
42 housing stock in a municipality and any other criteria including  
43 employment opportunities which the council deems appropriate, upon  
44 the aggregate number of units which may be allocated to a  
45 municipality as its fair share of the region's present and prospective  
46 need for low and moderate income housing. No municipality shall be

1 required to address a fair share beyond 1,000 units within ~~【six】~~ ten  
2 years from the grant of substantive certification, unless it is  
3 demonstrated, following objection by an interested party and an  
4 evidentiary hearing, based upon the facts and circumstances of the  
5 affected municipality that it is likely that the municipality through its  
6 zoning powers could create a realistic opportunity for more than 1,000  
7 low and moderate income units within that ~~【six-year】~~ ten-year period.  
8 For the purposes of this section, the facts and circumstances which  
9 shall determine whether a municipality's fair share shall exceed 1,000  
10 units, as provided above, shall be a finding that the municipality has  
11 issued more than 5,000 certificates of occupancy for residential units  
12 in the ~~【six-year】~~ ten-year period preceding the petition for substantive  
13 certification in connection with which the objection was filed.

14 For the purpose of crediting low and moderate income housing  
15 units in order to arrive at a determination of present and prospective  
16 fair share, as set forth in paragraph (1) of subsection c. of this section,  
17 housing units comprised in a community residence for the  
18 developmentally disabled, as defined in section 2 of P.L.1977, c.448  
19 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or  
20 to be promulgated by the council, to the extent that the units are  
21 affordable to persons of low and moderate income and are available to  
22 the general public.

23 In carrying out the above duties, including, but not limited to,  
24 present and prospective need estimations the council shall give  
25 appropriate weight to pertinent research studies, government reports,  
26 decisions of other branches of government, implementation of the  
27 State Development and Redevelopment Plan prepared pursuant to  
28 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and  
29 public comment. To assist the council, the State Planning Commission  
30 established under that act shall provide the council annually with  
31 economic growth, development and decline projections for each  
32 housing region for the next ~~【six】~~ ten years. The council shall develop  
33 procedures for periodically adjusting regional need based upon the low  
34 and moderate income housing that is provided in the region through  
35 any federal, State, municipal or private housing program.

36 (cf: P.L.1995, c.344, s.1)

37

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

40 10. A municipality's housing element shall be designed to achieve  
41 the goal of access to affordable housing to meet present and  
42 prospective housing needs, with particular attention to low and  
43 moderate income housing, and shall contain at least:

44 a. An inventory of the municipality's housing stock by age,  
45 condition, purchase or rental value, occupancy characteristics, and  
46 type, including the number of units affordable to low and moderate

1 income households and substandard housing capable of being  
2 rehabilitated, and in conducting this inventory the municipality shall  
3 have access, on a confidential basis for the sole purpose of conducting  
4 the inventory, to all necessary property tax assessment records and  
5 information in the assessor's office, including but not limited to the  
6 property record cards;

7 b. A projection of the municipality's housing stock, including the  
8 probable future construction of low and moderate income housing, for  
9 the next [six] ten years, taking into account, but not necessarily  
10 limited to, construction permits issued, approvals of applications for  
11 development and probable residential development of lands;

12 c. An analysis of the municipality's demographic characteristics,  
13 including but not necessarily limited to, household size, income level  
14 and age;

15 d. An analysis of the existing and probable future employment  
16 characteristics of the municipality;

17 e. A determination of the municipality's present and prospective  
18 fair share for low and moderate income housing and its capacity to  
19 accommodate its present and prospective housing needs, including its  
20 fair share for low and moderate income housing; and

21 f. A consideration of the lands that are most appropriate for  
22 construction of low and moderate income housing and of the existing  
23 structures most appropriate for conversion to, or rehabilitation for,  
24 low and moderate income housing, including a consideration of lands  
25 of developers who have expressed a commitment to provide low and  
26 moderate income housing.

27 (cf: P.L.1985, c.222, s.10)

28

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

31 11. a. In adopting its housing element, the municipality may  
32 provide for its fair share of low and moderate income housing by  
33 means of any technique or combination of techniques which provide  
34 a realistic opportunity for the provision of the fair share. The housing  
35 element shall contain an analysis demonstrating that it will provide  
36 such a realistic opportunity, and the municipality shall establish that its  
37 land use and other relevant ordinances have been revised to  
38 incorporate the provisions for low and moderate income housing. In  
39 preparing the housing element, the municipality shall consider the  
40 following techniques for providing low and moderate income housing  
41 within the municipality, as well as such other techniques as may be  
42 published by the council or proposed by the municipality:

43 (1) Rezoning for densities necessary to assure the economic  
44 viability of any inclusionary developments, either through mandatory  
45 set-asides or density bonuses, as may be necessary to meet all or part  
46 of the municipality's fair share;

- 1 (2) Determination of the total residential zoning necessary to  
2 assure that the municipality's fair share is achieved;
- 3 (3) Determination of measures that the municipality will take to  
4 assure that low and moderate income units remain affordable to low  
5 and moderate income households for an appropriate period of not less  
6 than six years;
- 7 (4) A plan for infrastructure expansion and rehabilitation if  
8 necessary to assure the achievement of the municipality's fair share of  
9 low and moderate income housing;
- 10 (5) Donation or use of municipally owned land or land condemned  
11 by the municipality for purposes of providing low and moderate  
12 income housing;
- 13 (6) Tax abatements for purposes of providing low and moderate  
14 income housing;
- 15 (7) Utilization of funds obtained from any State or federal subsidy  
16 toward the construction of low and moderate income housing; and
- 17 (8) Utilization of municipally generated funds toward the  
18 construction of low and moderate income housing.
- 19 b. The municipality may provide for a phasing schedule for the  
20 achievement of its fair share of low and moderate income housing  
21 which is not inconsistent with section 23 of [this act] P.L.1985, c.222  
22 (C.52:27D-323).
- 23 c. The municipality may propose that a portion of its fair share be  
24 met through a regional contribution agreement. The housing element  
25 shall demonstrate, however, the manner in which that portion will be  
26 provided within the municipality if the regional contribution agreement  
27 is not entered into. The municipality shall provide a statement of its  
28 reasons for the proposal.
- 29 d. Nothing in [this act] P.L.1985, c.222 shall require a  
30 municipality to raise or expend municipal revenues in order to provide  
31 low and moderate income housing.
- 32 e. When a municipality's housing element includes the provision of  
33 rental housing units in a community residence for the developmentally  
34 disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2),  
35 which will be affordable to persons of low and moderate income, and  
36 for which adequate measures to retain such affordability pursuant to  
37 paragraph (3) of subsection a. of this section are included in the  
38 housing element, those housing units shall be fully credited as  
39 permitted under the rules of the council towards the fulfillment of the  
40 municipality's fair share of low and moderate income housing.
- 41 f. It having been determined by the Legislature that the provision  
42 of housing under this act is a public purpose, a municipality or  
43 municipalities may utilize public monies to make donations, grants or  
44 loans of public funds for the rehabilitation of deficient housing units  
45 and the provision of new or substantially rehabilitated housing for low  
46 and moderate income persons, providing that any private advantage is

1 incidental.

2 (cf: P.L.1998, c.89, s.1)

3

4 4. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to  
5 read as follows:

6 12. a. A municipality may propose the transfer of up to 50% of its  
7 fair share to another municipality within its housing region by means  
8 of a contractual agreement into which two municipalities voluntarily  
9 enter. A municipality may also propose a transfer by contracting with  
10 the agency or another governmental entity designated by the council  
11 if the council determines that the municipality has exhausted all  
12 possibilities within its housing region. A municipality proposing to  
13 transfer to another municipality, whether directly or by means of a  
14 contract with the agency or another governmental entity designated by  
15 the council, shall provide the council with the housing element and  
16 statement required under subsection c. of section 11 of P.L.1985,  
17 c.222 (C.52:27D-311), and shall request the council to determine a  
18 match with a municipality filing a statement of intent pursuant to  
19 subsection e. of this section. Except as provided in subsection b. of  
20 this section, the agreement may be entered into upon obtaining  
21 substantive certification under section 14 of P.L.1985, c.222  
22 (C.52:27D-314), or anytime thereafter. The regional contribution  
23 agreement entered into shall specify how the housing shall be provided  
24 by the second municipality, hereinafter the receiving municipality, and  
25 the amount of contributions to be made by the first municipality,  
26 hereinafter the sending municipality.

27 b. A municipality which is a defendant in an exclusionary zoning  
28 suit and which has not obtained substantive certification pursuant to  
29 **[this act] P.L.1985, c.222** may request the court to be permitted to  
30 fulfill a portion of its fair share by entering into a regional contribution  
31 agreement. If the court believes the request to be reasonable, the  
32 court shall request the council to review the proposed agreement and  
33 to determine a match with a receiving municipality or municipalities  
34 pursuant to this section. The court may establish time limitations for  
35 the council's review, and shall retain jurisdiction over the matter during  
36 the period of council review. If the court determines that the  
37 agreement provides a realistic opportunity for the provision of low and  
38 moderate income housing within the housing region, it shall provide  
39 the sending municipality a credit against its fair share for housing to be  
40 provided through the agreement in the manner provided in this section.

41 The agreement shall be entered into prior to the entry of a final  
42 judgment in the litigation. In cases in which a final judgment was  
43 entered prior to the date **[this act] P.L.1985, c.222** takes effect and  
44 in which an appeal is pending, a municipality may request  
45 consideration of a regional contribution agreement; provided that it is  
46 entered into within 120 days after **[this act] P.L.1985, c.222** takes

1 effect. In a case in which a final judgment has been entered, the court  
2 shall consider whether or not the agreement constitutes an expeditious  
3 means of providing part of the fair share.

4 c. Regional contribution agreements shall be approved by the  
5 council, after review by the county planning board or agency of the  
6 county in which the receiving municipality is located. The council  
7 shall determine whether or not the agreement provides a realistic  
8 opportunity for the provision of low and moderate income housing  
9 within convenient access to employment opportunities. The council  
10 shall refer the agreement to the county planning board or agency which  
11 shall review whether or not the transfer agreement is in accordance  
12 with sound, comprehensive regional planning. In its review, the  
13 county planning board or agency shall consider the master plan and  
14 zoning ordinance of the sending and receiving municipalities, its own  
15 county master plan, and the State development and redevelopment  
16 plan. In the event that there is no county planning board or agency in  
17 the county in which the receiving municipality is located, the council  
18 shall also determine whether or not the agreement is in accordance  
19 with sound, comprehensive regional planning. After it has been  
20 determined that the agreement provides a realistic opportunity for low  
21 and moderate income housing within convenient access to employment  
22 opportunities, and that the agreement is consistent with sound,  
23 comprehensive regional planning, the council shall approve the  
24 regional contribution agreement by resolution. All determinations of  
25 a county planning board or agency shall be in writing and shall be  
26 made within such time limits as the council may prescribe, beyond  
27 which the council shall make those determinations and no fee shall be  
28 paid to the county planning board or agency pursuant to this  
29 subsection.

30 d. In approving a regional contribution agreement, the council shall  
31 set forth in its resolution a schedule of the contributions to be  
32 appropriated annually by the sending municipality. A copy of the  
33 adopted resolution shall be filed promptly with the Director of the  
34 Division of Local Government Services in the Department of  
35 Community Affairs, and the director shall thereafter not approve an  
36 annual budget of a sending municipality if it does not include  
37 appropriations necessary to meet the terms of the resolution. Amounts  
38 appropriated by a sending municipality for a regional contribution  
39 agreement pursuant to this section are exempt from the limitations or  
40 increases in final appropriations imposed under P.L.1976, c.68  
41 (C.40A:4-45.1 et seq.).

42 e. The council shall maintain current lists of municipalities which  
43 have stated an intent to enter into regional contribution agreements as  
44 receiving municipalities, and shall establish procedures for filing  
45 statements of intent with the council. No receiving municipality shall  
46 be required to accept a greater number of low and moderate income



1 units through an agreement than it has expressed a willingness to  
2 accept in its statement, but the number stated shall not be less than a  
3 reasonable minimum number of units, not to exceed 100, as established  
4 by the council. The council shall require a project plan from a  
5 receiving municipality prior to the entering into of the agreement, and  
6 shall submit the project plan to the agency for its review as to the  
7 feasibility of the plan prior to the council's approval of the agreement.  
8 The agency may recommend and the council may approve as part of  
9 the project plan a provision that the time limitations for contractual  
10 guarantees or resale controls for low and moderate income units  
11 included in the project shall be less than 30 years, if it is determined  
12 that modification is necessary to assure the economic viability of the  
13 project.

14 f. The council shall establish guidelines for the duration and  
15 amount of contributions in regional contribution agreements. In doing  
16 so, the council shall give substantial consideration to the average of:  
17 (1) the median amount required to rehabilitate a low and moderate  
18 income unit up to code enforcement standards; (2) the average internal  
19 subsidization required for a developer to provide a low income  
20 housing unit in an inclusionary development; (3) the average internal  
21 subsidization required for a developer to provide a moderate income  
22 housing unit in an inclusionary development. Contributions may be  
23 prorated in municipal appropriations occurring over a period not to  
24 exceed ~~[six]~~ ten years and may include an amount agreed upon to  
25 compensate or partially compensate the receiving municipality for  
26 infrastructure or other costs generated to the receiving municipality by  
27 the development. Appropriations shall be made and paid directly to  
28 the receiving municipality or municipalities or to the agency or other  
29 governmental entity designated by the council, as the case may be.

30 g. The council shall require receiving municipalities to file annual  
31 reports with the agency setting forth the progress in implementing a  
32 project funded under a regional contribution agreement, and the  
33 agency shall provide the council with its evaluation of each report.  
34 The council shall take such actions as may be necessary to enforce a  
35 regional contribution agreement with respect to the timely  
36 implementation of the project by the receiving municipality.  
37 (cf: P.L.1995, c.83, s.2)

38  
39 5. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to  
40 read as follows:

41 13. a. A municipality which has filed a housing element may, at  
42 any time during a two-year period following the filing of the housing  
43 element, petition the council for a <sup>1</sup>~~[ten-year]~~<sup>1</sup> substantive  
44 certification of its element and ordinances or institute an action for  
45 declaratory judgment granting it ~~[six-year]~~ <sup>1</sup>~~[ten-year]~~<sup>1</sup> repose in the  
46 Superior Court <sup>1</sup>, but in no event shall a grant of substantive

1 certification extend beyond a 10-year period starting on the date the  
2 municipality files its housing element with the council<sup>1</sup>. The  
3 municipality shall publish notice of its petition in a newspaper of  
4 general circulation within the municipality and county and shall make  
5 available to the public information on the element and ordinances in  
6 accordance with such procedures as the council shall establish. The  
7 council shall also establish a procedure for providing public notice of  
8 each petition which it receives.

9 b. Notwithstanding the provisions of subsection a. of this section,  
10 a municipality which filed a housing element prior to the effective date  
11 of [this 1990 amendatory act] P.L.1990, c.121, shall be permitted to  
12 petition for substantive certification at any time within two years  
13 following that filing, or within one year following the effective date of  
14 [this 1990 amendatory act] P.L.1990, c.121, whichever shall result in  
15 permitting the municipality the longer period of time within which to  
16 petition.

17 <sup>1</sup>The Council shall establish procedures for a realistic opportunity  
18 review at the midpoint of the certification period and shall provide for  
19 notice to the public.<sup>1</sup>

20 (cf: P.L.1990, c.121, s.1)

21

22 6. The change in the calculation of a municipality's determination  
23 of present and prospective share of housing need as provided in  
24 P.L. , c. (pending before the Legislature as this bill) shall apply  
25 to the methodology employed by the council for the certification  
26 period beginning June 7, 2000 and thereafter.

27

28 7. This act shall take effect immediately.

29

30

31

32

33 \_\_\_\_\_  
34 Increases certification period governing COAH from six to ten years  
under "Fair Housing Act."

## CHAPTER 435

AN ACT concerning affordable housing, amending and supplementing P.L.1985, c.222.

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

1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to read as follows:

C.52:27D-307 Duties of council.

7. It shall be the duty of the council, seven months after the confirmation of the last member initially appointed to the council, or January 1, 1986, whichever is earlier, and from time to time thereafter, to:

- a. Determine housing regions of the State;
- b. Estimate the present and prospective need for low and moderate income housing at the State and regional levels;
- c. Adopt criteria and guidelines for:

(1) Municipal determination of its present and prospective fair share of the housing need in a given region which shall be computed for a 10-year period. Municipal fair share shall be determined after crediting on a one-to-one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. Notwithstanding any other law to the contrary, a municipality shall be entitled to a credit for a unit if it demonstrates that (a) the municipality issued a certificate of occupancy for the unit, which was either newly constructed or rehabilitated between April 1, 1980 and December 15, 1986; (b) a construction code official certifies, based upon a visual exterior survey, that the unit is in compliance with pertinent construction code standards with respect to structural elements, roofing, siding, doors and windows; (c) the household occupying the unit certifies in writing, under penalty of perjury, that it receives no greater income than that established pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for moderate income housing; and (d) the unit for which credit is sought is affordable to low and moderate income households under the standards established by the council at the time of filing of the petition for substantive certification. It shall be sufficient if the certification required in subparagraph (c) is signed by one member of the household. A certification submitted pursuant to this paragraph shall be reviewable only by the council or its staff and shall not be a public record;

Nothing in P.L.1995, c.81 shall affect the validity of substantive certification granted by the council prior to November 21, 1994, or to a judgment of compliance entered by any court of competent jurisdiction prior to that date. Additionally, any municipality that received substantive certification or a judgment of compliance prior to November 21, 1994 and filed a motion prior to November 21, 1994 to amend substantive certification or a judgment of compliance for the purpose of obtaining credits, shall be entitled to a determination of its right to credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81. Any municipality that filed a motion prior to November 21, 1994 for the purpose of obtaining credits, which motion was supported by the results of a completed survey performed pursuant to council rules, shall be entitled to a determination of its right to credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81;

(2) Municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or environmental or historic preservation factors and adjustments shall be made whenever:

- (a) The preservation of historically or important architecture and sites and their environs or environmentally sensitive lands may be jeopardized,
- (b) The established pattern of development in the community would be drastically altered,
- (c) Adequate land for recreational, conservation or agricultural and farmland preservation purposes would not be provided,
- (d) Adequate open space would not be provided,
- (e) The pattern of development is contrary to the planning designations in the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.),
- (f) Vacant and developable land is not available in the municipality, and

(g) Adequate public facilities and infrastructure capacities are not available, or would result in costs prohibitive to the public if provided; and

(3) (Deleted by amendment, P.L.1993, c.31).

d. Provide population and household projections for the State and housing regions;

e. In its discretion, place a limit, based on a percentage of existing housing stock in a municipality and any other criteria including employment opportunities which the council deems appropriate, upon the aggregate number of units which may be allocated to a municipality as its fair share of the region's present and prospective need for low and moderate income housing. No municipality shall be required to address a fair share beyond 1,000 units within ten years from the grant of substantive certification, unless it is demonstrated, following objection by an interested party and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within that ten-year period. For the purposes of this section, the facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units, as provided above, shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the ten-year period preceding the petition for substantive certification in connection with which the objection was filed.

For the purpose of crediting low and moderate income housing units in order to arrive at a determination of present and prospective fair share, as set forth in paragraph (1) of subsection c. of this section, housing units comprised in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or to be promulgated by the council, to the extent that the units are affordable to persons of low and moderate income and are available to the general public.

In carrying out the above duties, including, but not limited to, present and prospective need estimations the council shall give appropriate weight to pertinent research studies, government reports, decisions of other branches of government, implementation of the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and public comment. To assist the council, the State Planning Commission established under that act shall provide the council annually with economic growth, development and decline projections for each housing region for the next ten years. The council shall develop procedures for periodically adjusting regional need based upon the low and moderate income housing that is provided in the region through any federal, State, municipal or private housing program.

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

C.52:27D-310 Essential components of municipality's housing element.

10. A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing, and shall contain at least:

a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;

b. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;

d. An analysis of the existing and probable future employment characteristics of the municipality;

e. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and

f. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

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

C.52:27D-311 Provision of fair share by municipality.

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

(1) Rezoning for densities necessary to assure the economic viability of any inclusionary developments, either through mandatory set-asides or density bonuses, as may be necessary to meet all or part of the municipality's fair share;

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

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

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

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

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

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

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

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

b. The municipality may provide for a phasing schedule for the achievement of its fair share of low and moderate income housing which is not inconsistent with section 23 of P.L.1985, c.222 (C.52:27D-323).

c. The municipality may propose that a portion of its fair share be met through a regional contribution agreement. The housing element shall demonstrate, however, the manner in which that portion will be provided within the municipality if the regional contribution agreement is not entered into. The municipality shall provide a statement of its reasons for the proposal.

d. Nothing in P.L.1985, c.222 shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.

e. When a municipality's housing element includes the provision of rental housing units in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), which will be affordable to persons of low and moderate income, and for which adequate measures to retain such affordability pursuant to paragraph (3) of subsection a.

of this section are included in the housing element, those housing units shall be fully credited as permitted under the rules of the council towards the fulfillment of the municipality's fair share of low and moderate income housing.

f. It having been determined by the Legislature that the provision of housing under this act is a public purpose, a municipality or municipalities may utilize public monies to make donations, grants or loans of public funds for the rehabilitation of deficient housing units and the provision of new or substantially rehabilitated housing for low and moderate income persons, providing that any private advantage is incidental.

4. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to read as follows:

C.52:27D-312 Regional contribution agreements.

12. a. A municipality may propose the transfer of up to 50% of its fair share to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. A municipality may also propose a transfer by contracting with the agency or another governmental entity designated by the council if the council determines that the municipality has exhausted all possibilities within its housing region. A municipality proposing to transfer to another municipality, whether directly or by means of a contract with the agency or another governmental entity designated by the council, shall provide the council with the housing element and statement required under subsection c. of section 11 of P.L.1985, c.222 (C.52:27D-311), and shall request the council to determine a match with a municipality filing a statement of intent pursuant to subsection e. of this section. Except as provided in subsection b. of this section, the agreement may be entered into upon obtaining substantive certification under section 14 of P.L.1985, c.222 (C.52:27D-314), or anytime thereafter. The regional contribution agreement entered into shall specify how the housing shall be provided by the second municipality, hereinafter the receiving municipality, and the amount of contributions to be made by the first municipality, hereinafter the sending municipality.

b. A municipality which is a defendant in an exclusionary zoning suit and which has not obtained substantive certification pursuant to P.L.1985, c.222 may request the court to be permitted to fulfill a portion of its fair share by entering into a regional contribution agreement. If the court believes the request to be reasonable, the court shall request the council to review the proposed agreement and to determine a match with a receiving municipality or municipalities pursuant to this section. The court may establish time limitations for the council's review, and shall retain jurisdiction over the matter during the period of council review. If the court determines that the agreement provides a realistic opportunity for the provision of low and moderate income housing within the housing region, it shall provide the sending municipality a credit against its fair share for housing to be provided through the agreement in the manner provided in this section.

The agreement shall be entered into prior to the entry of a final judgment in the litigation. In cases in which a final judgment was entered prior to the date P.L.1985, c.222 takes effect and in which an appeal is pending, a municipality may request consideration of a regional contribution agreement; provided that it is entered into within 120 days after P.L.1985, c.222 takes effect. In a case in which a final judgment has been entered, the court shall consider whether or not the agreement constitutes an expeditious means of providing part of the fair share.

c. Regional contribution agreements shall be approved by the council, after review by the county planning board or agency of the county in which the receiving municipality is located. The council shall determine whether or not the agreement provides a realistic opportunity for the provision of low and moderate income housing within convenient access to employment opportunities. The council shall refer the agreement to the county planning board or agency which shall review whether or not the transfer agreement is in accordance with sound, comprehensive regional planning. In its review, the county planning board or agency shall consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan, and the State development and redevelopment plan. In the event that there is no county planning board or agency in the county in which the receiving municipality is

located, the council shall also determine whether or not the agreement is in accordance with sound, comprehensive regional planning. After it has been determined that the agreement provides a realistic opportunity for low and moderate income housing within convenient access to employment opportunities, and that the agreement is consistent with sound, comprehensive regional planning, the council shall approve the regional contribution agreement by resolution. All determinations of a county planning board or agency shall be in writing and shall be made within such time limits as the council may prescribe, beyond which the council shall make those determinations and no fee shall be paid to the county planning board or agency pursuant to this subsection.

d. In approving a regional contribution agreement, the council shall set forth in its resolution a schedule of the contributions to be appropriated annually by the sending municipality. A copy of the adopted resolution shall be filed promptly with the Director of the Division of Local Government Services in the Department of Community Affairs, and the director shall thereafter not approve an annual budget of a sending municipality if it does not include appropriations necessary to meet the terms of the resolution. Amounts appropriated by a sending municipality for a regional contribution agreement pursuant to this section are exempt from the limitations or increases in final appropriations imposed under P.L.1976, c.68 (C.40A:4-45.1 et seq.).

e. The council shall maintain current lists of municipalities which have stated an intent to enter into regional contribution agreements as receiving municipalities, and shall establish procedures for filing statements of intent with the council. No receiving municipality shall be required to accept a greater number of low and moderate income units through an agreement than it has expressed a willingness to accept in its statement, but the number stated shall not be less than a reasonable minimum number of units, not to exceed 100, as established by the council. The council shall require a project plan from a receiving municipality prior to the entering into of the agreement, and shall submit the project plan to the agency for its review as to the feasibility of the plan prior to the council's approval of the agreement. The agency may recommend and the council may approve as part of the project plan a provision that the time limitations for contractual guarantees or resale controls for low and moderate income units included in the project shall be less than 30 years, if it is determined that modification is necessary to assure the economic viability of the project.

f. The council shall establish guidelines for the duration and amount of contributions in regional contribution agreements. In doing so, the council shall give substantial consideration to the average of: (1) the median amount required to rehabilitate a low and moderate income unit up to code enforcement standards; (2) the average internal subsidization required for a developer to provide a low income housing unit in an inclusionary development; (3) the average internal subsidization required for a developer to provide a moderate income housing unit in an inclusionary development. Contributions may be prorated in municipal appropriations occurring over a period not to exceed ten years and may include an amount agreed upon to compensate or partially compensate the receiving municipality for infrastructure or other costs generated to the receiving municipality by the development. Appropriations shall be made and paid directly to the receiving municipality or municipalities or to the agency or other governmental entity designated by the council, as the case may be.

g. The council shall require receiving municipalities to file annual reports with the agency setting forth the progress in implementing a project funded under a regional contribution agreement, and the agency shall provide the council with its evaluation of each report. The council shall take such actions as may be necessary to enforce a regional contribution agreement with respect to the timely implementation of the project by the receiving municipality.

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

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

13. a. A municipality which has filed a housing element may, at any time during a two-year period following the filing of the housing element, petition the council for a substantive certification of its element and ordinances or institute an action for declaratory judgment granting it repose in the Superior Court, but in no event shall a grant of substantive certification

extend beyond a 10-year period starting on the date the municipality files its housing element with the council. The municipality shall publish notice of its petition in a newspaper of general circulation within the municipality and county and shall make available to the public information on the element and ordinances in accordance with such procedures as the council shall establish. The council shall also establish a procedure for providing public notice of each petition which it receives.

b. Notwithstanding the provisions of subsection a. of this section, a municipality which filed a housing element prior to the effective date of P.L.1990, c.121, shall be permitted to petition for substantive certification at any time within two years following that filing, or within one year following the effective date of P.L.1990, c.121, whichever shall result in permitting the municipality the longer period of time within which to petition.

The Council shall establish procedures for a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public.

C.52:27D-307.6 Methodology for change in calculation for loss on June 7, 2000 and after.

6. The change in the calculation of a municipality's determination of present and prospective share of housing need as provided in P.L.2001,c.435 shall apply to the methodology employed by the council for the certification period beginning June 7, 2000 and thereafter.

7. This act shall take effect immediately.

Approved January 10, 2002.