

LEGISLATIVE HISTORY CHECKLIST

NJSA: 52:27D-301 et seq "Fair Housing Act"

LAWS OF: 1985 CHAPTER: 222

BILL NO: S2046

Sponsor(s): Lipman, Stockman and Lynch

Date Introduced: June 28, 1984

Committee: Assembly: Municipal Government
Senate: Revenue, Finance and Appropriations

Amended during passage: Yes Substituted for A3302 (OCR and Assembly Committee statement--attached)

Date of Passage: Assembly: March 7, 1985 Re-enacted 6-27-85
Senate: January 31, 1985 Re-enacted 6-24-85

Date of Approval: July 2, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes
Senate Yes 1-28-85 & 11-26-84

Fiscal Note: No

Veto Message: Yes

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: Yes

974/90 New Jersey. Legislature. Senate. State Government, Federal & Interstate
H842 Relations and Veterans' Affairs.
1984 Public hearing on S1913 and S2046, held 8-2-84. Trenton, 1984.

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974.90 New Jersey. Legislature. Senate. State Government, Federal and Interstate
H842 Relations and Veterans Affairs Committee.
1984a Public hearing on S.2046, held 9-17-84.

974.90 New Jersey. Legislature. Senate. Legislative Oversight Committee.
H842 Public hearing on state response to Mount Laurel II, held 10-4-83 and
1983d 10-18-83. Trenton, 1983.

974.90 New Jersey. Legislature. Senate. Legislative Oversight Committee.
H842 Public hearing on State response to Mount Laurel II, held 12-15-83.
1983h Trenton, 1983.

See also:

Jager, James R., "The fair housing act and its impact on municipalities,"
New Jersey Municipalities, Oct., 1985, pp. 16+.

Mallach, Alan, "The fair housing act: how fair is it?" New Jersey Reporter,
Oct., 1985, pp. 20+.

Rose, Jerome G, "New Jersey Enacts a Fair Housing Law," 14 Real Estate
Law Journal, 195-217.

See also New Jersey Index under "Mt. Laurel" and "Zoning" and Newsclipping file in "N.J.-
Zoning, Exclusionary-1985" and N.J.-Zoning, Exclusionary-Mt. Laurel-1985."

Bibliography:

974.90 New Jersey. State Library
H842 Exclusionary Zoning: a bibliography. 2nd edition. April,
1985 1985.

974.90 New Jersey. Legislature. Senate. Legislative Oversight Committee.
H842 Public hearing on state response to Mount Laurel II,
1983d held 10-4-83 and 10-18-83 Trenton, 1983.

974.90 New Jersey. State Legislature. Senate. Legislative Oversight Committee.
H892 Public hearing on state response held 12-15-83. Trenton, N.J.,
1983h 1983.

P. L. 1985, CHAPTER 222, *approved July 2, 1985*

Senate Committee Substitute For
1985 Senate Nos. 2046 and 2334 (*Second Official Copy Reprint*)

AN ACT concerning housing, ****[and]**** making an appropriation
****and amending P. L. 1975, c. 291**.**

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

1 1. This act shall be known and may be cited as the "Fair Housing
2 Act."

1 2. The Legislature finds that:

2 a. The New Jersey Supreme Court, through its rulings in *South*
3 *Burlington County NAACP v. Mount Laurel*, 67 N.J. 151 (1975)
4 and *South Burlington County NAACP v. Mount Laurel*, 92 N.J.
5 158 (1983), has determined that every municipality in a growth
6 area has a constitutional obligation to provide ****through its land**
7 **use regulations**** a realistic opportunity for a fair share of its
8 region's present and prospective needs for housing for low and
8A moderate income families.

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

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

19 d. There are a number of essential ingredients to a comprehen-
20 sive planning and implementation response, including the estab-

**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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly committee amendments adopted February 28, 1985.**

****—Senate amendments adopted in accordance with Governor's recommenda-
tions May 13, 1985.**

21 lishment of reasonable fair share housing guidelines and standards,
22 the initial determination of fair share by officials at the municipal
23 level and the preparation of a municipal housing element, State
24 review of the local fair share study and housing element, and con-
25 tinuous State funding for low and moderate income housing to
26 replace the federal housing subsidy programs which have been
27 almost completely eliminated.

28 e. The State can maximize the number of low and moderate
29 income units provided in New Jersey by allowing its municipalities
30 to adopt appropriate phasing schedules for meeting their fair
31 share, so long as the municipalities permit a timely achievement
32 of an appropriate fair share of the regional need for low and
33 moderate income housing as required by the Mt. Laurel I and II
34 opinions.

35 f. The State can, also, maximize the number of low and moderate
36 income units by rehabilitating existing, but substandard, housing
37 in the State, and, in order to achieve this end, it is appropriate
38 to permit the transfer of a limited portion of the fair share obli-
39 gations among municipalities in a housing region, so long as the
40 transfer occurs on the basis of sound comprehensive planning,
41 with regard to an adequate housing financing plan, and in relation
42 to the access of low and moderate income households to employ-
43 ment opportunities.

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

49 h. The Supreme Court of New Jersey in its Mount Laurel deci-
50 sion demands that municipal land use regulations affirmatively
51 afford a reasonable opportunity for a variety and choice of housing
52 including low and moderate cost housing, to meet the needs of peo-
53 ple desiring to live there. While provision for the actual construc-
54 tion of that housing by municipalities is not required, they are en-
55 couraged but not mandated to expend their own resources to help
56 provide low and moderate income housing.**

1 3. The Legislature declares that the statutory scheme set forth
2 in this act is in the public interest in that it comprehends a low
3 and moderate income housing planning and financing mechanism
4 in accordance with regional considerations and sound planning
5 concepts which satisfies the constitutional obligation enunciated
6 by the Supreme Court. **The Legislature declares that the State's*
7 *preference for the resolution of existing and future disputes in-*

8 *volving exclusionary zoning is the mediation and review process*
9 *set forth in this act and not litigation, and that it is the intention of*
10 *this act to provide various alternatives to the use of the builder's*
11 *remedy as a method of achieving fair share housing.**

1 4. As used in this act:

2 a. "Council" means the Council on Affordable Housing estab-
3 lished in this act, which shall have primary jurisdiction for the
4 administration of housing obligations in accordance with sound
5 regional planning considerations in this State.

6 b. "Housing region" means a geographic area of no less than
7 two nor more than four contiguous, whole counties which exhibit
8 significant social, economic and income similarities, and which
9 constitute to the greatest extent practicable the primary metro-
10 politan statistical areas as last defined by the United States Census
11 Bureau prior to the effective date of this act.

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

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

26 e. "Resolution of participation" means a resolution adopted by
27 a municipality in which the municipality chooses to prepare a fair
28 share ***[study]*** **plan** and housing element in accordance with
28A this act.

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

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

38 h. "Development" means any development for which permission

39 may be required pursuant to the "Municipal Land Use Law," P. L.
40 1975, c. 291 (C. 40:55D-1 et seq.).

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

44 **j. "Prospective Need" means a projection of housing needs
45 based on development and growth which is reasonably likely to
46 occur in a region or a municipality, as the case may be, as a result
47 of actual determination of public and private entities. In deter-
48 mining prospective need consideration shall be given to approvals
49 of development application, real property transfers and economic
50 projections prepared by the State Planning Commission established
51 by P. L. . . . , c. . . . (now pending before the Legislature as Senate
52 Bill No. 1464 of 1984).**

1 5. a. There is established in, but not of, the Department of Com-
2 munity Affairs a Council on Affordable Housing to consist of
3 nine members appointed by the Governor with the advice and con-
4 sent of the State, of whom four shall be elected officials represent-
5 ing the interests of local government, at least one of whom shall be
6 representative of an urban municipality having a population in
7 excess of 40,000 persons and a population density in excess of
8 3,000 persons per square mile, and no more than one of whom
9 may be a representative of the interests of county government;
10 **[three]** **two** shall represent the interests of households in
11 need of low and moderate housing, **[at least]** one of whom
12 shall represent the interests of the builders of low and moderate
13 income housing, and shall have an expertise in land use practices
14 and housing issues **and one of whom shall be the executive director
15 of the agency, serving ex officio** ; and **[two]** **three** shall
16 represent the public interest. Not more than five of the nine shall
17 be members of the same political party. The membership shall be
17A balanced to the greatest extent practicable among the various hous-
17B ing regions of the State.

18 b. The members shall serve for terms of six years, except that
19 of the members first appointed, two shall serve for terms of four
20 years, three for terms of five years, and **[four]** **three** for
21 terms of six years. All members shall serve until their respective
22 successors are appointed and shall have qualified. Vacancies shall
23 be filled in the same manner as the original appointment, but for
24 the remainder of the unexpired term only.

25 c. The members **excluding the executive director of the
26 agency** shall be compensated at the rate of \$150.00 for each six-
27 hour day, or prorated portion thereof for more or less than six

28 hours, spent in attendance at meetings and consultations and all
 29 members shall be eligible for reimbursement for necessary ex-
 30 penses incurred in connection with the discharge of their duties.

31 d. The Governor shall ***[appoint]*** **nominate** the members
 32 within 30 days of the effective date of this act and shall designate a
 33 member to serve as chairman throughout the member's term of
 34 office and until his successor shall have been appointed and qualified.

35 e. Any member may be removed from office for misconduct in
 36 office, willful neglect of duty, or other conduct evidencing unfitness
 37 for the office, or for incompetence. A proceeding for removal may
 38 be instituted by the Attorney General in the Superior Court. A
 39 member or employee of the council shall automatically forfeit his
 40 office or employment upon conviction of any crime. Any member
 41 or employee of the council shall be subject to the duty to appear
 42 and testify and to removal from his office or employment in accor-
 43 dance with the provisions of P. L. 1970, c. 72 (C. 2A:81-17.2a
 44 et seq.).

1 6. a. The council may establish, and from time to time alter, such
 2 plan of organization as it may deem expedient, and may incur
 3 expenses within the limits of funds available to it.

4 b. The council shall elect annually by a majority of its members
 5 one of its members, other than the chairman, to serve as vice-
 6 chairman for a term of one year and until his successor is elected.
 7 The vice-chairman shall carry out all of the responsibilities of the
 8 chairman as prescribed in this act during the chairman's absence,
 9 disqualification or inability to serve.

10 c. The council shall appoint and fix the salary of an executive
 11 director who shall serve at its pleasure. The council may employ
 12 such other personnel as it deems necessary. All employees of
 13 the council shall be in the unclassified service of the Civil Service.
 14 The council may employ legal counsel who shall represent it in
 15 any proceeding to which it is a party, and who shall render legal
 16 advice to the council. The council may contract for the services
 17 of other professional, technical and operational personnel and
 18 consultants as may be necessary to the performance of its duties.
 19 ***[Members and employees]*** **Employees** shall be enrolled in the
 20 Public Employees Retirement System of New Jersey established
 21 under P. L. 1954, c. 84 (C. 43:15A-1 et seq.).

1 7. It shall be the duty of the council, ***[six]*** **seven** months after
 2 the ****[effective date of this act]**** ***confirmation of the last mem-
 2A ber initially appointed to the council, or January 1, 1986, whichever
 2B is earlier***, and from time to time thereafter, to:

3 a. Determine housing regions of the State***[**, in the establishment

4 of which the council shall give particular attention to the recom-
5 mendations of the Center for Urban Policy Research, Rutgers,
6 the State University]*;

7 b. Estimate the present and prospective need for low and
8 moderate income housing at the State and regional level;

9 c. Adopt criteria and guidelines for:

10 (1) Municipal determination of its present and prospective fair
11 share of the housing need in a given region*. *Municipal fair share*
11A *shall be determined after crediting on a one to one basis each*
11B *current unit of low and moderate income housing of adequate*
11C *standard, including any such housing constructed or acquired as*
11D *part of a housing program specifically intended to provide housing*
11E *for low and moderate income households**;

12 (2) Municipal adjustment of the present and prospective fair
13 share based upon available vacant and developable land, infra-
14 structure considerations or **environmental or** historic preserva-
15 tion factors ***and adjustments shall be made whenever:*

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

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

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

23 (d) *Adequate open space would not be provided,*

24 (e) *The pattern of development is contrary to the planning desig-*
25 *nations in the State Development and Redevelopment Plan pre-*
26 *pared pursuant to P. L., c. (now pending before the Legis-*
27 *lature as Senate Bill No. 1464 of 1984),*

28 (f) *Vacant and developable land is not available in the munici-*
29 *pality, and*

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

33 (3) Phasing of present and prospective fair share housing re-
34 quirements pursuant to section 23 of this act.

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

37 **e. May in its discretion, place a limit, based on a percentage
38 of existing housing stock in a municipality and any other criteria
39 including employment opportunities which the council deems ap-
40 propriate, upon the aggregate number of units which may be allo-
41 cated to a municipality as its fair share of the region's present and
42 prospective need for low and moderate income housing.**

43 In carrying out the above duties, **including, but not limited to,*
 44 *present and prospective need estimations** the council shall give
 45 appropriate weight to pertinent research studies, government
 46 reports, decisions of other branches of government, implementation
 47 of the State Development and Redevelopment Plan prepared pur-
 48 suant to P. L. . . . , c. . . . (now pending before the Legislature as
 49 Senate Bill No. 1464 of 1984) and public comment. **To assist the*
 50 *council, the State Planning Commission established under that act*
 51 *shall provide the council annually with economic growth, develop-*
 52 *ment and decline projections for each housing region for the next*
 53 *six years.** The council shall develop procedures for periodically
 54 adjusting regional need based upon the low and moderate income
 55 housing that is provided in the region through ****[the Fair Hous-**
 56 **ing Trust Fund Account established in section 20 of this act or]****
 57 any ****[other]**** federal, State, municipal or private housing pro-
 58 gram.

1 8. Within four months after the ****[effective date of this act]****
 2 ****confirmation of the last member initially appointed to the council,**
 3 **or January 1, 1986, whichever is earlier****, the council shall, in ac-
 4 cordance with the "Administrative Procedure Act," P. L. 1968,
 5 c. 410 (C. 52:14B-1 et seq.), ***[adopt]* *propose*** procedural rules.

1 9. **a.** Within four months after the effective date of this act, each
 2 municipality which so elects shall, by a duly adopted resolution
 3 of participation, notify the council of its intent to submit to the
 4 council its fair share housing plan. Within ***[four]* *five*** months
 5 after the council's adoption of its criteria and guidelines, the mu-
 6 nicipality shall prepare and file with the council a housing element,
 7 based on the council's criteria and guidelines, and any
 8 ****[adopted]** *fair share housing** ordinance **[revisions]****
 8A ****introduced and given first reading and second reading in a hear-**
 8B **ing pursuant to R. S. 40:49-2**** which ****[implement]** *imple-**
 8C **ments**** the housing element.

9 **b.** A municipality which does not notify the council of its parti-
 10 cipation within four months may do so at any time thereafter. In
 11 any exclusionary zoning litigation instituted against such a mu-
 12 nicipality, however, there shall be no exhaustion of administrative
 13 remedy requirements pursuant to section 16 of this act unless the
 14 municipality also files its fair share plan and housing element with
 15 the council prior to the institution of the litigation.

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

5 a. An inventory of the municipality's housing stock by age,
6 condition, purchase or rental value, occupancy characteristics, and
7 type, including the number of units affordable to low and moderate
8 income household ***and substandard housing capable of being re-*
8A *habilitated, and in conducting this inventory the municipality shall*
8B *have access, on a confidential basis for the sole purpose of conduct-*
8C *ing the inventory, to all necessary property tax assessment records*
8D *and information in the assessor's office, including but not limited*
8E *to the property record cards**;*

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

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

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

19 e. A determination of the municipality's present and prospective
20 fair share for low and moderate income housing and its capacity
21 to accommodate its present and prospective housing needs, includ-
22 ing its fair share for low and moderate income housing; and

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

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

14 (1) Rezoning for densities necessary to assure the economic

15 viability of any inclusionary developments, either through manda-
 16 tory set asides or density bonuses, as may be necessary to meet
 17 all or part of the municipality's fair share;

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

20 (3) Determination of measures that the municipality will take
 21 to assure that low and moderate income units remain affordable
 22 to low and moderate income households ***[over a 30-year period]***
 22A **for an appropriate period of not less than six years**;

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

26 (5) Donation or use of municipally owned land or land con-
 27 demned by the municipality for purposes of providing low and
 28 moderate income housing;

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

31 (7) Utilization of funds obtained from ****[the Fair Housing**
 32 **Trust Fund Account established pursuant to section 20 of this act**
 33 **or]**** any ****[other]**** State or federal subsidy toward the con-
 34 struction of low and moderate income housing; and

35 (8) Utilization of municipally generated funds toward the con-
 36 struction of low and moderate income housing.

37 b. The municipality may provide for a phasing schedule for the
 38 achievement of its fair share of low and moderate income housing
 39 which is not inconsistent with section 23 of this act.

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

46 **d. Nothing in this act shall require a municipality to raise or*
 47 *expend municipal revenues in order to provide low and moderate*
 48 *income housing.**

1 12. a. A municipality may propose the transfer of up to
 2 ****[33⅓%]**** ****50%**** of its fair share to another municipality
 3 within its housing region by means of a contractual agreement into
 4 which two municipalities voluntarily enter. A municipality pro-
 5 posing to transfer to another municipality shall provide the council
 6 with the housing element and statement required under subsection
 7 c. of section 11 of this act, and shall request the council to deter-
 8 mine a match with a municipality filing a statement of intent pur-

9 suant to subsection e. of this section. Except as provided in sub-
10 section b. of this section, the agreement may be entered into upon
11 obtaining substantive certification under section 14 of this act, or
12 anytime thereafter. The regional contribution agreement entered
13 into shall specify how the housing shall be provided by the second
14 municipality, hereinafter the receiving municipality, and the amount
15 of contributions to be made by the first municipality, hereinafter
16 the sending municipality.

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

32 The agreement shall be entered into prior to the entry of a final
33 judgment in the litigation. In cases in which a final judgment was
34 entered prior to the date this act takes effect and in which an
35 appeal is pending, a municipality may request consideration of a
36 regional contribution agreement provided that it is entered into
37 within 120 days after this act takes effect. In a case in which a
38 final judgment has been entered, the court shall consider whether
39 or not the agreement constitutes an expeditious means of provid-
40 ing part of the fair share.

41 c. Regional contribution agreements shall be approved by the
42 council, after review by the county planning board or agency of
43 the county in which the receiving municipality is located. The
44 council shall determine whether or not the agreement provides
45 a realistic opportunity for the provision of low and moderate
46 income housing within convenient access to employment oppor-
47 tunities. The council shall refer the agreement to the county plan-
48 ning board or agency which shall review whether or not the
49 transfer agreement is in accordance with sound comprehensive
50 regional planning. In its review, the county planning board or
51 agency shall consider the master plan and zoning ordinance of

52 the sending and receiving municipalities, its own county master
 53 plan, and the State development and redevelopment plan. **[The
 54 county planning board or agency shall receive a fee from the Fair
 55 Housing Trust Fund to reimburse it for the expenses of reviewing
 56 the regional contribution agreement.]** In the event that there is
 57 no county planning board or agency in the county in which the
 58 receiving municipality is located, the council shall also determine
 59 whether or not the agreement is in accordance with sound com-
 60 prehensive regional planning. After it has been determined that
 61 the agreement provides a realistic opportunity for low and mod-
 62 erate income housing within convenient access to employment
 63 opportunities, and that the agreement is consistent with sound
 64 comprehensive regional planning, the council shall approve the
 65 regional contribution agreement by resolution. All determinations
 66 of a county planning board or agency shall be in writing and shall
 67 be made within such time limits as the council may prescribe,
 68 beyond which the council shall make those determinations and no
 69 fee shall be paid to the county planning board or agency pursuant
 70 to this subsection.

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

83 e. The council shall maintain current lists of municipalities which
 84 have stated an intent to enter into regional contribution agreements
 85 as receiving municipalities, and shall establish procedures for
 86 filing statements of intent with the council. No receiving munic-
 87 ipality shall be required to accept a greater number of low and
 88 moderate income units through an agreement than it has expressed
 89 a willingness to accept in its statement, but the number stated
 90 shall not be less than a reasonable minimum number of units, not
 91 to exceed 100, as established by the council. The council shall
 92 require a project plan from a receiving municipality prior to the
 93 entering into of the agreement, and shall submit the project plan
 94 to the *[Department of Community Affairs]* *agency* for its

95 review as to the feasibility of the plan prior to the council's
 96 approval of the agreement. The ***[department]*** **agency** may
 97 recommend and the council may approve as part of the project plan
 98 a provision that the time limitations for contractual guarantees or
 99 resale controls for low and moderate income units included in the
 100 project shall be less than 30 years, if it is determined that modifica-
 101 tion is necessary to assure the economic viability of the project.

102 f. The council shall establish guidelines for the duration and
 103 amount of contributions in regional contribution agreements. In
 104 doing so, the council shall give substantial consideration to the
 105 average of: (1) the median amount required to rehabilitate a
 106 low and moderate income unit up to code enforcement standards;
 107 (2) the average internal subsidization required for a developer to
 108 provide a low income housing unit in an inclusionary development;
 109 (3) the average internal subsidization required for a developer to
 110 provide a moderate income housing unit in an inclusionary develop-
 111 ment. Contributions may be prorated in municipal appropriations
 112 occurring over a period not to exceed six years ***and may include*
 113 *an amount agreed upon to compensate or partially compensate the*
 114 *receiving municipality for infrastructure or other costs generated*
 114A *to the receiving municipality by the development***. Appropria-
 114B tions shall be made and paid directly to the receiving municipality
 114C or municipalities.

115 g. The council shall require receiving municipalities to file an-
 116 nual reports with the ***[Department of Community Affairs]***
 117 **agency** setting forth the progress in implementing a project
 118 funded under a regional contribution agreement, and the ***[depart-**
 119 **ment]*** **agency** shall provide the council with its evaluation of
 120 each report. The council shall take such actions as may be necessary
 121 to enforce a regional contribution agreement with respect to the
 122 timely implementation of the project by the receiving municipality.

1 13. A municipality which has filed a housing element may, at any
 2 time during a six year period following the filing of the housing
 3 element, petition the council for a substantive certification of its
 4 element and ordinances or institute an action for declaratory judg-
 5 ment granting it six-year repose in the Superior Court. The mu-
 6 nicipality shall publish notice of its petition in a newspaper of
 7 general circulation within the municipality and county and shall
 8 make available to the public information on the element and ordi-
 9 nances in accordance with such procedures as the council shall
 10 establish. The council shall also establish a procedure for pro-
 11 viding public notice of each petition which it receives.

1 14. Unless an objection to the substantive certification is filed

2 with the council by any person within 45 days of the publication
3 of the notice of the municipality's petition, the council shall review
4 the petition and shall issue a substantive certification if it shall
5 find that:

6 a. The municipality's fair share plan is consistent with the rules
7 and criteria adopted by the council and not inconsistent with
8 achievement of the *~~region's~~* low and moderate income housing
9 needs **of the region as adjusted pursuant to the council's criteria*
9A *and guidelines adopted pursuant to subsection c. of section 7 of this*
9B *act**; and

10 b. The combination of the elimination of unnecessary housing
11 cost generating features from the municipal land use ordinances
12 and regulations, and the affirmative measures in the housing
13 element and implementation plan make the achievement of the
14 municipality's fair share of low and moderate income housing
15 realistically possible after allowing for the implementation of any
16 regional contribution agreement approved by the council.

17 In conducting its review, the council may meet with the munici-
18 pality and may deny the petition or condition its certification upon
19 changes in the element or ordinances. **Any denial or conditions for*
20 *approval shall be in writing and shall set forth the reasons for the*
21 *denial or conditions.** If, within 60 days of the council's denial or
22 conditional approval, the municipality refiles its petition with
23 changes satisfactory to the council, the council shall issue a sub-
24 stantive certification.

25 ***Once substantive certification is granted the municipality shall*
26 *have 45 days in which to adopt its fair share housing ordinance*
27 *approved by the council.***

1 15. a. The council shall engage in a mediation and review process
2 in the following situations: (1) if an objection to the municipality's
3 petition for substantive certification is filed with the council within
4 the time specified in section 14 of this act; or (2) if a request for
5 mediation and review is made pursuant to section 16 of this act.

6 b. In cases in which an objection is filed to substantive certifica-
7 tion the council shall meet with the municipality and the objectors
8 and attempt to mediate a resolution of the dispute. If the media-
9 tion is successful, the council shall issue a substantive certification
10 if it finds that the criteria of section 14 of this act have been met.

11 c. If the mediation efforts are unsuccessful, ~~**~~*[then the council*
12 *shall conduct a review process in which objectors shall have the*
13 *right to present their objections in the form of written submissions*
14 *or expert reports and a reasonable opportunity shall be given*
15 *to the objectors, the municipality, and their experts to be heard,*

16 but the review process shall not be considered] ** *the matter shall*
 17 *be transferred to the Office of Administrative Law as* ** a contested
 18 case as defined in the "Administrative Procedure Act," P. L. 1968,
 18A c. 410 (C. 52:14B-1 et seq.).

19 ** [The council may impose reasonable time limitations, such as
 20 one or two days, or such other period as the council determines to
 21 be appropriate in a particular case, upon the length of the hearing.
 22 The council may also impose reasonable limitations upon the
 23 length of presentation by both the municipality and by the ob-
 24 jectors who challenge the adequacy of the housing element or the
 25 revisions of the land use ordinance, and upon the length of cross
 26 examination. The review process may be conducted by a panel of
 27 three council members, one from each category, * [staff,] * or an
 28 administrative law judge, as the council determines. After consider-
 29 ing the submissions, reports, and testimony, the council, or a panel
 30 of three council members consisting of one local government, one
 31 housing and one public member, shall determine whether to grant
 32 substantive certification pursuant to section 14 of this act, to deny
 33 the petition, or to grant conditional approval. The representative
 34 of an urban municipality shall be considered a public member
 35 for the purpose of establishing panels. The council shall give
 36 detailed reasons for its decision. Any appeal of a council decision
 37 granting or denying substantive certification shall be to a trial
 38 court, which shall conduct an adjudicatory hearing.

39 d. In review and mediation processes instituted in accordance
 40 with section 16 of this act, the council shall attempt to mediate a
 41 resolution of the dispute between the litigants, provided that no
 42 agreement shall be entered by which a developer provides less
 43 than a substantial percentage of low and moderate income housing.
 44 The mediation process shall commence as soon as possible after
 45 the request for mediation and review is made, but in no case prior
 46 to the council's determination of housing regions and needs pur-
 47 suant to section 7 of this act. In the event that the mediation
 48 between the litigants is successful, the municipality shall have the
 49 option of choosing whether or not to also seek substantive certi-
 50 fication as provided in section 13 of this act. If mediation is not
 51 successful, the council shall conduct a review process as set forth
 52 in subsection c. to determine whether or not the municipality is
 53 entitled to substantive certification.] ** **The Office of Administra-
 54 tive Law shall expedite its hearing process as much as practicable
 55 by promptly assigning an administrative law judge to the matter;
 56 promptly scheduling an evidentiary hearing; expeditiously conduct-
 57 ing and concluding the evidentiary hearing; limiting the time al-

58 lotted for briefs, proposed findings of fact, conclusions of law, forms
 59 of order or other disposition, or other supplemental material; and
 60 the prompt preparation of the initial decision. A written transcript
 61 of all oral testimony and copies of all exhibits introduced into evi-
 62 dence shall be submitted to the council by the Office of Adminis-
 63 trative Law simultaneously with a copy of the initial decision. The
 64 evidentiary hearing shall be concluded and the initial decision issued
 65 no later than 90 days after the transmittal of the matter as a con-
 66 tested case to the Office of Administrative Law by the council, un-
 67 less the time is extended by the Director of Administrative Law for
 68 good cause shown.**

1 16. For those exclusionary zoning cases instituted more than 60
 2 days before the effective date of this act, ***[no exhaustion of the**
 3 **review and mediation procedures established in sections 14 and 15**
 4 **of this act shall be required unless the court determines that a**
 5 **transfer of the case to the council is likely to facilitate and expedite**
 6 **the provision of a realistic opportunity for low and moderate**
 7 **income housing]** **any party to the litigation may file a motion with*
 8 *the court to seek a transfer of the case to the council. In determining*
 9 *whether or not to transfer, the court shall consider whether or not*
 10 *the transfer would result in a manifest injustice to any party to the*
 11 *litigation**. If the municipality fails to file a housing element and
 11A fair share plan with the council within ***[four]*** *five* months from
 11B the date of transfer, or promulgation of criteria and guidelines by
 11C the council pursuant to section 7 of this act, whichever occurs later,
 11D jurisdiction shall revert to the court.

12 b. Any person who institutes litigation less than 60 days before
 13 the effective date of this act or after the effective date of this act
 14 challenging a municipality's zoning ordinance with respect to the
 15 opportunity to provide for low or moderate income housing, shall
 16 file a notice to request review and mediation with the council
 17 pursuant to sections 14 and 15 of this act. In the event that the
 18 municipality adopts a resolution of participation within the period
 19 established in **subsection a. of** section 9 of this act, the person
 20 shall exhaust the review and mediation process of the council be-
 21 fore being entitled to a trial on his complaint.

1 17. a. In any exclusionary zoning case filed against a municipality
 2 which has a substantive certification and in which there is a re-
 3 quirement to exhaust the review and mediation process pursuant
 4 to section 16 of this act, there shall be a presumption of validity
 5 attaching to the housing element and ordinances implementing the
 6 housing element. To rebut the presumption of validity, the com-
 7 plainant shall have the burden of proof to demonstrate ***by clear*

8 *and convincing evidence*** that the housing element and ordinances
 9 implementing the housing element do not provide a realistic op-
 10 portunity for the provision of the municipality's fair share of low
 11 and moderate income housing after allowing for the implementation
 12 of any regional contribution agreement approved by the council.

13 b. There shall be a presumption of validity attaching to any
 14 regional contribution agreement approved by the council. To
 15 rebut the presumption of validity, the complainant shall have the
 16 burden of proof to demonstrate ***by clear and convincing evi-*
 17 *dence*** that the agreement does not provide for a realistic op-
 18 portunity for the provision of low and moderate income housing
 18A within the housing region.

19 c. The council shall be made a party to any exclusionary zoning
 20 suit against a municipality which receives substantive certification,
 21 and shall be empowered to present to the court its reasons for
 22 granting substantive certification.

1 18. If a municipality which has adopted a resolution of partici-
 2 pation pursuant to section 9 of this act fails to ***[submit]*** **meet*
 3 *the deadline for submitting** its housing element to the council prior
 4 to the institution of exclusionary zoning litigation, the obligation to
 5 exhaust administrative remedies contained in subsection b. of
 6 section 16 of this act automatically expires. The obligation also
 7 expires if the council rejects the municipality's request for sub-
 8 stantive certification or conditions its certification upon changes
 9 which are not made within the period established in this act or
 10 within an extension of that period agreed to by the council and all
 11 litigants.

1 19. If the council has not completed its review and mediation
 2 process for a municipality within six months of receipt of a request
 3 by a party who has instituted litigation, the party may file a motion
 4 with a court of competent jurisdiction to be relieved of the duty
 5 to exhaust administrative remedies. In the case of review and
 6 mediation requests filed within nine months after this act takes
 7 effect, the six-month completion date shall not begin to run until
 8 nine months after this act takes effect.

1 20. ****[There is established in the State General Fund an account**
 2 **entitled the "Fair Housing Trust Fund Account."** There shall be
 3 established within that account the following subaccounts: a gen-
 4 eral account and an account for each housing region established
 5 by the council to be entitled the "(insert names of counties in the
 6 housing region) Regional Housing Trust Fund Account." Funds
 7 in the account shall be maintained by the State Treasurer and
 8 may be held in depositories as the State Treasurer may select,

9 and be invested and reinvested as are other funds in the custody
10 of the State Treasurer in the manner provided by law, provided
11 that all revenues from investments shall be credited to the account.

12 The State Treasurer shall credit to the general account all
13 moneys appropriated to the "Fair Housing Trust Fund Account"
14 pursuant to this act and 10% of the annual amount of realty
15 transfer fees collected pursuant to P. L. 1968, c. 49 (C. 46:15-5
16 et seq.) and paid to the State Treasurer pursuant to section 4 of
17 that act (C. 46:15-8).

18 There shall be credited to each regional housing trust fund
19 account 90% of the annual amount of realty transfer fees collected
20 pursuant to P. L. 1968, c. 49 (C. 46:15-5 et seq.) in the housing
21 region to which a regional housing trust fund account pertains
22 and paid to the State Treasurer pursuant to section 4 of that act
23 (C. 46:15-8).

24 Notwithstanding any other law to the contrary, the Fair Housing
25 Trust Fund Account shall be an eligible fund for the purposes of
26 providing housing to low and moderate income households, and
27 any federal, State or local government, agency or instrumentality
28 may appropriate, deposit or invest or reinvest its funds in the
29 account for those purposes. No such funds shall be deposited
30 therein without the approval of the council and the State Treas-
31 urer, and the State Treasurer shall provide for the separate
32 maintenance, holding and accounting for those funds within the
33 general account of the Fair Housing Trust Fund Account to the
34 extent required by law.***The Neighborhood Preservation Pro-
35 gram within the Department of Community Affairs' Division of
36 Housing and Development, established pursuant to the Commis-
37 sioner of the Department of Community Affairs' authority under
38 section 8 of P. L. 1975, c. 248 (C. 52:27D-149), shall establish a
39 separate Neighborhood Preservation Nonlapsing Revolving Fund
40 for monies appropriated by section 33 of this act.

41 a. The commissioner shall award grants or loans from this fund
42 to municipalities whose housing elements have received substantive
43 certification from the council, to municipalities subject to builder's
44 remedy as defined in section 31 of this act or to receiving munici-
45 palities in cases where the council has approved a regional con-
46 tribution agreement and a project plan developed by the receiving
47 municipality. The commissioner shall assure that a substantial
48 percentage of the loan or grant awards shall be made to projects
49 and programs in those municipalities receiving State aid pursuant
50 to P. L. 1978, c. 14 (C. 52:27D-178 et seq.).

51 b. The commissioner shall establish rules and regulations gov-

95 reasonable percentage of the construction costs of the low and mod-
 96 erate income housing to be provided.

97 e. Any grant or loan agreement entered into pursuant to this
 98 section shall incorporate contractual guarantees and procedures by
 99 which the division will ensure that any unit of housing provided
 100 for low and moderate income households shall continue to be oc-
 101 cupied by low and moderate income households for at least 20 years
 102 following the award of the loan or grant except that the division
 103 may approve a guarantee for a period of less than 20 years where
 104 necessary to ensure project feasibility.**

1 21. **[Funds in the Fair Housing Trust Fund Account shall be
 2 appropriated annually by the Legislature, and shall be used solely
 3 by the council for awards of assistance, loans or grants to or on
 4 behalf of public or private housing projects or programs which
 5 will provide affordable low and moderate income housing.

6 Amounts appropriated to the general account pursuant to this
 7 act shall be used within the first 18 months following the organi-
 8 zation of the council. Except as provided below, amounts deposited
 9 in the general account thereafter shall be applied by the council
 10 generally in the State for the purposes set forth in subsections a.
 11 through h. of this section. Amounts deposited annually in the
 12 general account from realty transfer fees shall be used annually
 13 by the council for personnel, administrative and technical services,
 14 for litigation costs incurred by the council, and for reimbursing
 15 county planning boards and agencies for costs incurred in review-
 16 ing regional contribution agreements. The State Treasurer shall
 17 adopt regulations under which county planning boards and agencies
 18 shall report costs incurred in performing these duties, for the
 19 purpose of making payments from the general account within the
 20 limits established by legislative appropriations.

21 Amounts deposited annually in a regional housing trust fund
 22 account shall be used exclusively within the housing region to
 23 which the account pertains.

24 Except as provided above, amounts in the general account of the
 25 Fair Housing Trust Fund Account, and amounts in the regional
 26 housing trust fund accounts shall be applied for the following
 27 purposes:

28 a. Rehabilitation of substandard housing units occupied or to be
 29 occupied by low and moderate income households pursuant to con-
 30 tractual guarantees for at least 30 years following the awarding
 31 of the loan or grant;

32 b. Accessory conversions for housing units occupied or to be
 33 occupied by low and moderate income households pursuant to

34 contractual guarantees for at least 30 years following the awarding
35 of the loan or grant;

36 c. Conversion of nonresidential space to residential purposes
37 provided a substantial percentage of the resulting housing units
38 are occupied or to be occupied by low and moderate income house-
39 holds pursuant to contractual guarantees for at least 30 years
40 following the awarding of the loan or grant;

41 d. Inclusionary developments of which a substantial percentage
42 of the housing units will be occupied by low and moderate income
43 households for at least 30 years pursuant to contractual guarantees;

44 e. Grants of assistance to receiving municipalities under regional
45 contribution agreements entered into under this act for costs of
46 necessary studies, surveys, plans and permits, engineering, archi-
47 tectural and other technical services, costs of land acquisition and
48 any buildings thereon, and costs of site preparation, demolition
49 and infrastructure development for projects undertaken pursuant
50 to a regional contribution agreement;

51 f. Assistance to a local housing authority, nonprofit or limited
52 dividend housing corporation or association for rehabilitation or
53 restoration of housing units which it administers which: (1) are
54 unusable or in a serious state of disrepair; (2) can be restored in
55 an economically feasible and sound manner; and (3) can be re-
56 tained in a safe, decent and sanitary manner, upon completion of
57 rehabilitation or restoration.

58 g. Such other housing programs for low and moderate income
59 housing, including infrastructure projects directly facilitating the
60 construction of low and moderate income housing not to exceed a
61 reasonable percentage of the construction costs of the low and
62 moderate income housing to be provided, as the council may deem
63 necessary.

64 The council shall assure that a substantial percentage of the loan
65 or grant awards made from the general account of the Fair
66 Housing Trust Fund Account shall be made available to projects
67 and programs in those municipalities receiving State aid pursuant
68 to P. L. 1978, c. 14 (C. 52:27D-178 et seq.). The council shall assure
69 that priority shall be accorded in loan and grant awards from a
70 regional housing trust fund account to projects and programs in
71 municipalities in the housing region which have filed statements
72 of intent to enter into regional contribution agreements as receiv-
73 ing municipalities for grants of assistance pursuant to subsection e.
74 of this section. Receiving municipalities entering into regional
75 contribution agreements shall receive priority for additional assis-
76 tance set forth in subsections a. through g. of this section from a
77 regional housing trust fund account for at least one other low and

78 moderate income housing unit for each housing unit accepted under
79 a regional contribution agreement. Priority accorded under this
80 section shall be subject to the availability of funds in the regional
81 housing trust funds account and to a favorable evaluation of
82 feasibility pursuant to section 22 of this act.

83 The council shall establish rules and regulations governing the
84 qualifications of applicants, the application procedures, and the
85 criteria for awarding grants and loans and the standards for
86 establishing the amount, terms and conditions of each grant or
87 loan.***The agency shall establish affordable housing programs
88 to assist municipalities in meeting the obligation of developing
89 communities to provide low and moderate income housing:

90 a. Of the bond authority allocated to it under section 20 of P. L.
91 1983, c. 530 (C. 55:14K-20) the agency will allocate, for a reason-
92 able period of time established by its board, no less than 25% to
93 be used in conjunction with housing to be constructed or rehabili-
94 tated with assistance under this act.

95 b. The agency shall to the extent of available funds, award assis-
96 tance to affordable housing programs located in municipalities
97 whose housing elements have received substantive certification from
98 the council, or which have been subject to a builder's remedy or
99 which are in furtherance of a regional contribution agreement ap-
100 proved by the council. During the first 12 months from the effective
101 date of this act and for any additional period which the council may
102 approve, the agency may assist affordable housing programs which
103 are not located in municipalities whose housing elements have been
104 granted substantive certification or which are not in furtherance of
105 a regional contribution agreement provided the affordable housing
106 program will meet all or in part a municipal low and moderate in-
107 come housing obligation.

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

114 d. Affordable housing programs which may be financed or as-
115 sisted under this provision may include, but are not limited to:

116 (1) Assistance for home purchase and improvement including
117 interest rate assistance, down payment and closing cost assistance,
118 and direct grants for principal reduction;

119 (2) Rental programs including loans or grants for developments
120 containing low and moderate income housing, moderate rehabilita-

121 tion of existing rental housing, congregate care and retirement
122 facilities;

123 (3) Financial assistance for the conversion of nonresidential
124 space to residences;

125 (4) Other housing programs for low and moderate income hous-
126 ing, including infrastructure projects directly facilitating the con-
127 struction of low and moderate income housing; and

128 (5) Grants or loans to municipalities, housing sponsors and com-
129 munity organizations to encourage development of innovative ap-
130 proaches to affordable housing, including:

131 (a) Such advisory, consultation, training and educational ser-
132 vices as will assist in the planning, construction, rehabilitation and
133 operation of housing; and

134 (b) Encouraging research in and demonstration projects to de-
135 velop new and better techniques and methods for increasing the
136 supply, types and financing of housing and housing projects in the
137 State.

138 e. The agency shall establish procedures and guidelines govern-
139 ing the qualifications of applicants, the application procedures and
140 the criteria for awarding grants and loans for affordable housing
141 programs and the standards for establishing the amount, terms
142 and conditions of each grant or loan.

143 f. In consultation with the council, the agency shall establish
144 requirements and controls to insure the maintenance of housing
145 assisted under this act as affordable to low and moderate income
146 households for a period of not less than 20 years; provided that
147 the agency may establish a shorter period upon a determination
148 that the economic feasibility of the program is jeopardized by the
149 requirement and the public purpose served by the program out-
150 weights the shorter period. The controls may include, among
151 others, requirements for recapture of assistance provided pursuant
152 to the act or restrictions on return on equity in the event of failure
153 to meet the requirements of the program. With respect to rental
154 housing financed by the agency pursuant to this act or otherwise
155 which promotes the provision or maintenance of low and moderate
156 income housing, the agency may waive restrictions on return on
157 equity required pursuant to P. L. 1983, c. 530 (C. 55:14K-1 et seq.)
158 which is gained through the sale of the property or of any interest
159 in the property or sale of any interest in the housing sponsor.

160 g. The agency may establish affordable housing programs
161 through the use or establishment of subsidiary corporations or de-
162 velopment corporations as provided in P. L. 1983, c. 530 (C.
163 55:14K-1 et seq.). The subsidiary corporations or development

164 corporations shall be eligible to receive funds provided under this
 165 act for any permitted purpose.**

1 22. **[a. Except for housing receiving assistance under subsec-
 2 tion b. of this section, the council shall refer all housing proposed
 3 to be funded in whole or in part from amounts deposited in the Fair
 4 Housing Trust Fund Account to the *[Division of Housing in the
 5 Department of Community Affairs]* *agency* for evaluation as to
 6 the feasibility of the housing. The council shall not finance any
 7 housing for which the *[division]* *agency* does not provide a
 8 favorable evaluation of feasibility. With respect to housing to be
 9 undertaken in municipalities which have filed statements of intent
 10 to enter into regional contribution agreements, or which have
 11 entered into agreements, the *[division]* *agency* may recommend
 12 as part of the feasibility evaluation, and the council may approve, a
 13 provision that the low and moderate income housing units shall be
 14 subject to contractual guarantees or resale controls for a time of
 15 less than 30 years, if it is determined that modification is necessary
 16 to assure the economic viability of the housing. The council may
 17 establish procedures and time limitations for the conduct of the
 18 feasibility evaluations, beyond which the council may proceed with
 19 the housing notwithstanding the *[division's]* *agency's* failure
 19a to complete a feasibility evaluation.

20 b. The council, may enter into agreement with the New Jersey
 21 Housing and Mortgage Financing Agency under which amounts
 22 credited to the Fair Housing Trust Fund Account shall be used
 23 to assist, in whole or in part, low and moderate income housing
 24 to be financed by the agency. An agreement shall be specific as to
 25 the housing, and shall set forth the times and schedule according
 26 to which amounts in the account shall be provided to the agency.
 27 A copy of the agreement shall be filed with the State Treasurer,
 28 who shall administer the agreement in the course of his mainte-
 29 nance of the account. Agreements entered into under this sub-
 30 section shall be subject to the requirement that amounts credited
 31 to a regional housing trust fund account shall be used exclusively
 32 within the housing region to which the account pertains.*** *Any*
 33 *municipality which has reached a settlement of any exclusionary*
 34 *zoning litigation prior to the effective date of this act, shall not be*
 35 *subject to any exclusionary zoning suit for a six year period follow-*
 36 *ing the effective date of this act. Any such municipality shall be*
 37 *deemed to have a substantively certified housing element and ordi-*
 38 *nances, and shall not be required during that period to take any*
 39 *further actions with respect to provisions for low and moderate*
 40 *income housing in its land use ordinances or regulations.***

1 23. a. A municipality which has an action pending or a judgment
 2 entered against it after the effective date of this act, or which had
 3 a judgment entered against it prior to that date and from which
 4 an appeal is pending, or which brings an action for declaratory
 5 judgment pursuant to section 13 of this act, shall upon municipal
 6 request be allowed to phase in its obligation for a fair share of low
 7 and moderate income housing. If such a phase-in is requested by
 8 the municipality, the court shall implement a phase-in for the
 9 issuance of final approvals, as defined in section 3.1 of P. L. 1975,
 10 c. 291 (C. 40:55D-4), for low and moderate income housing, which
 11 shall be based on an analysis of the following factors:

- 12 (1) The size of the municipal ***[obligation]*** **fair share**;
- 13 (2) The present and projected capacity of the community's in-
 14 frastructure, taking into account expansion and rehabilitation of
 15 existing facilities;
- 16 (3) Vacant developable land;
- 17 (4) Likely absorption rate for housing in light of market forces;
- 18 (5) Reasonable development priorities among areas of the com-
 19 munity; and
- 20 (6) Past performance in providing low and moderate income
 21 housing, including credit for low and moderate income senior or
 22 disabled citizen housing.

23 b. The phase-in schedule shall provide for the grant of pre-
 24 liminary approvals to the developer subject to the phase-in
 25 schedule for final approvals in accordance with time periods set
 26 forth in sections 34, 36 and 48 of P. L. 1975, c. 291 (C. 40:55D-46,
 27 48 and 61), provided that such preliminary approvals shall confer
 28 vested rights as defined in subsection a. of section 37 of P. L. 1975,
 29 c. 291 (C. 40:55D-49) for the period until the developer has the
 30 ability to proceed to final approval pursuant to the phase-in
 31 schedule. In any phase-in schedule for a development, all final
 32 approvals shall be cumulative.

33 c. The court shall, where appropriate, also implement a phase-in
 34 schedule for the market units in the inclusionary development
 35 which are not low and moderate income, giving due consideration
 36 to the plan for low and moderate income housing established in
 37 this section and the need to maintain the economic viability of the
 38 development.

39 d. In entering the phase-in order, the court shall consider whether
 40 or not it is necessary to condition the phase-in order upon a phase-
 41 in schedule for the construction of other development in the mu-
 42 nicipality to minimize an imbalance between available housing units
 43 and available jobs, or to prevent the sites which are the most
 44 appropriate or the only possible sites for the construction of low

45 and moderate income housing from being used for other purposes,
46 or to prevent limited public infrastructure capacities from being
47 entirely utilized for other purposes.

48 e. In entering a phasing order, the court, upon municipal request,
49 shall implement a specific phasing schedule for the issuance of
50 final approvals in inclusionary developments. The court shall take
51 into account the six analysis factors enumerated in subsection a.
52 of this section, giving particular attention to:

53 (1) The size of the municipal *~~obligation~~* *fair share** which
54 is to be provided in inclusionary developments;

55 (2) The extent and projected capacity of the community's infra-
56 structure, taking into account expansion and rehabilitation of
57 existing facilities; and

58 (3) The extent and pattern of growth within the municipality
59 and region during the six years prior to the implementation of the
60 phase-in plan.

61 The following time periods shall be guidelines for a phasing
62 schedule for the issuance of final approvals in inclusionary de-
63 velopments, subject, however, to upward or downward modification
64 based upon a review of the analysis factors:

65 Any municipality which has a fair share obligation to provide
66 2,000 or more low and moderate income units in inclusionary
67 developments shall be entitled to consideration of a phase-in
68 schedule for the issuance of final approvals in inclusionary develop-
69 ments of at least 20 years from the effective date of this act.

70 Any municipality which has a fair share obligation to provide
71 between 1,500 and 1,999 low and moderate income units in inclu-
72 sionary developments shall be entitled to consideration of a phase-
73 in schedule for the issuance of final approvals in inclusionary
74 developments of at least 15 years from the effective date of this act.

75 Any municipality which has a fair share obligation to provide
76 between 1,000 and 1,499 low and moderate income units in inclu-
77 sionary developments shall be entitled to consideration of a phase-
78 in schedule for the issuance of final approvals in inclusionary
79 developments of at least 10 years from the effective date of this act.

80 Any municipality which has a fair share obligation to provide
81 between 500 and 999 low and moderate income units in inclusionary
82 developments shall be entitled to consideration of a phase-in
83 schedule for the issuance of final approvals in inclusionary de-
84 velopments of at least six years from the effective date of this act.

85 Any municipality which has a fair share obligation to provide
86 less than 500 low and moderate income units in inclusionary de-
87 velopments shall be entitled to consideration of a phase-in schedule
88 for the issuance of final approvals in inclusionary developments

89 for such period of time, including a period of at least six years,
90 as is determined to be reasonable pursuant to the analysis factors.

91 f. As part of a phasing order concerning inclusionary develop-
92 ments, the court may approve a municipal plan, or implement
93 another plan, concerning priorities among developers and sites,
94 and the timing in the issuance of final approvals to particular
95 developers. Any plan concerning priorities and the timing of final
96 approvals shall take into consideration:

97 (1) The location of various sites and their suitability for de-
98 velopment pursuant to environmental protection and sound plan-
99 ning criteria, including their consistency with reasonable provisions
100 of municipal master plans;

101 (2) Infrastructure capacity or the ability to provide the capacity
102 for the site, and the readiness of a particular developer to com-
103 mence construction;

104 (3) Any settlements or court orders establishing priorities
105 among developers.

106 Consistent with the overall phasing schedule adopted pursuant
107 to the analysis factors, the municipality shall make a good faith
108 effort to time the issuance of final approvals for particular de-
109 velopments which it approves in a manner which enables the
110 realistic and economically viable construction of the development.
111 To this end, the municipality shall take into consideration the need
112 for sufficient development in a particular project to permit timely
113 recovery of infrastructure costs, and, in the case of a development
114 which will have a homeowners' association, to prevent the imposi-
115 tion of excessive homeowners' fees because of the failure to achieve
116 economies of scale. In the case of developers who have previously
117 constructed residential developments in this State, a municipality
118 shall also take into consideration the greatest number of units
119 which the developer has constructed in any one development in
120 the State within any one year period; this factor shall be considered
121 if the municipality seeks to phase the issuance of final approvals
122 for the inclusionary development over a period greater than one
123 year.

1 24. The ***[Division of Housing in the Department of Community**
2 **Affairs]*** *agency* shall establish procedures for entering into, and
3 shall enter into, contractual agreements with willing municipalities
4 or developers of inclusionary developments whereby the ***[divi-**
5 **sion]*** *agency* will administer resale controls and rent controls in
6 municipalities where no appropriate administrative agency exists.
7 The contractual agreements shall be for the duration of the controls
8 and shall involve eligibility determinations, determination of initial
9 occupants, the marketing of units, maintenance of eligibility lists

10 for subsequent purchasers or renters, and determination of maxi-
 11 mum resale prices or rents. ***[The division may enter into agree-**
 12 **ments whereby some or all of these responsibilities are performed**
 13 **by the New Jersey Housing and Mortgage Finance Agency.]*** The
 14 ***[division]* *agency*** may charge the municipality or inclusionary
 15 developer a reasonable per unit fee for entering into such an agree-
 16 ment, or may charge a reasonable fee to a low or moderate income
 17 household at the time the home is sold subject to the resale control
 18 or both. ***[Division]* *Agency*** fees shall be established according
 19 to methods or schedules approved by the ***[council]* *State**
 20 **Treasurer***;

1 25. Notwithstanding any other law to the contrary, a munici-
 2 pality may purchase, ****[condemn or otherwise acquire]** **lease**
 3 **or acquire by gift**** real property and any estate or interest therein,
 4 which the municipal governing body determines necessary or useful
 5 for the construction or rehabilitation of low and moderate income
 6 housing or conversion to low and moderate income housing.

7 The municipality may provide for the acquisition, construction
 8 and maintenance of buildings, structures or other improvements
 9 necessary or useful for the provision of low and moderate income
 10 housing, and may provide for the reconstruction, conversion or
 11 rehabilitation of those improvements in such manner as may be
 12 necessary or useful for those purposes.

13 Notwithstanding the provisions of any other law regarding the
 14 conveyance, sale or lease of real property by municipalities, the
 15 municipal governing body may, by resolution, authorize the private
 16 sale and conveyance or lease of a housing unit or units acquired
 17 or constructed pursuant to this section, where the sale, conveyance
 18 or lease is to a low or moderate income household or nonprofit
 19 entity and contains a contractual guarantee that the housing unit
 20 will remain available to low and moderate income households for
 21 a period of at least 30 years.

1 26. Within ****[24]** **12**** months after the effective date of this
 2 act and every ****[two years]** **year**** thereafter, the ***[council]***
 3 ***agency* **and the council**** shall report ****separately**** to the Gov-
 4 ernor and the Legislature on the effects of this act in promoting the
 5 provision of low and moderate income housing in the several hous-
 6 ing regions of this State. ****[The report shall give specific attention**
 7 **to the manner in which amounts expended from the Fair Housing**
 8 **Trust Fund Account, and amounts transferred between sending**
 9 **municipalities and receiving municipalities, have or have not been**
 10 **sufficient in promoting this end.]**** The ****[report]** **reports****
 11 may include recommendations for any revisions or changes in this

11A act which the ***[council]*** **agency** ****[believes]**** *and the council believe* ****** necessary to more nearly effectuate this end.

12 Within 36 months after the effective date of this act, the council
13 shall report to the Governor and the Legislature concerning the
14 actions necessary to be taken at the State, regional, county and
15 municipal levels to provide for the implementation and admin-
16 istration of this act on a regional basis, including any revisions
17 or changes in the law necessary to accomplish that end. The council
18 may include in the report any recommendations or considerations
19 it may wish to provide regarding the advisability of implementing
20 and administering the act on a regional basis.

1 27. Amounts expended by a municipality in preparing and im-
2 plementing a housing element and fair share plan pursuant to this
3 act shall be considered a mandated expenditure exempt from the
4 limitations on final appropriations imposed pursuant to P. L. 1976,
5 c. 68 (C. 40A:4-45.1 et seq.).

1 **28. **[For a period of 12 months following the effective date of*
2 *this act, no judicial judgment or judgments issued on or after Janu-*
3 *ary 20, 1983, which require the provision of low and moderate in-*
4 *come housing in a municipality, shall be implemented to the extent*
5 *that the judgment or judgments require provision of any housing*
6 *in the municipality which is not affordable to low or moderate in-*
7 *come households, provided that nothing in this section shall affect*
8 *any rights heretofore granted to a developer pursuant to municipal*
9 *approval of a development application, or as a result of any court*
10 *judgment or order, or any settlement of litigation.*

11 *The Attorney General shall, not later than 30 days after this act*
12 *becomes effective, file a complaint in the Superior Court for a*
13 *declaratory judgment determining the constitutionality of this*
14 *section. If that complaint is not filed within 30 days after the*
15 *effective date of this act, this section shall be null and void.]****

16 ***No builder's remedy shall be granted to a plaintiff in any ex-*
17 *clusionary zoning litigation which has been filed on or after January*
18 *20, 1983, unless a final judgment providing for a builder's remedy*
19 *has already been rendered to that plaintiff. This provision shall*
20 *terminate upon the expiration of the period set forth in subsection*
21 *a. of section 9 of this act for the filing with the council of the mu-*
22 *nicipality's housing element.*

23 *For the purposes of this section, "final judgment" shall mean a*
24 *judgment subject to an appeal as of right for which all right to*
25 *appeal is exhausted.*

26 *For the purposes of this section "exclusionary zoning litigation"*
27 *shall mean lawsuits filed in courts of competent jurisdiction in this*

28 *State challenging a municipality's zoning and land use regulations*
29 *on the basis that the regulations do not make realistically possible*
30 *the opportunity for an appropriate variety and choice of housing*
31 *for all categories of people living within the municipality's housing*
32 *region, including those of low and moderate income, who may desire*
33 *to live in the municipality.*

34 *For the purpose of this section "builder's remedy" shall mean a*
35 *court imposed remedy for a litigant who is an individual or a profit-*
36 *making entity in which the court requires a municipality to utilize*
37 *zoning techniques such as mandatory set asides or density bonuses*
38 *which provide for the economic viability of a residential develop-*
39 *ment by including housing which is not for low and moderate in-*
40 *come households.***

1 **29. Section 19 of P. L. 1975, c. 291 (C. 40:55D-28) is amended
2 to read as follows:

3 Preparation; contents; modification.

4 a. The planning board may prepare and, after public hearing,
5 adopt or amend a master plan or component parts thereof, to guide
6 the use of lands within the municipality in a manner which protects
7 public health and safety and promotes the general welfare.

8 b. The master plan shall generally comprise a report or state-
9 ment and land use and development proposals, with maps, diagrams
10 and text, presenting, where appropriate, the following elements:

11 (1) A statement of objectives, principles, assumptions, policies
12 and standards upon which the constituent proposals for the physi-
13 cal, economic and social development of the municipality are based;

14 (2) A land use plan element (a) taking into account the other
15 master plan elements and natural conditions, including, but not
16 necessarily limited to, topography, soil conditions, water supply,
17 drainage, flood plain areas, marshes, and woodlands; (b) showing
18 the existing and proposed location, extent and intensity of develop-
19 ment of land to be used in the future for varying types of resi-
20 dential, commercial, industrial, agricultural, recreational, educa-
21 tional and other public and private purposes or combination of
22 purposes; (c) showing the existing and proposed location of any
23 airports and the boundaries of any airport hazard areas delineated
24 pursuant to the "Air Safety and Hazardous Zoning Act of 1983,"
25 P. L. 1983, c. 260 (C. 6:1-80 et seq.); and (d) including a statement
26 of the standards of population density and development intensity
27 recommended for the municipality;

28 (3) A housing plan element pursuant to section 10 of P. L. . . . ,
29 c. . . . (C.) (now pending before the Legislature as
30 Senate Committee Substitute for Senate Bill No. 2046 and Senate

31 *Bill No. 2334*), including, but not limited to, residential standards
32 and proposals for the construction and improvement of housing;

33 (4) A circulation plan element showing the location and types of
34 facilities for all modes of transportation required for the efficient
35 movement of people and goods into, about, and through the munici-
36 pality;

37 (5) A utility service plan element analyzing the need for and
38 showing the future general location of water supply and distribu-
39 tion facilities, drainage and flood control facilities, sewerage and
40 waste treatment, solid waste disposal and provision for other
41 related utilities;

42 (6) A community facilities plan element showing the location
43 and type of educational or cultural facilities, historic sites, librari-
44 es, hospitals, firehouses, police stations and other related facilities,
45 including their relation to the surrounding areas;

46 (7) A recreation plan element showing a comprehensive system
47 of areas and public sites for recreation;

48 (8) A conservation plan element providing for the preservation,
49 conservation, and utilization of natural resources, including, to the
50 extent appropriate, open space, water, forests, soil, marshes, wet-
51 lands, harbors, rivers and other waters, fisheries, wildlife and other
52 natural resources;

53 (9) An energy conservation plan element which systematically
54 analyzes the impact of each other component and element of the
55 master plan on the present and future use of energy in the mu-
56 nicipality, details specific measures contained in the other plan
57 elements designed to reduce energy consumption, and proposes
58 other measures that the municipality may take to reduce energy
59 consumption and to provide for the maximum utilization of re-
60 newable energy sources; and

61 (10) Appendices or separate reports containing the technical
62 foundation for the master plan and its constituent elements.

63 c. The master plan and its plan elements may be divided into
64 subplans and subplan elements projected according to periods of
65 time or staging sequences.

66 d. The master plan shall include a specific policy statement in-
67 dicating the relationship of the proposed development of the mu-
68 nicipality, as developed in the master plan to (1) the master plans
69 of contiguous municipalities, (2) the master plan of the county in
70 which the municipality is located and (3) any comprehensive guide
71 plan pursuant to section 15 of P. L. 1961, c. 47 (C. 13:1B-15.52).

1 30. Section 49 of P. L. 1975, c. 291 (C. 40:55D-62) is amended
2 to read as follows:

3 49. Power to zone.

4 a. The governing body may adopt or amend a zoning ordinance
 5 relating to the nature and extent of the uses of land and of build-
 6 ings and structures thereon. Such ordinance shall be adopted after
 7 the planning board has adopted the land use plan element *and the*
 8 *housing plan element* of a master plan, and all of the provisions of
 9 such zoning ordinance or any amendment or revision thereto shall
 10 either be substantially consistent with the land use plan element
 11 *and the housing plan element* of the master plan or designed to
 12 effectuate such plan [element] *elements*; provided that the govern-
 13 ing body may adopt a zoning ordinance or amendment or revision
 14 thereto which in whole or part is inconsistent with or not designed
 15 to effectuate the land use plan element *and the housing plan ele-*
 16 *ment*, but only by affirmative vote of a majority of the full autho-
 17 rized membership of the governing body, with the reasons of the
 18 governing body for so acting recorded in its minutes when adopting
 19 such a zoning ordinance; and provided further that, notwithstand-
 20 ing anything aforesaid, the governing body may adopt an interim
 21 zoning ordinance pursuant to subsection 77 b. of this act.

22 The zoning ordinance shall be drawn with reasonable considera-
 23 tion to the character of each district and its peculiar suitability for
 24 particular uses and to encourage the most appropriate use of land.
 25 The regulations in the zoning ordinance shall be uniform through-
 26 out each district for each class or kind of buildings or other struc-
 27 tures or uses of land, including planned unit development, planned
 28 unit residential development and residential cluster, but the regu-
 29 lations in one district may differ from those in other districts.

30 b. No zoning ordinance and no amendment or revision to any
 31 zoning ordinance shall be submitted to or adopted by initiative or
 32 referendum.

33 c. The zoning ordinance shall provide for the regulation of any
 34 airport hazard areas delineated under the "Air Safety and Haz-
 35 ardous Zoning Act of 1983," P. L. 1983, c. 260 (C.6:1-80 *et seq.*), in
 36 conformity with standards promulgated by the Commissioner of
 37 Transportation.

1 31. Until August 1, 1988, any municipality may continue to regu-
 2 late development pursuant to a zoning ordinance in accordance with
 3 section 49 of the "Municipal Law Use Law," P. L. 1975, c. 291 (C.
 4 40:55D-62) as same read before the effective date of this act.**

1 **[29.]** **32.** *If any part of this act shall be held invalid, the*
 2 *holding shall not affect the validity of remaining parts of this act.*
 3 *If a part of this act is held invalid in one or more of its applications,*
 4 *the act shall remain in effect in all valid applications that are*
 5 *severable from the invalid application.**

1 ***[28.]*** ****[30.]**** **33.** There is appropriated to the Council
2 on Affordable Housing from the General Fund the sum of
3 \$1,000,000.00, and there is appropriated ****[to the Fair Housing**
4 **Trust Fund Account]**** from the General Fund the sum of
5 ****[\$25,000,000.00 to effectuate the purposes of that account.]****
6 **\$17,000,000.00 to be allocated as follows:
6A a. \$2,000,000.00 to the Neighborhood Preservation Fund estab-
7 lished pursuant to the "Maintenance of Viable Neighborhoods Act"
8 P. L. 1975, c. 248 (C. 52:27D-146 et seq.) which shall be used to
9 effectuate the purposes set forth in section 20 of this act. b.
10 \$15,000,000.00 to the Housing and Mortgage Finance Agency to be
11 used to effectuate the purpose of section 21 of this act.

12 Of the amounts herein appropriated a reasonable sum, approved
13 by the Treasurer may be expended for the administration of this
14 act by the Department of Community Affairs and the agency.**

1 ***[29.]*** ****[31.]**** **34.** This act shall take effect immedi-
2 ately but shall remain inoperative until the enactment of P. L.
3 ..., c. ... (now pending before the Legislature as Assembly Bill
4 No. 3117).

SENATE, No. 2046

STATE OF NEW JERSEY

INTRODUCED JUNE 28, 1984

By Senators LIPMAN, STOCKMAN and LYNCH

Referred to Committee on State Government, Federal and
Interstate Relations and Veterans Affairs

AN ACT concerning housing, amending P. L. 1968, c. 49, and making
an appropriation.

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

1 1. (New section) This act shall be known and may be cited as the
2 "Fair Housing Act."

1 2. (New section) The Legislature finds that:

2 a. The New Jersey Supreme Court, through its rulings in *South*
3 *Burlington County NAACP v. Mount Laurel*, 67 N. J. 151 (1975)
4 and *South Burlington County NAACP v. Mount Laurel*, 92 N. J. 158
5 (1983), has determined that every municipality in a growth area
6 has a constitutional obligation to provide a realistic opportunity
7 for a fair share of its region's present and prospective needs for
8 housing for low and moderate income families.

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

15 c. The interest of all citizens, including low and moderate income
16 families in need of affordable housing, would be best served by a
17 comprehensive planning and implementation response to this con-
18 stitutional obligation;

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 printed in italics thus is new matter.

19 d. There are a number of essential ingredients to a compre-
 20 hensive planning and implementation response, including the
 21 establishment of a Statewide fair share housing guidelines and
 22 standards, the determination of fair share at the municipal level
 23 and the preparation of a municipal housing element, State review
 24 of the local fair share study and housing element, and a continuing
 25 source of State funding for low and moderate income housing to
 26 replace the federal housing subsidy programs which have been
 27 almost completely eliminated.

28 e. The State can maximize the number of low and moderate
 29 income units provided in New Jersey by allowing its municipalities
 30 to adopt six-year phasing schedules for meeting their fair share,
 31 so long as the municipalities permit the immediate construction of
 32 a substantial amount of the fair share, and so long as the Legisla-
 33 ture funds a housing subsidy program for each year of the phasing
 34 schedule.

1 3. (New section) As used in this act:

2 a. "Affordable housing" means housing for which a household is
 3 not required to pay more than 28% of its gross household income
 4 for principal, interest, taxes, insurance and homeowners fees or not
 5 more than 30% of its gross household income for rent and utilities.

6 b. "Council" means the Council on Affordable Housing estab-
 7 lished in this act.

8 c. "Low income housing" means housing affordable to, and
 9 occupied by, households with a gross household income equal to
 10 50% or less of the median gross household income for households
 11 of the same size within the region in which the housing is located.

12 d. "Moderate income housing" means housing affordable to, and
 13 occupied by, households with a gross household income equal to
 14 more than 50% but less than 80% of the median gross household
 15 income for households of the same size within the region in which
 16 the housing is located.

17 e. "Region" means the general area which constitutes the housing
 18 market area of which a municipality is a part.

19 f. "Resolution of participation" means a resolution adopted by a
 20 municipality in which the municipality chooses to prepare a fair
 21 share study and housing element in accordance with this act.

22 g. "Inclusionary development" means a residential housing
 23 development in which at least 20% of the housing units are low and
 24 moderate income housing.

1 4. a. (New section) There is established in, but not of, the Depart-
 2 ment of Community Affairs a Council on Affordable Housing to
 3 consist of seven members appointed by the Governor with the

4 advice and consent of the Senate, of whom two shall represent the
5 interests of municipal government, two shall represent the interests
6 of households in need of low and moderate housing and who shall
7 have an expertise in land use practices and housing issues, and
8 three shall represent the public interest, of whom one may be a
9 State official. Not more than four of the seven shall be members of
10 the same political party.

11 b. The members shall serve for terms of six years, except that of
12 the members first appointed, two shall serve for terms of four years,
13 two for terms of five years, and three for terms of six years, and
14 except that any State official shall serve only while the official
15 continues to hold the office held at the time of appointment. All
16 members shall serve until their respective successors are appointed
17 and shall have qualified. Vacancies shall be filled in the same
18 manner as the original appointment, but for the remainder of the
19 unexpired term only.

20 c. The members shall be compensated, except for any State
21 official, at the rate of \$150.00 for each six-hour day, or prorated por-
22 tion thereof for more or less than six hours, spent in attendance at
23 meetings and consultations and all members shall be eligible for
24 reimbursement for necessary expenses incurred in connection with
25 the discharge of their duties.

26 d. The Governor shall designate a member to serve as chairman
27 throughout the member's term of office and until his successor shall
28 have been appointed and qualified.

29 e. Any member may be removed from office for misconduct in
30 office, willful neglect of duty, or other conduct evidencing unfitness
31 for the office, or for incompetence. A proceeding for removal may
32 be instituted by the Attorney General in the Superior Court. A
33 member or employee of the council shall automatically forfeit his
34 office or employment upon conviction of any crime. Any member or
35 employee of the council shall be subject to the duty to appear and
36 testify and to removal from his office or employment in accordance
37 with the provisions of P. L. 1970, c. 72 (C. 2A:81-17.2a et seq.).

1 5. a. (New section) The council may establish, and from time
2 to time alter, such plan of organization as it may deem expedient,
3 and may incur expenses within the limits of funds available to it.

4 b. The council shall elect annually by a majority of its members
5 one of its members, other than the chairman, to serve as vice-
6 chairman for a term of one year and until his successor is elected.
7 The vice-chairman shall carry out all of the responsibilities of the
8 chairman as prescribed in this act during the chairman's absence,
9 disqualification or inability to serve.

10 d. The council shall appoint and fix the salary of an executive
 11 director who shall serve at its pleasure. The council may employ
 12 such other personnel as it deems necessary. All employees of the
 13 commission shall be in the unclassified service of the Civil Service
 14 and shall be deemed confidential employees for the purposes of the
 15 "New Jersey Employer-Employee Relations Act" (P. L. 1941, c.
 16 100; C. 34:13A-1 et seq.). The council may employ legal counsel
 17 who shall represent it in any proceeding to which it is a party, and
 18 who shall render legal advice to the council. The council may
 19 contract for the services of other professional, technical and opera-
 20 tional personnel and consultants as may be necessary to the per-
 21 formance of its duties. Members and employees shall be enrolled
 22 in the Public Employees Retirement System of New Jersey (P. L.
 23 1954, c. 84; C. 43:15A-1 et seq.).

1 6. (New section) It shall be the duty of the council to ascertain
 2 the housing needs of, and formulate a fair share plan for the distri-
 3 bution of, low and moderate income housing units in the various
 4 regions of the State as it shall delineate for the period ending
 5 nine months after the effective date of this act and every six years
 6 thereafter. The plan shall include, but need not be limited to:

7 a. Housing regions, which may be different for purposes of
 8 present and prospective need;

9 b. An analysis of the present and prospective need for low and
 10 moderate income housing in the State and in each region and the
 11 indigenous need;

12 c. Population and household projections; and

13 d. Criteria for allocating present and prospective fair share of
 14 the housing need among the municipalities in each region and
 15 guidelines for municipal adjustments based upon vacant land,
 16 infrastructure considerations or other municipal matters.

1 7. (New section) Within nine months after the effective date of
 2 this act, the council shall, in accordance with the "Administrative
 3 Procedure Act" P. L. 1968, c. 410 (C. 52:14B-1 et seq.), adopt rules
 4 and guidelines relating to the municipal obligation to provide a
 5 realistic opportunity for a municipality's fair share of low and
 6 moderate income housing, including such matters as a. the elimina-
 7 tion of excessive restrictions and exactions which operate as
 8 barriers to the construction of low and moderate income housing
 9 and b. affirmative measures which provide a realistic possibility for
 10 the construction of low and moderate income housing. In adopting
 11 these rules and guidelines, the council shall give appropriate weight
 12 to pertinent research center studies, government reports and
 13 decisions of other branches of government.

1 8. (New section) Within three months after the effective date
2 of this act, each municipality which so elects shall, by a duly adopted
3 resolution, notify the council of its participation in the council's
4 fair share housing plan and shall, within six months after the
5 council's adoption of its rules, guidelines and plan, prepare and file
6 with the council a housing element, based on the council's rules,
7 guidelines and plan, and any adopted ordinance revisions which
8 implement the housing element.

1 9. (New section) A municipality's housing element shall be
2 designed to achieve the goal of access to affordable housing to
3 meet present and future housing needs, with particular attention
4 to low and moderate income housing, and shall contain at least:

5 a. An inventory of the municipality's housing stock by age, condi-
6 tion, purchase or rental value, occupancy characteristics, and type,
7 including, but not necessarily limited to, habitable floor area and
8 number of rooms, bedrooms and bathrooms, and including the
9 number of units affordable to low and moderate income households;

10 b. A projection of the municipality's housing stock, including the
11 probable future construction of low and moderate income housing,
12 for the next three, six and twelve years, taking into account, but
13 not necessarily limited to, construction permits issued, approvals of
14 applications for development and probable residential development
15 of lands;

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

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

21 e. An analysis of demographic and housing projections as pub-
22 lished by the council;

23 f. An analysis of the municipality's present and prospective fair
24 share for low and moderate income housing;

25 g. An analysis of the municipality's capacity to accommodate its
26 present and prospective housing needs, including its fair share for
27 low and moderate income housing;

28 h. An analysis demonstrating that the land use element of the
29 municipality's master plan is suitable for the purpose of accom-
30 modating its present and prospective fair share for low and
31 moderate income housing;

32 i. A determination of how the municipality's present and pros-
33 pective fair share of low and moderate income housing will be met,
34 including, but not necessarily limited to:

35 (1) Affirmative measures and incentive zoning devices designed
36 to ensure construction of low and moderate income housing;

37 (2) Consideration of the lands that are most appropriate for
 38 construction of low and moderate income housing, including a
 39 specific consideration of lands of developers who have expressed a
 40 commitment to provide low and moderate income housing;

41 (3) The minimum densities necessary to assure the economic
 42 viability of the inclusionary developments;

43 (4) Determination of the overzoning necessary to ensure that the
 44 municipality's fair share is achieved;

45 (5) Determination of measures that the municipality will take to
 46 ensure that low and moderate income units remain affordable to
 47 low and moderate income households over a 30-year period;

48 (6) A plan for infrastructure expansion if necessary to ensure
 49 the construction of the municipality's fair share of low and moder-
 50 ate income housing;

51 (7) Any plan the municipality may wish to adopt whereby resi-
 52 dential, industrial or commercial developers are given the right to
 53 higher densities or intensity of uses in exchange for the construction
 54 of a percentage of low and moderate income housing or a pro-rata
 55 payment into a trust fund for low and moderate income housing;
 56 and

57 (8) Any phasing schedule for construction of low and moderate
 58 income housing which the municipality may wish to adopt which is
 59 not more restrictive than the schedule provided in section 22 of this
 60 act.

1 10. (New section) Within 15 business days of the receipt of a
 2 municipality's housing element, the council shall make a determina-
 3 tion as to whether the element is in compliance with the filing
 4 requirements of this act. If the council determines that the filing
 5 requirements have been met, the council shall provide the munici-
 6 pality with a certification of filing. If the council finds otherwise,
 7 it shall notify the municipality of any filing deficiencies. If, within
 8 45 days of the council's notification, the municipality shall refile its
 9 housing element with a correction of the deficiencies to the council's
 10 satisfaction, the council shall within 15 business days of the refiling
 11 issue a certification of filing.

1 11. (New section) A municipality which has received a filing
 2 certification may at any time during the six year period established
 3 in section 6 of this act petition the council for a substantive certifica-
 4 tion of its element and ordinances. The municipality shall publish
 5 notice of its petition in a newspaper of general circulation within
 6 the municipality and region and shall make available to the public
 7 information on the element and ordinances in accordance with such
 8 procedures as the council shall establish. The council shall also

9 establish a procedure for providing public notice of each petition
10 which it receives.

1 12. (New section) Unless an objection to the substantive certifica-
2 tion is filed with the council by any person within 45 days of the
3 publication of the notice of the municipality's petition, the council
4 shall review the petition and shall issue a substantive certification
5 if it shall find that:

6 a. The municipality's fair share methodology is consistent with
7 the rules and criteria adopted by the council;

8 b. Any reductions in the municipality's fair share from the fair
9 share number produced by using the council's criteria which are
10 based on local municipal constraints such as lack of vacant develop-
11 able land or public facilities are necessary and not fundamentally
12 inconsistent with achievement of the region's housing needs; and

13 c. The combination of the elimination of cost generating features
14 and the affirmative measures in the housing element and imple-
15 mentation plan make the construction of the municipality's fair
16 share of low and moderate income housing realistically possible.

17 In conducting its review, the council may meet with the municipi-
18 pality and may deny the petition or condition its certification upon
19 changes in the element or ordinances. If, within 60 days of the
20 council's denial or conditional approval, the municipality refiles its
21 petition with changes satisfactory to the council, the council shall
22 issue a substantive certification.

1 13. a. (New section) If an objection to the municipality's petition
2 for substantive certification is filed with the council within the
3 time specified in section 12 of this act or a request for mediation
4 and review is made pursuant to section 14 of this act, the council
5 shall conduct a mediation and review process in which objectors or
6 aggrieved parties shall have the right to present their objections
7 in the form of written submissions or expert reports, and a reason-
8 able opportunity shall be given to the objectors and their experts
9 to be heard, but the review process shall not be considered a con-
10 tested case as defined in the "Administrative Procedure Act," P. L.
11 1968, c. 410 (C. 52:14B-1 et seq.). The mediation and review process
12 shall commence as soon as possible after the filing of the housing
13 element as provided in section 8 of this act.

14 b. In mediation and review processes instituted in accordance
15 with section 14. a. of this act, the council shall attempt to mediate
16 a resolution of the dispute between the developer and the municipi-
17 pality, provided that no agreement shall be entered by which a
18 developer provides less than 20% low and moderate income housing
19 in the development. The mediation process shall commence as soon

20 as possible after the time established in section 8 of this act for the
 21 filing of the housing element. In the event that the mediation
 22 between the litigants is successful, the municipality shall have the
 23 option of choosing whether to also seek substantive certification as
 24 provided in section 11 of this act. If mediation is not successful,
 25 the council shall promptly determine whether the municipality is
 26 entitled to substantive certification.

1 14. a. (New section) Any court of competent jurisdiction shall
 2 have discretion to require the parties in any lawsuit challenging a
 3 municipality's zoning ordinances with respect to the opportunity to
 4 construct low or moderate income housing, which lawsuit was in-
 5 stituted either on or before June 1, 1984, or prior to six months
 6 prior to the effective date of this act, to exhaust the mediation and
 7 review procedure established in section 13 of this act. No exhaus-
 8 tion of remedies requirement shall be imposed unless the munici-
 9 pality has filed a timely resolution of participation. In exercising
 10 its discretion, the court shall consider:

- 11 (1) The age of the case;
- 12 (2) The amount of discovery and other pre-trial procedures that
- 13 have taken place;
- 14 (3) The likely date of trial;
- 15 (4) The likely date by which administrative mediation and review
- 16 can be completed; and
- 17 (5) Whether the transfer is likely to facilitate and expedite the
- 18 provision of a realistic opportunity for low and moderate income
- 19 housing.

20 b. Any person who has instituted litigation challenging a munici-
 21 pality's zoning ordinances with respect to the opportunity to pro-
 22 vide for low or moderate income housing, which litigation was
 23 instituted after June 1, 1984, or after six months prior to the effec-
 24 tive date of this act, whichever is later, shall file a notice to request
 25 mediation and review with the council within 60 days of the munici-
 26 pality's resolution of participation pursuant to section 8 of this act.
 27 If the municipality filed a resolution of participation prior to the
 28 institution of exclusionary zoning litigation against it, a person who
 29 brings such litigation shall exhaust the mediation and review pro-
 30 ceedings of the council before being entitled to a trial on his
 31 complaint.

1 15. (New section) In any exclusionary zoning case filed against
 2 a municipality which has a substantive certification and in which
 3 there is a requirement to exhaust the mediation and review process
 4 pursuant to section 14 of this act, there shall be a presumption of
 5 validity attaching to the housing element and ordinances imple-

6 menting the housing element. To rebut the presumption of validity,
7 the complainant shall have the burden of proof to demonstrate that
8 the housing element and ordinances implementing the housing
9 element do not provide a realistic opportunity for the provision
10 of low and moderate income housing.

1 16. (New section) If a municipality which has adopted a resolu-
2 tion of participation pursuant to section 8 of this act fails to meet
3 the deadline for submitting the material required for filing certifica-
4 tion, the obligation to exhaust administrative remedies contained
5 in subsection b. of section 14 of this act automatically expires. The
6 obligation also expires if the council rejects the municipality's
7 request for filing or substantive certification or conditions its
8 certification upon changes which are not made within the period
9 established in this act.

1 17. (New section) If the council has not completed its mediation
2 and review process for a municipality within one year of receipt
3 of a request by a party who has instituted litigation, the party may
4 file a motion with a court of competent jurisdiction to be relieved
5 of the duty to exhaust administrative remedies. In reviewing the
6 motion, the court shall consider any information received from the
7 council regarding its expected timetable for completing the review
8 process. If the court denies the motion, it may establish a reason-
9 able deadline for the council's completion of the process and
10 relieve the party of the duty to exhaust if the deadline is not met.

1 18. (New section) The Pinelands Commission established pur-
2 suant to the "New Jersey Pinelands Protection Act" (P. L. 1979,
3 c. 111) and the Hackensack Meadowlands Development Commis-
4 sion established pursuant to the "Hackensack Meadowlands
5 Development Act" (P. L. 1968, c. 404) shall have 60 days after the
6 enactment of this act to elect to administer this act for munici-
7 palities which have at least 25% of their area within the jurisdic-
8 tion of the respective commission. A commission which so elects
9 shall have the same responsibilities as the council with respect to
10 the municipalities within its jurisdiction and shall coordinate its
11 policies with the council, and municipalities which chose to adopt a
12 resolution of participation shall submit their fair share plans and
13 housing elements to their respective commission. The council shall
14 retain jurisdiction if a commission does not elect to administer this
15 act.

1 19. (New section) There is established in the State General Fund
2 an account entitled the "Low and Moderate Income Housing Trust
3 Fund Account." The treasurer shall credit to this account all
4 funds paid to the State Treasurer by each county treasurer pur-

5 suant to P. L. 1968, c. 49 (C. 46:15-8). Funds in the account shall be
 6 maintained by the State Treasurer and may be held in depositories
 7 as the State Treasurer may select and invested and reinvested as
 8 other funds in the custody of the State Treasurer in the manner
 9 provided by law, provided that all revenues from investments shall
 10 be credited to the fund.

1 20. (New section) Funds in the Low and Moderate Income Trust
 2 Fund Account shall be transferred to the council upon appropria-
 3 tion from time to time by the Legislature, and shall be used solely
 4 by the council for awards of assistance loans or grants to or on
 5 behalf of public or private housing projects which will provide
 6 affordable low and moderate income housing in such manner, but
 7 not limited to, as the following:

8 a. Rehabilitation of substandard housing units occupied or to be
 9 occupied by low and moderate income households pursuant to con-
 10 tractual guarantees for at least 20 years following the awarding of
 11 the loan or grant;

12 b. Accessory conversions for housing units occupied or to be
 13 occupied by low and moderate income households pursuant to con-
 14 tractual guarantees for at least 20 years following the awarding of
 15 the loan or grant;

16 c. Conversion of nonresidential space to residential purposes pro-
 17 vided at least 20% of the resulting housing units are occupied by
 18 low and moderate income households pursuant to contractual
 19 guarantees for at least 20 years following the awarding of the
 20 loan or grant;

21 d. Inclusionary developments of which at least 20% of the hous-
 22 ing units will be occupied by low and moderate income households
 23 for at least 20 years pursuant to contractual guarantees; and

24 e. Shelters for the homeless.

25 The council shall ensure that a reasonable percentage of the
 26 loan or grant awards shall be made available to projects in those
 27 municipalities receiving State aid pursuant to P. L. 1978, c. 14 (C.
 28 52:27D-178 et seq.) which have a disproportionately high amount
 29 of low and moderate income residents.

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

1 21. (New section) If the Legislature does not appropriate to the
 2 council from the Low and Moderate Income Trust Fund in any one
 3 of the six fiscal years commencing with the fiscal year in which this
 4 act is effective an amount substantially equivalent to the revenues

5. accruing to the fund in that fiscal year, then sections 15 and 22 of
6 this act shall terminate on the last day of that fiscal year.

1 22. (New section) A municipality which has a judgment entered
2 against it after the enactment of this act, or which had a judgment
3 entered against it prior to the enactment of this act and from which
4 an appeal has been filed, shall upon municipal request not be re-
5 quired by any court to phase in the issuance of building permits
6 for low and moderate income housing in inclusionary developments
7 at a rate greater than 25% as soon as possible but no later than
8 one year after entry of the judgment and 15% at 12 month intervals
9 thereafter of the municipality's original fair share of low and
10 moderate income housing.

11 The court shall also implement a phase-in schedule for the market
12 units in the inclusionary development which are not low and
13 moderate income, giving due consideration to the schedule for low
14 and moderate income housing established in this section and the
15 need to maintain the economic viability of the development.

16 In entering the phase-in order, the court shall consider whether
17 it is necessary to enter a phase-in order for the construction of
18 commercial, industrial and residential development in the munici-
19 pality to minimize an imbalance between available housing units and
20 available jobs, or to prevent the sites which are the most appro-
21 priate or the only possible sites for the construction of low and
22 moderate income housing to be used for other purposes.

23 The court may modify the phase-in schedule if it determines that
24 the fair share number is so small that literal compliance with this
25 schedule would make the construction of low and moderate income
26 housing economically or practically unfeasible. A development with
27 50 or fewer low and moderate income units shall not be required to
28 adhere to any phase-in schedule after receiving its building permit.

1 23. (New section) The New Jersey Housing and Mortgage
2 Finance Agency shall adopt rules and regulations to provide that
3 at least 50% of the proceeds of its tax exempt bond issues in the
4 four years following the effective date of this act shall be used to
5 assist in the financing of low and moderate income housing.

1 24. Section 3 of P. L. 1968, c. 49 (C. 46:15-7) is amended to read
2 as follows:

3 3. In addition to the recording fees imposed by P. L. 1965, c. 123,
4 s. 2 (C. 22A:4-4.1) a fee is imposed upon grantors, at the rate of
5 ~~[\$1.75]~~ \$3.50 for each \$500.00 of consideration or fractional part
6 thereof recited in the deed, which fee shall be collected by the county
7 recording officer at the time the deed is offered for recording.

8 Every deed subject to the additional fee required by this act,
9 which is in fact recorded, shall be conclusively deemed to have

10 been entitled to recording, notwithstanding that the amount of the
 11 consideration shall have been incorrectly stated, or that the correct
 12 amount of such additional fee, if any, shall not have been paid, and
 13 no such defect shall in any way affect or impair the validity of the
 14 title conveyed or render the same unmarketable; but the person
 15 or persons required to pay said additional fee at the time of record-
 16 ing shall be and remain liable to the county recording officer for the
 17 payment of the proper amount thereof.

1 25. Section 4 of P. L. 1968, c. 49 (C. 46:15-8) is amended to read
 2 as follows:

3 4. The proceeds of the fees collected by the county recording
 4 officer, as authorized by this act, shall be accounted for and re-
 5 mitted to the county treasurer. An amount equal to 28.6% of the
 6 proceeds *from the first \$1.75 for each \$500.00 of consideration or*
 7 *fractional part thereof recited in the deed* so collected shall be re-
 8 tained by the county treasurer for the use of the county and the
 9 balance shall be paid to the State Treasurer for the use of the
 10 State. Payments shall be made to the State Treasurer on the tenth
 11 day of each month following the month of collection.

1 26. There is appropriated to the Council on Affordable Housing
 2 from the General Fund the sum of \$250,000.00 to effectuate the
 3 purposes of this act.

1 27. This act shall take effect immediately, except that sections
 2 19, 20, 24 and 25 shall take effect on the 30th day following enact-
 3 ment.

52046 (1985)
 STATEMENT

This bill provides a mechanism for implementing the constitu-
 tional obligation to provide a realistic opportunity for low and
 moderate income housing as enunciated in the Mount Laurel
 doctrine. It establishes a Council on Affordable Housing to set fair
 share guidelines for municipalities and to review the housing plans
 and ordinances of those municipalities who elect to participate in
 the council's fair share program. Those municipalities whose plans
 and ordinances are certified by the council are entitled to a presump-
 tion of validity in any exclusionary zoning challenge. The council
 will also act as a mediator between developers and participating
 municipalities in an attempt to reach out-of-court settlements.

The bill also provides for a six-year phase-in of any judgments
 requiring a municipality to issue building permits in inclusionary
 developments.

The bill also establishes a Low and Moderate Income Housing
 Trust Fund with revenues derived from an increase in the realty
 transfer tax from \$1.75 to \$3.50 per \$500.

52046 (1985)

SENATE STATE GOVERNMENT, FEDERAL AND
INTERSTATE RELATIONS AND VETERANS AFFAIRS
COMMITTEE

STATEMENT TO
SENATE, No. 2046
with Senate committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 26, 1984

This bill provides for implementation of the Mount Laurel II court decision. It was substantially amended based upon the extensive input from public officials and private individuals received by the committee during the course of its public hearings and meetings.

The bill establishes a Council on Affordable Housing to consist of nine members appointed by the Governor with the advice and consent of the Senate. Three shall be elected officials representing the interests of municipal government (one of whom may be a representative of the interests of county government); three shall represent the interests of households in need of low and moderate housing (at least one of whom shall represent the interests of builders of low and moderate income housing); and three shall represent the public interest. Not more than five of the nine members shall be of the same political party.

The members shall be compensated, except for any State official, at the rate of \$150.00 for each 6-hour day spent in attendance at meetings and consultations and all members shall be eligible for reimbursement for necessary expenses incurred in connection with the discharge of their duties. The council shall appoint and fix the salary of an executive director who shall serve at its pleasure. The council may employ such other personnel as it deems necessary.

It shall be the duty of the council to:

1. Determine housing regions, which may be different for purposes of present and prospective need;
2. Estimate the present and prospective need for low and moderate income housing at the State and regional level;
3. Adopt criteria and guidelines for:
 - (a) Municipal determination of its present and prospective fair share of the housing need in a given region;
 - (b) Municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or historical preservation factors;

(c) Phasing of present and prospective fair share housing requirements; and

4. Provide population and household projections for the State and regions.

Within four months after the effective date of this act, each municipality which so elects shall, by a duly adopted resolution of participation, notify the council of its intent to submit to the council its fair share housing plan and shall, within four months after the council's adoption of its criteria and rules, prepare and file with the council a housing element based on the council's rules and criteria and any adopted ordinance revisions which implement the housing element.

A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and future housing needs, with particular attention to low and moderate income housing. Low and moderate income housing is defined as housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and according to percentages of median gross household income.

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 the element will provide such a realistic opportunity, and the municipality shall establish that the land use ordinances have been revised to incorporate the provisions for low and moderate income housing contained in the housing element.

A municipality which has filed a housing element may, at any time during a six-year period following the filing, petition the council for a substantive certification of its element and ordinances or institute an action for declaratory judgment granting it six year repose in the Superior Court. Unless an objection to the substantive certification is filed with the council by any person within 45 days of the publication of the notice of the municipality's petition, the council shall review the petition and shall issue a substantive certification if it shall find that:

- a. The municipality's fair share plan is consistent with the rules and criteria adopted by the council and not inconsistent with the achievement of the region's low and moderate income housing needs; and
- b. The combination of the elimination of unnecessary cost generating features and the affirmative measures in the housing element and implementation plan make the achievement of the municipality's fair share of low and moderate income housing realistically possible.

The council shall engage in a mediation and review process in the following situations:

(1) If an objection to the municipality's petition for substantive certification is filed with the council within the time specified by this act or (2) if a request for mediation and review is made pursuant to this act. In cases in which an objection is filed to substantive certification the council shall meet with the municipality and the objectors and attempt to mediate a resolution of the dispute. If the mediation is successful, the council shall issue a substantive certification provided it finds that the criteria in this act have been met.

If the mediation efforts are unsuccessful, then the council shall conduct a review process in which objectors shall have the right to present their objections in the form of written submissions or expert reports and a reasonable opportunity shall be given to the objectors, the municipality and their experts to be heard, but the review process shall not be considered a contested case as defined in the "Administrative Procedure Act," P. L. 1968, c. 110 (C. 52:14B-1 et seq.).

The council may impose reasonable time limitations, such as one or two days, or such other period as the council determines to be appropriate in a particular case, upon the length of the hearing. The council may also impose reasonable limitations upon the length of presentation by both the municipality and by the objectors who challenge the adequacy of the housing element or the revisions of the land use ordinance, and upon the length of cross examination. The review process may be conducted by a panel of three council members, one from each category, staff or by an administrative law judge, as the council determines. After considering the submissions, reports, and testimony, the council or a panel of three council members consisting of one local government, one housing and one public member shall determine whether to grant substantive certification pursuant to this act, to deny the petition, or to grant conditional approval. The council shall give detailed reasons for its decision. Any appeal of a council decision granting or denying substantive certification shall be to a trial court, which shall conduct an adjudicatory hearing.

For those exclusionary zoning cases instituted more than 60 days before the effective date of this act, no exhaustion of the mediation and review procedure established in this act shall be required unless the court determines that a transfer of the case to the council is likely to facilitate and expedite the provision of a realistic opportunity for low and moderate income housing. If the municipality fails to file a housing element and fair share plan with the council within four months from the date of transfer, jurisdiction shall revert back to the court.

Any person who institutes litigation less than sixty (60) days before the effective date of this act or after the effective date of this act, challenging a municipality's zoning ordinance with respect to the

opportunity to provide for low or moderate income housing, shall file a notice to request mediation and review with the council. In the event that the municipality adopts a resolution of participation within the four-month period established in this act, such person shall exhaust the mediation and review process of the council before being entitled to a trial on his complaint.

In any exclusionary zoning case filed against a municipality which has a substantive certification and in which there is a requirement to exhaust the mediation and review process pursuant to this act, there shall be a presumption of validity attaching to the housing element and ordinances implementing the housing element.

If the council has not completed its mediation and review process for a municipality within six months of receipt of a request by a party who has instituted litigation, the party may file a motion with a court of competent jurisdiction to be relieved of the duty to exhaust administrative remedies.

A municipality which has a judgment entered against it after the enactment of this act, or which had a judgment entered against it prior to the enactment of this act, or which brings an action for declaratory judgment shall, upon municipal request, be allowed to phase-in its obligation for fair share low and moderate income housing. Based upon various analysis factors, fair share obligations and time periods specified in the bill, the court shall implement a phase-in schedule.

Any municipality which has a fair share obligation to provide 2,000 or more low and moderate income units in inclusionary developments shall be entitled to a phase-in schedule for the issuance of final approvals in inclusionary developments of at least 20 years from the effective date of this act.

Any municipality which has a fair share obligation to provide between 1,500 and 1,999 low and moderate income units in inclusionary developments shall be entitled to a phase-in schedule for the issuance of final approvals in inclusionary developments of at least 15 years from the effective date of this act.

Any municipality which has a fair share obligation to provide between 1,000 and 1,499 low and moderate income units in inclusionary developments shall be entitled to a phase-in schedule for the issuance of final approvals in inclusionary developments of at least 10 years from the effective date of this act.

Any municipality which has a fair share obligation to provide between 500 and 999 low and moderate income units in inclusionary developments shall be entitled to a phase-in schedule for the issuance of final approvals in inclusionary developments of at least six years from the effective date of this act.

Any municipality which has a fair share obligation to provide less than 500 low and moderate income units in inclusionary developments shall be entitled to a phase-in schedule for the issuance of final approvals in inclusionary developments for a period of time, including a period of at least six years, as is determined to be reasonable pursuant to the analysis factors enumerated in this section.

In an inclusionary development which a municipality has approved, the phase-in schedule for the development shall include a commencement date consistent with the purposes of this section and a staging plan which the development requires in order to be economically feasible. A phase-in schedule shall endeavor to give larger developments which the municipality has approved a longer staging plan and smaller developments which the municipality has approved a shorter staging plan, if any, for the completion of the project.

The bill provides that the Division of Housing in the Department of Community Affairs shall establish procedures for entering into, and shall enter into, contracted agreements with consenting municipalities or developers of inclusionary developments whereby the division will administer resale controls.

The bill establishes a "Low and Moderate Income Housing Trust Fund Account" and provides an appropriation of \$100 million, instead of using realty transfer fees, to finance it. The bill provides that 50% of the proceeds of the New Jersey Housing and Mortgage Finance Agency's bond issues in the four years following the effective date of this act shall be used to assist in the financing of low and moderate income housing.

The bill also: (1) no longer refers to a specific percentage of low and moderate income housing but refers to a "substantial" percentage of such housing and, (2) no longer refers only to the construction of low and moderate income housing but refers to the achievement of such housing.

The bill appropriates \$1,000,000.00 to the Council on Affordable Housing to carry out the purposes of this act.

SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2046 and 2334

STATE OF NEW JERSEY

DATED: JANUARY 28, 1985

This bill provides for a legislative response to the Mount Laurel II court decision. It contains substantive elements of both Senate Bill No. 2046 Sca as reported by the Senate State Government Committee, and Senate Bill No. 2334, and is based upon the suggestions of various public officials and private individuals concerned with Mount Laurel issues. Generally, the major elements of the bill are those contained in Senate Bill No. 2046 as revised in the Senate State Government Committee, with provisions added to incorporate the regional housing financing elements and regional contribution agreement concepts of Senate Bill No. 2334.

COUNCIL

The bill establishes a Council on Affordable Housing to consist of nine members appointed by the Governor with the advice and consent of the Senate. Four shall be elected officials representing the interests of municipal government (one shall be from an urban municipality and one may be a representative of the interests of county government); three shall represent the interests of households in need of low and moderate housing (at least one of whom shall represent the interests of builders of low and moderate income housing); and two shall represent the public interest. Not more than five of the nine members shall be of the same political party.

The members shall be compensated, except for any State official, at the rate of \$150.00 for each six-hour day spent in attendance at meetings and consultations and all members shall be eligible for reimbursement for necessary expenses incurred in connection with the discharge of their duties. The council shall appoint and fix the salary of an executive director who shall serve at its pleasure.

The council would:

1. Establish stable housing regions for the State to consist of not less than two or nor more than four contiguous, whole counties, with particular attention to the recommendations of the Center for Urban Policy Research, Rutgers, the State University;
2. Estimate the present and prospective need for low and moderate income housing at the State and regional level:

3. Adopt criteria and guidelines for:

- (a) Municipal determination of its present and prospective fair share of the housing need in a given region;
- (b) Municipal adjustment of the present and prospective fair share based upon available vacant and developable land, infrastructure considerations or historical preservation factors;
- (c) Phasing of present and prospective fair share housing requirements; and,

4. Provide population and household projections for the State and regions.

PLANNING PROCESS

Within four months after the effective date of this act, each municipality which so elects shall, by a duly adopted resolution of participation, notify the council of its intent to submit to the council its fair share housing plan and shall, within four months after the council's adoption of its criteria and rules, prepare and file with the council a housing element based on the council's rules and criteria and any adopted ordinance revisions which implement the housing element.

A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and future housing needs, with particular attention to low and moderate income housing. Low and moderate income housing is defined as housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and according to percentages of median gross household income.

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 the element will provide such a realistic opportunity, and the municipality shall establish that the land use ordinances have been revised to incorporate the provisions for low and moderate income housing contained in the housing element.

A municipality which has filed a housing element may, at any time during a six-year period following the filing, petition the council for a substantive certification of its element and ordinances or institute an action for declaratory judgment granting it six year repose in the Superior Court. Unless an objection to the substantive certification is filed with the council by any person within 45 days of the publication of the notice of the municipality's petition, the council shall review the petition and shall issue a substantive certification if it shall find that:

- a. The municipality's fair share plan is consistent with the rules and criteria adopted by the council and not inconsistent with the achievement of the region's low and moderate income housing needs; and

b. The combination of the elimination of unnecessary cost generating features and the affirmative measures in the housing element and implementation plan make the achievement of the municipality's fair share of low and moderate income housing realistically possible.

REGIONAL CONTRIBUTION AGREEMENT

The bill provides that a municipality may propose that up to 33 $\frac{1}{3}$ % of its fair share obligation be met through a regional contribution agreement. The "sending municipality" is required to demonstrate how that portion of its fair share would be provided in its housing element and to state its reasons for seeking the transfer. The council would receive statements of intent from municipalities wishing to be "receiving" municipalities for transfer purposes. The council would match "sending" municipalities with "receiving" municipalities within the same housing region, but the agreement entered into would be voluntary to both municipalities. The council would approve the agreement if it determines that the agreement provides a realistic opportunity for the provision of low and moderate income housing within convenient access to employment opportunities. It would refer the agreement to the county planning board of the receiving municipality for a review of the conformity of the agreement with sound comprehensive regional planning.

The bill provides for mechanisms for enforcement of a regional contribution agreement over both the "sending" and "receiving" municipalities. The annual budget of the "sending" municipality must contain the "cap exempt" annual appropriations to the "receiving" municipality required by the agreement or the budget could not be approved by the State. The bill provides guidelines to the council for determining the schedule and amount of annual appropriations. "Receiving" municipalities are required to submit a project plan for utilization of the contributions, which will be evaluated for feasibility by the Department of Community Affairs. Annual progress reports on projects are required to be filed and evaluated, and the council is empowered to take action to enforce a regional contribution agreement to assure timely implementation of the project.

A regional contribution agreement would be entered into at the time of substantive certification of a municipal housing element. The mechanism is, however, available to municipalities which are defendants in exclusionary zoning suits, and which have not obtained certification, if the court determines the municipal request to be reasonable.

REVIEW AND MEDIATION PROCESS

The council shall engage in a review and mediation process in the following situations:

(1) If an objection to the municipality's petition for substantive certification is filed with the council within the time specified by this act or (2) if a request for mediation and review is made pursuant to this act. In cases in which an objection is filed to substantive certification the council shall meet with the municipality and the objectors and attempt to mediate a resolution of the dispute. If the mediation is successful, the council shall issue a substantive certification provided it finds that the criteria in this act have been met.

If the mediation efforts are unsuccessful, then the council shall conduct a review process in which objectors shall have the right to present their objections in the form of written submissions or expert reports and a reasonable opportunity shall be given to the objectors, the municipality and their experts to be heard, but the review process shall not be considered a contested case as defined in the "Administrative Procedure Act," P. L. 1968, c. 110 (C. 52:14B-1 et seq.).

The council may impose reasonable time limitations, such as one or two days, or such other period as the council determines to be appropriate in a particular case, upon the length of the hearing. The council may also impose reasonable limitations upon the length of presentation by both the municipality and by the objectors who challenge the adequacy of the housing element or the revisions of the land use ordinance, and upon the length of cross examination. The review process may be conducted by a panel of three council members, one from each category, staff or by an administrative law judge, as the council determines. After considering the submissions, reports, and testimony, the council or a panel of three council members consisting of one local government, one housing and one public member shall determine whether to grant substantive certification pursuant to this act, to deny the petition, or to grant conditional approval. The council shall give detailed reasons for its decision. Any appeal of a council decision granting or denying substantive certification shall be to a trial court, which shall conduct an adjudicatory hearing.

For those exclusionary zoning cases instituted more than 60 days before the effective date of this act, no exhaustion of the review and mediation procedure established in this act shall be required unless the court determines that a transfer of the case to the council is likely to facilitate and expedite the provision of a realistic opportunity for low and moderate income housing. If the municipality fails to file a housing element and fair share plan with the council within four months from the date of transfer, jurisdiction shall revert back to the court.

Any person who institutes litigation less than sixty days before the effective date of this act or after the effective date of this act, challenging a municipality's zoning ordinance with respect to the opportunity to provide for low or moderate income housing, shall file

a notice to request review and mediation with the council. In the event that the municipality adopts a resolution of participation within the four-month period established in this act, the person shall exhaust the review and mediation process of the council before being entitled to a trial on his complaint.

If the council has not completed its review and mediation process for a municipality within six months of receipt of a request by a party who has instituted litigation, the party may file a motion with a court of competent jurisdiction to be relieved of the duty to exhaust administrative remedies.

LEGAL PROTECTIONS

In any exclusionary zoning case filed against a municipality which has a substantive certification and in which there is a requirement to exhaust the review and mediation process pursuant to this act, there shall be a presumption of validity attaching to the housing element and ordinances implementing the housing element.

There shall be a presumption of validity attaching to a regional contribution agreement approved by the council.

The council is made a party to any exclusionary zoning suit against a municipality which receives substantive certification, and is empowered to present to the court its reasons for granting certification. For this purpose, the council is authorized to employ legal counsel to represent it in proceedings and furnish legal advice to the council.

PHASE-IN SCHEDULE

A municipality which has an action pending or a judgment entered against it after the enactment of this act, or which had a judgment entered against it prior to the enactment of this act, or which brings an action for declaratory judgment shall, upon municipal request, be allowed to phase-in its obligation for fair share low and moderate income housing. Based upon various analysis factors, fair share obligations and time periods specified in the bill, the court shall implement a phase-in schedule based upon the following guidelines:

Any municipality which has a fair share obligation to provide 2,000 or more low and moderate income units in inclusionary developments shall be entitled to consideration of a phase-in schedule for the issuance of final approvals in inclusionary developments of at least 20 years from the effective date of this act.

Any municipality which has a fair share obligation to provide between 1,500 and 1,999 low and moderate income units in inclusionary developments shall be entitled to consideration of a phase-in schedule for the issuance of final approvals in inclusionary developments of at least 15 years from the effective date of this act.

Any municipality which has a fair share obligation to provide between 1,000 and 1,499 low and moderate income units in inclusionary developments shall be entitled to consideration of a phase-in schedule for the issuance of final approvals in inclusionary developments of at least 10 years from the effective date of this act.

Any municipality which has a fair share obligation to provide between 500 and 999 low and moderate income units in inclusionary developments shall be entitled to consideration of a phase-in schedule for the issuance of final approvals in inclusionary developments of at least six years from the effective date of this act.

Any municipality which has a fair share obligation to provide less than 500 low and moderate income units in inclusionary developments shall be entitled to consideration of a phase-in schedule for the issuance of final approvals in inclusionary developments for a period of time, including a period of at least six years, as is determined to be reasonable based upon the analysis factors set forth in the bill.

The bill provides planning criteria for establishing priorities among developers under a phase-in schedule and requires a municipality under a phase-in schedule to make a good effort to time the issuance of final approvals for particular developments in a manner which enables the realistic and economically viable construction of the development.

FAIR HOUSING TRUST FUND ACCOUNT

The bill provides for two sources of funding for low and moderate income housing programs. The first is a \$25,000,000.00 appropriation to the Fair Housing Trust Fund Account to be used anywhere in the State for programs facilitating low and moderate income housing. This appropriation would address the immediate need for housing financing, in light of the impact of Mount Laurel II obligations.

A continuous funding source for low and moderate income housing is to be provided through a revised schedule of realty transfer fees, and the use of State proceeds from those fees for the purposes of the Fair Housing Trust Fund Account. The continuous funding source is established in Assembly Bill No. 3117, and the enactment of this bill is tied to enactment of that bill. The revised schedule would graduate realty transfer fees by providing for a \$1.75 fee per each \$500.00 of consideration up to \$150,000.00, and a \$2.50 fee per each \$500.00 in excess of \$150,000.00. The Assembly Bill also limits the current partial exemption for property upon which there is new construction to a \$1.00 exemption per each \$500.00 of consideration up to \$150,000.00. A partial exemption is also established for low and moderate income housing subject to resale controls. The revised fees would take effect January 1 next following enactment of this Senate Committee Substitute.

A regional housing trust fund subaccount is established for each housing region. The realty transfer fees collected in each housing region would remain 90% in the subaccount of the housing region, with 10% available for general council purposes. Priority is accorded for use of regional subaccounts for assistance to "receiving" municipalities under regional contribution agreements for planning, land acquisition, site preparation and infrastructure provision for projects undertaken under a transfer, and for other housing programs based upon the number of housing units accepted under the transfer.

Other programs eligible for funding include: rehabilitation of substandard housing; accessory conversions of housing units; conversions of nonresidential space to residential purposes; inclusionary developments of which a substantial percentage of the housing units are low and moderate income; assistance to local housing authorities or non-profit or limited dividend housing corporations or associations for rehabilitation of housing units which are unusable or in serious disrepair; and infrastructure projects directly facilitating construction of low and moderate income housing.

All projects proposed to be funded from the account are required to be evaluated by the Division of Housing, Department of Community Affairs, for feasibility. The council shall not undertake a project unless it receives a favorable evaluation from the division. The council may enter into agreements with the New Jersey Housing and Mortgage Finance Agency under which moneys from the Fair Housing Trust Fund Account would be used to finance low and moderate income housing projects to be undertaken by the agency.

The bill provides that the Division of Housing shall establish procedures for entering into, and shall enter into, contracted agreements with consenting municipalities or developers of inclusionary developments whereby the division will administer resale controls.

COUNCIL REPORTS

The council is required to report every two years to the Governor and Legislature on the effects of the legislation in promoting low and moderate income housing, with specific attention to the sufficiency of the housing financing provisions.

In addition, within 36 months of the effective date of the act, the council is required to report to the Governor and the Legislature on the actions necessary to be undertaken to implement and administer the act on a regional basis. The Legislature would review the advisability of revising the act to accomplish that end.

MINORITY STATEMENT

Pursuant to Senate Rule No. 79, Senators Foran, Ewing and Brown have requested that the following minority statement be appended to the committee statement on this bill:

"THE REPUBLICAN MEMBERS OF THE SENATE RFA COMMITTEE ARE IN FULL AGREEMENT THAT THERE IS A PRESSING NEED IN THE STATE FOR AFFORDABLE HOUSING. WE ALSO RECOGNIZE THAT THERE IS NEED FOR COMPROMISE IF ANY CONSTRUCTIVE LEGISLATION IS TO BE ENACTED INTO LAW. HOWEVER, BECAUSE OF THE IMPACT THIS LEGISLATION WILL HAVE ON THE FUTURE OF THE MUNICIPALITIES AND CITIZENS OF THIS STATE WE HAVE TAKEN THE FOLLOWING POSITION:

WE CANNOT VOTE FOR A BILL WHICH:

1. ESTABLISHES HOUSING QUOTAS IN ANY FORM.
2. ESTABLISHES A NEW LAYER OF BUREAUCRACY TO SERVE AS "CZAR" OF HOUSING.
3. AUTHORIZES THE EXPENDITURE OF BILLIONS OF DOLLARS OVER THE YEARS BASED ON UNSUBSTANTIATED PROJECTIONS OF HOUSING NEEDS, RATHER THAN ACTUAL HOUSING NEEDS AS DETERMINED IN EACH MUNICIPALITY IN ACCORDANCE WITH ITS ACTUAL GROWTH POTENTIAL.
4. INCREASES STATE AND LOCAL TAXES IN ANY WAY.

WE CAN ONLY VOTE FOR LEGISLATION WHICH:

1. ESTABLISHES A PLANNING AND IMPLEMENTATION PERIOD DURING WHICH THE USE OF THE BUILDERS REMEDY WILL BE PROHIBITED.
 2. PROVIDES FUNDS FOR HOUSING REHABILITATION AND DEVELOPMENT IN ALL MUNICIPALITIES OF THE STATE WHICH NEED IT.
 3. CONNECTS ZONING FOR AFFORDABLE HOUSING WITH ACTUAL ECONOMIC AND COMMERCIAL GROWTH AND THE NEEDS OF THE MUNICIPALITIES' INDIGENOUS POPULATION.
 4. AMENDS THE CONSTITUTION TO CLARIFY THE JURISDICTION OF THE COURT AND ESTABLISH THAT IT IS THE ROLE OF THE LEGISLATURE TO ENACT LAW CONCERNING ZONING."
-

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

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SENATE, Nos. 2046 and 2334

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STATE OF NEW JERSEY

DATED: FEBRUARY 28, 1985

This bill provides for a legislative response to the Mt. Laurel II decision. The bill encompasses a comprehensive housing planning and financing assistance mechanism which provides an alternative to the planning mechanisms and remedies currently being enforced by the courts. The Assembly committee amendments would:

1. Provide for a 12 month moratorium period, during which the imposition of the builder's remedy by the courts would be prohibited.
2. Require the Attorney General to seek a declaratory judgment within 30 days of the effective date as to the constitutionality of the moratorium.
3. Extend the time which a municipality has to file its housing plan with the council from 10 months to 12 months within the protected period of the planning process.
4. Clarify that the legislation does not require a municipality to raise or expend its revenues in order to provide housing.
5. Establish that a court in determining whether to transfer pending lawsuits to the council must consider whether or not a manifest injustice to a party to the suit would result, and not just whether or not the provision of low and moderate income housing would be expedited by the transfer.
6. Clarify that municipal fair share is determined after crediting the municipality for adequate low and moderate income housing currently provided.
7. Clarify that regional housing need estimates must be adjusted by the council as municipal fair shares are adjusted based on available land, infrastructure considerations, or environmental or historic preservation factors.
8. Declare the State's preference for the review and mediation process, rather than litigation, for resolving exclusionary zoning disputes, and the Legislature's intent to provide in the act alternatives to the use of the builder's remedy.
9. Require council determinations regarding certification to be in writing.

10. Provide for a more extensive role for the proposed State Planning Commission in assisting the council and for the New Jersey Mortgage and Housing Finance Agency in reviewing housing project plans and administering resale controls.

The committee reported the bill favorably.

MINORITY STATEMENT

By Assemblymen Kline and Colburn

Although we are pleased that the committee accepted many of the suggestions offered by the Republicans, we cannot accept this bill, as amended, because it fails to remove the courts from Mount Laurel-like litigation.

This bill does not prevent the courts from continuing in their current direction. Pending Mount Laurel cases may continue to be litigated, ridiculous housing quotas established in the Warren township decision and builder's remedy may still be applied to municipalities throughout New Jersey, and the decisions of the State Housing Council, as established by this bill, may be negated by the courts.

The Republicans offered an amendment that tied this bill to the Legislature's positive action to place a constitutional amendment (*ACR-145—Albohn*) on the ballot. This amendment guarantees that the courts will no longer be able to interfere in local zoning the way the Supreme Court did in its Mount Laurel II decision. Nothing short of a constitutional amendment would achieve this goal. This amendment also would bar imposition on the builder's remedy should the proposed moratorium be struck down by any court decision.

The Republicans also offered an amendment that required the courts, to transfer all pending litigation to the Housing Council. The language, as amended, is a step in the right direction, but does not go far enough. It is patently unfair to set up two bodies which can establish two separate housing standards. This bill could create that very situation.

It is also unfair that municipalities, which already have settled Mount Laurel cases, to now find themselves in the position of having accepted unreasonable quotas set by the courts, while a Housing Council generates new and less burdensome quotas. This bill does nothing to protect or reward those municipalities which have met far more than their obligation. Specifically, the Republican amendment protected these settled municipalities from further suits for the 12-year period following the enactment of this legislation.

While the adopted amendments allow the municipalities to adjust the figures given to them by the Housing Council in accordance with important factors, such as environmental concerns and historic preservation, the adjustment does not take into account farmland preserva-

tion and the adequacy of existing public facilities. The Republican amendment included these necessary factors in any adjustment of housing quotas.

Finally, it must be underscored that there is nothing in this bill that prevents the Housing Council from using the same housing formula and imposing the same outlandish housing quotas as the courts did in the Mt. Laurel II decision and the subsequent Warren township decision.

The Republican amendment gave the Housing Council clear direction in the way the council must develop its formula. This direction uses realistic definitions of "prospective need," thereby ensuring that ephemeral projections and equations do not determine the future housing needs of a municipality.

This bill, no doubt, will be touted as the majority party's answer to Mount Laurel II. It may be a partial answer, but it is our belief that it is woefully inadequate. Even worse, we believe that this solution may turn out to be as bad as the Mount Laurel II decision. Should this occur, however, the members voting in favor of this bill will no longer be able to point their fingers at the courts. They will have to accept responsibility for the mess they created.

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ASSEMBLY, No. 3302

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 28, 1985

By Assemblyman BRYANT

AN ACT concerning housing, and making an appropriation.

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

1 1. This act shall be known and may be cited as the "Fair Housing
2 Act."

1 2. The Legislature finds that:

2 a. The New Jersey Supreme Court, through its rulings in *South*
3 *Burlington County NAACP v. Mount Laurel*, 67 N.J. 151 (1975)
4 and *South Burlington County NAACP v. Mount Laurel*, 92 N.J.
5 158 (1983), has determined that every municipality in a growth
6 area has a constitutional obligation to provide a realistic oppor-
7 tunity for a fair share of its region's present and prospective
8 needs for housing for low and moderate income families.

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

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

19 d. There are a number of essential ingredients to a comprehen-
20 sive planning and implementation response, including the estab-
21 lishment of reasonable fair share housing guidelines and standards,
22 the initial determination of fair share by officials at the municipal
23 level and the preparation of a municipal housing element, State

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted February 28, 1985.

24 review of the local fair share study and housing element, and con-
 25 tinuous State funding for low and moderate income housing to
 26 replace the federal housing subsidy programs which have been
 27 almost completely eliminated.

28 e. The State can maximize the number of low and moderate
 29 income units provided in New Jersey by allowing its municipalities
 30 to adopt appropriate phasing schedules for meeting their fair
 31 share, so long as the municipalities permit a timely achievement
 32 of an appropriate fair share of the regional need for low and
 33 moderate income housing as required by the Mt. Laurel I and II
 34 opinions.

35 f. The State can, also, maximize the number of low and moderate
 36 income units by rehabilitating existing, but substandard, housing
 37 in the State, and, in order to achieve this end, it is appropriate
 38 to permit the transfer of a limited portion of the fair share obli-
 39 gations among municipalities in a housing region, so long as the
 40 transfer occurs on the basis of sound comprehensive planning,
 41 with regard to an adequate housing financing plan, and in relation
 42 to the access of low and moderate income households to employ-
 43 ment opportunities.

1 3. The Legislature declares that the statutory scheme set forth
 2 in this act is in the public interest in that it comprehends a low
 3 and moderate income housing planning and financing mechanism
 4 in accordance with regional considerations and sound planning
 5 concepts which satisfies the constitutional obligation enunciated
 6 by the Supreme Court. **The Legislature declares that the State's*
 7 *preference for the resolution of existing and future disputes in-*
 8 *volving exclusionary zoning is the mediation and review process*
 9 *set forth in this act and not litigation, and that it is the intention*
 10 *of this act to provide various alternatives to the use of the builder's*
 11 *remedy as a method of achieving fair share housing.**

1 4. As used in this act:

2 a. "Council" means the Council on Affordable Housing estab-
 3 lished in this act, which shall have primary jurisdiction for the
 4 administration of housing obligations in accordance with sound
 5 regional planning considerations in this State.

6 b. "Housing region" means a geographic area of no less than
 7 two nor more than four contiguous, whole counties which exhibit
 8 significant social, economic and income similarities, and which
 9 constitute to the greatest extent practicable the primary metro-
 10 politan statistical areas as last defined by the United States Census
 11 Bureau prior to the effective date of this act.

12 c. "Low income housing" means housing affordable according

13 to federal Department of Housing and Urban Development or
 14 other recognized standards for home ownership and rental costs
 15 and occupied or reserved for occupancy by households with a gross
 16 household income equal to 50% or less of the median gross house-
 17 hold income for households of the same size within the housing
 18 region in which the housing is located.

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

26 e. "Resolution of participation" means a resolution adopted by
 27 a municipality in which the municipality chooses to prepare a fair
 28 share ***[study]*** **plan** and housing element in accordance with
 28A this act.

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

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

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

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

1 5. a. There is established in, but not of, the Department of Com-
 2 munity Affairs a Council on Affordable Housing to consist of
 3 nine members appointed by the Governor with the advice and con-
 4 sent of the State, of whom four shall be elected officials represent-
 5 ing the interests of local government, at least one of whom shall be
 6 representative of an urban municipality having a population in
 7 excess of 40,000 persons and a population density in excess of
 8 3,000 persons per square mile, and no more than one of whom
 9 may be a representative of the interests of county government;
 10 three shall represent the interests of households in need of low
 11 and moderate housing, at least one of whom shall represent the

12 interests of the builders of low and moderate income housing,
 13 and shall have an expertise in land use practices and housing
 14 issues; and two shall represent the public interest. Not more than
 15 five of the nine shall be members of the same political party. The
 16 membership shall be balanced to the greatest extent practicable
 17 among the various housing regions of the State.

18 b. The members shall serve for terms of six years, except that
 19 of the members first appointed, two shall serve for terms of four
 20 years, three for terms of five years, and four for terms of six years.
 21 All members shall serve until their respective successors are
 22 appointed and shall have qualified. Vacancies shall be filled in the
 23 same manner as the original appointment, but for the remainder
 24 of the unexpired term only.

25 c. The members shall be compensated at the rate of \$150.00
 26 for each six-hour day, or prorated portion thereof for more or
 27 less than six hours, spent in attendance at meetings and consul-
 28 tations and all members shall be eligible for reimbursement for
 29 necessary expenses incurred in connection with the discharge of
 30 their duties.

31 d. The Governor shall *~~appoint~~* **nominate** the members
 32 within 30 days of the effective date of this act and shall designate
 33 a member to serve as chairman throughout the member's term of
 34 office and until his successor shall have been appointed and qualified.

35 e. Any member may be removed from office for misconduct in
 36 office, willful neglect of duty, or other conduct evidencing unfitness
 37 for the office, or for incompetence. A proceeding for removal may
 38 be instituted by the Attorney General in the Superior Court. A
 39 member or employee of the council shall automatically forfeit his
 40 office or employment upon conviction of any crime. Any member
 41 or employee of the council shall be subject to the duty to appear
 42 and testify and to removal from his office or employment in accor-
 43 dance with the provisions of P. L. 1970, c. 72 (C. 2A:81-17.2a
 44 et seq.).

1 6. a. The council may establish, and from time to time alter, such
 2 plan of organization as it may deem expedient, and may incur
 3 expenses within the limits of funds available to it.

4 b. The council shall elect annually by a majority of its members
 5 one of its members, other than the chairman, to serve as vice-
 6 chairman for a term of one year and until his successor is elected.
 7 The vice-chairman shall carry out all of the responsibilities of the
 8 chairman as prescribed in this act during the chairman's absence,
 9 disqualification or inability to serve.

10 c. The council shall appoint and fix the salary of an executive

11 director who shall serve at its pleasure. The council may employ
 12 such other personnel as it deems necessary. All employees of
 13 the council shall be in the unclassified service of the Civil Service.
 14 The council may employ legal counsel who shall represent it in
 15 any proceeding to which it is a party, and who shall render legal
 16 advice to the council. The council may contract for the services
 17 of other professional, technical and operational personnel and
 18 consultants as may be necessary to the performance of its duties.
 19 *~~Members and employees~~* *Employees** shall be enrolled in the
 20 Public Employees Retirement System of New Jersey established
 21 under P. L. 1954, c. 84 (C. 43:15A-1 et seq.).

1 7. It shall be the duty of the council, ~~six~~* *seven** months
 2 after the effective date of this act, and from time to time, there-
 2A after, to:

3 a. Determine housing regions of the State~~,~~ in the establish-
 4 ment of which the council shall give particular attention to the rec-
 5 ommendations of the Center for Urban Policy Research, Rutgers,
 6 The State University~~;~~;

7 b. Estimate the present and prospective need for low and mod-
 8 erate income housing at the State and regional level;

9 c. Adopt criteria and guidelines for:

10 (1) Municipal determination of its present and prospective fair
 11 share of the housing need in a given region*. *Municipal fair share*
 11A *shall be determined after crediting on a one to one basis each cur-*
 11B *rent unit of low and moderate income housing of adequate stan-*
 11C *dard, including any such housing constructed or acquired as part*
 11D *of a housing program specifically intended to provide housing for*
 11E *low and moderate income households**;

12 (2) Municipal adjustment of the present and prospective fair
 13 share based upon available vacant and developable land, infra-
 14 structure considerations or *environmental or** historic preserva-
 14A tion factors; and

15 (3) Phasing of present and prospective fair share housing re-
 16 quirements pursuant to section 23 of this act.

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

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 re-
 22 ports, decisions of other branches of government, implementation
 23 of the State Development and Redevelopment Plan prepared pur-
 24 suant to P. L. , c. (now pending before the Legislature as
 25 Senate Bill No. 1464 of 1984) and public comment. *To assist the*

26 *council, the State Planning Commission established under that act*
 27 *shall provide the council annually with economic growth, develop-*
 28 *ment and decline projections for each housing region for the next*
 29 *six years.** The council shall develop procedures for periodically
 30 adjusting regional need based upon the low and moderate income
 31 housing that is provided in the region through the Fair Housing
 32 Trust Fund Account established in section 20 of this act or any
 33 other federal, State, municipal or private housing program.

1 8. Within four months after the effective date of this act, the
 2 council shall, in accordance with the "Administrative Procedure
 3 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), ***[adopt]*** **propose**
 4 procedural rules.

1 9. **a.** Within four months after the effective date of this act,
 2 each municipality which so elects shall, by a duly adopted resolution
 3 of participation, notify the council of its intent to submit to the
 4 council its fair share housing plan. Within ***[four]*** **five** months
 5 after the council's adoption of its criteria and guidelines, the mu-
 6 nicipality shall prepare and file with the council a housing element,
 7 based on the council's criteria and guidelines, and any adopted
 8 ordinance revisions which implement the housing element.

9 **b.** A municipality which does not notify the council of its par-
 10 ticipation within four months may do so at any time thereafter. In
 11 any exclusionary zoning litigation instituted against such a mu-
 12 nicipality, however, there shall be no exhaustion of administrative
 13 remedy requirements pursuant to section 16 of this act unless the
 14 municipality also files its fair share plan and housing element with
 15 the council prior to the institution of the litigation.

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

5 a. An inventory of the municipality's housing stock by age,
 6 condition, purchase or rental value, occupancy characteristics, and
 7 type, including the number of units affordable to low and moderate
 8 income households;

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

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

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

19 e. A determination of the municipality's present and prospective
20 fair share for low and moderate income housing and its capacity
21 to accommodate its present and prospective housing needs, includ-
22 ing its fair share for low and moderate income housing; and

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

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

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

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

20 (3) Determination of measures that the municipality will take
21 to assure that low and moderate income units remain affordable
22 to low and moderate income households ***[over a 30-year period]***
22A **for an appropriate period of not less than six years**;

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

26 (5) Donation or use of municipally owned land or land con-
27 demned by the municipality for purposes of providing low and
28 moderate income housing;

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

31 (7) Utilization of funds obtained from the Fair Housing Trust
 32 Fund Account established pursuant to section 20 of this act or any
 33 other State or federal subsidy toward the construction of low and
 34 moderate income housing; and

35 (8) Utilization of municipally generated funds toward the con-
 36 struction of low and moderate income housing.

37 b. The municipality may provide for a phasing schedule for the
 38 achievement of its fair share of low and moderate income housing
 39 which is not inconsistent with section 23 of this act.

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

46 **d. Nothing in this act shall require a municipality to raise or*
 47 *expend municipal revenues in order to provide low and moderate*
 48 *income housing.**

1 12. a. A municipality may propose the transfer of up to 33 $\frac{1}{3}$ %
 2 of its fair share to another municipality within its housing region
 3 by means of a contractual agreement into which two municipalities
 4 volutarily enter. A municipality proposing to transfer to another
 5 municipality shall provide the council with the housing element
 6 and statement required under subsection c. of section 11 of this
 7 act, and shall request the council to determine a match with a
 8 municipality filing a statement of intent pursuant to subsection e.
 9 of this section. Except as provided in subsection b. of this section,
 10 the agreement may be entered into upon obtaining substantive
 11 certification under section 14 of this act, or anytime thereafter.
 12 The regional contribution agreement entered into shall specify
 13 how the housing shall be provided by the second municipality,
 14 hereinafter the receiving municipality, and the amount of con-
 15 tributions to be made by the first municipality, hereinafter the
 16 sending municipality.

17 b. A municipality which is a defendant in an exclusionary zoning
 18 suit and which has not obtained substantive certification pursuant
 19 to this act may request the court to be permitted to fulfill a portion
 20 of its fair share by entering into a regional contribution agree-
 21 ment. If the court believes the request to be reasonable, the court
 22 shall request the council to review the proposed agreement and
 23 to determine a match with a receiving municipality or munici-
 24 palities pursuant to this section. The court may establish time
 25 limitations for the council's review, and shall retain jurisdiction

26 over the matter during the period of council review. If the court
27 determines that the agreement provides a realistic opportunity
28 for the provision of low and moderate income housing within the
29 housing region, it shall provide the sending municipality a credit
30 against its fair share for housing to be provided through the
31 agreement in the manner provided in this section.

32 The agreement shall be entered into prior to the entry of a final
33 judgment in the litigation. In cases in which a final judgment was
34 entered prior to the date this act takes effect and in which an
35 appeal is pending, a municipality may request consideration of a
36 regional contribution agreement provided that it is entered into
37 within 120 days after this act takes effect. In a case in which a
38 final judgment has been entered, the court shall consider whether
39 or not the agreement constitutes an expeditious means of provid-
40 ing part of the fair share.

41 c. Regional contribution agreements shall be approved by the
42 council, after review by the county planning board or agency of
43 the county in which the receiving municipality is located. The
44 council shall determine whether or not the agreement provides
45 a realistic opportunity for the provision of low and moderate
46 income housing within convenient access to employment oppor-
47 tunities. The council shall refer the agreement to the county plan-
48 ning board or agency which shall review whether or not the
49 transfer agreement is in accordance with sound comprehensive
50 regional planning. In its review, the county planning board or
51 agency shall consider the master plan and zoning ordinance of
52 the sending and receiving municipalities, its own county master
53 plan, and the State development and redevelopment plan. The
54 county planning board or agency shall receive a fee from the Fair
55 Housing Trust Fund to reimburse it for the expenses of reviewing
56 the regional contribution agreement. In the event that there is
57 no county planning board or agency in the county in which the
58 receiving municipality is located, the council shall also determine
59 whether or not the agreement is in accordance with sound com-
60 prehensive regional planning. After it has been determined that
61 the agreement provides a realistic opportunity for low and mod-
62 erate income housing within convenient access to employment
63 opportunities, and that the agreement is consistent with sound
64 comprehensive regional planning, the council shall approve the
65 regional contribution agreement by resolution. All determinations
66 of a county planning board or agency shall be in writing and shall
67 be made within such time limits as the council may prescribe,
68 beyond which the council shall make those determinations and no-

69 fee shall be paid to the county planning board or agency pursuant
70 to this subsection.

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

83 e. The council shall maintain current lists of municipalities which
84 have stated an intent to enter into regional contribution agreements
85 as receiving municipalities, and shall establish procedures for
86 filing statements of intent with the council. No receiving munici-
87 pality shall be required to accept a greater number of low and
88 moderate income units through an agreement than it has expressed
89 a willingness to accept in its statement, but the number stated
90 shall not be less than a reasonable minimum number of units, not
91 to exceed 100, as established by the council. The council shall
92 require a project plan from a receiving municipality prior to the
93 entering into of the agreement, and shall submit the project plan
94 to the ***[Department of Community Affairs]*** *agency* for its re-
95 view as to the feasibility of the plan prior to the council's approval
96 of the agreement. The ***[department]*** *agency* may recommend
97 and the council may approve as part of the project plan a provision
98 that the time limitations for contractual guarantees or resale con-
99 trols for low and moderate income units included in the project
100 shall be less than 30 years, if it is determined that modification is
101 necessary to assure the economic viability of the project.

102 f. The council shall establish guidelines for the duration and
103 amount of contributions in regional contribution agreements. In
104 doing so, the council shall give substantial consideration to the
105 average of: (1) the median amount required to rehabilitate a
106 low and moderate income unit up to code enforcement standards;
107 (2) the average internal subsidization required for a developer to
108 provide a low income housing unit in an inclusionary development;
109 (3) the average internal subsidization required for a developer to
110 provide a moderate income housing unit in an inclusionary develop-
111 ment. Contributions may be prorated in municipal appropriations

112 occurring over a period not to exceed six years. Appropriations
 113 shall be made and paid directly to the receiving municipality or
 114 municipalities.

115 g. The council shall require receiving municipalities to file an-
 116 nual reports with the *~~Department of Community Affairs~~*
 117 *agency* setting forth the progress in implementing a project
 118 funded under a regional contribution agreement, and the *~~depart-~~
 119 ment]* *agency* shall provide the council with its evaluation of
 120 each report. The council shall take such actions as may be neces-
 121 sary to enforce a regional contribution agreement with respect to
 122 the timely implementation of the project by the receiving munici-
 123 pality.

1 13. A municipality which has filed a housing element may, at any
 2 time during a six year period following the filing of the housing
 3 element, petition the council for a substantive certification of its
 4 element and ordinances or institute an action for declaratory judg-
 5 ment granting it six-year repose in the Superior Court. The mu-
 6 nicipality shall publish notice of its petition in a newspaper of
 7 general circulation within the municipality and county and shall
 8 make available to the public information on the element and ordi-
 9 nances in accordance with such procedures as the council shall
 10 establish. The council shall also establish a procedure for pro-
 11 viding public notice of each petition which it receives.

1 14. Unless an objection to the substantive certification is filed
 2 with the council by any person within 45 days of the publication
 3 of the notice of the municipality's petition, the council shall review
 4 the petition and shall issue a substantive certification if it shall
 5 find that:

6 a. The municipality's fair share plan is consistent with the rules
 7 and criteria adopted by the council and not inconsistent with
 8 achievement of the *~~region's~~* low and moderate income housing
 9 needs **of the region as adjusted pursuant to the council's criteria*
 9A *and guidelines adopted pursuant to subsection c. of section 7 of this*
 9B *act**; and

10 b. The combination of the elimination of unnecessary housing
 11 cost generating features from the municipal land use ordinances
 12 and regulations, and the affirmative measures in the housing
 13 element and implementation plan make the achievement of the
 14 municipality's fair share of low and moderate income housing
 15 realistically possible after allowing for the implementation of any
 16 regional contribution agreement approved by the council.

17 In conducting its review, the council may meet with the munici-
 18 pality and may deny the petition or condition its certification upon

19 changes in the element or ordinances. **Any denial or conditions*
 20 *for approval shall be in writing and shall set forth the reasons for*
 21 *the denial or conditions.** If, within 60 days of the council's denial
 22 or conditional approval, the municipality refiles its petition with
 23 changes satisfactory to the council, the council shall issue a sub-
 24 stantive certification.

1 15. a. The council shall engage in a mediation and review process
 2 in the following situations: (1) if an objection to the municipality's
 3 petition for substantive certification is filed with the council within
 4 the time specified in section 14 of this act; or (2) if a request for
 5 mediation and review is made pursuant to section 16 of this act.

6 b. In cases in which an objection is filed to substantive certifica-
 7 tion the council shall meet with the municipality and the objectors
 8 and attempt to mediate a resolution of the dispute. If the media-
 9 tion is successful, the council shall issue a substantive certification
 10 if it finds that the criteria of section 14 of this act have been met.

11 c. If the mediation efforts are unsuccessful, then the council
 12 shall conduct a review process in which objectors shall have the
 13 right to present their objections in the form of written submissions
 14 or expert reports and a reasonable opportunity shall be given
 15 to the objectors, the municipality, and their experts to be heard,
 16 but the review process shall not be considered a contested case as
 17 defined in the "Administrative Procedure Act," P. L. 1968, c. 410
 18 (C.52:14B-1 et seq.).

19 The council may impose reasonable time limitations, such as one
 20 or two days, or such other period as the council determines to be
 21 appropriate in a particular case, upon the length of the hearing.
 22 The council may also impose reasonable limitations upon the
 23 length of presentation by both the municipality and by the ob-
 24 jectors who challenge the adequacy of the housing element or the
 25 revisions of the land use ordinance, and upon the length of cross
 26 examination. The review process may be conducted by a panel of
 27 three council members, one from each category, **[staff,]** or an
 28 administrative law judge, as the council determines. After consider-
 29 ing the submissions, reports, and testimony, the council, or a panel
 30 of three council members consisting of one local government, one
 31 housing and one public member, shall determine whether to grant
 32 substantive certification pursuant to section 44 of this act, to deny
 33 the petition, or to grant conditional approval. The representative
 34 of an urban municipality shall be considered a public member
 35 for the purpose of establishing panels. The council shall give
 36 detailed reasons for its decision. Any appeal of a council decision
 37 granting or denying substantive certification shall be to a trial
 38 court, which shall conduct an adjudicatory hearing.

39 d. In review and mediation processes instituted in accordance
 40 with section 16 of this act, the council shall attempt to mediate a
 41 resolution of the dispute between the litigants, provided that no
 42 agreement shall be entered by which a developer provides less
 43 than a substantial percentage of low and moderate income housing.
 44 The mediation process shall commence as soon as possible after
 45 the request for mediation and review is made, but in no case prior
 46 to the council's determination of housing regions and needs pur-
 47 suant to section 7 of this act. In the event that the mediation
 48 between the litigants is successful, the municipality shall have the
 49 option of choosing whether or not to also seek substantive certi-
 50 fication as provided in section 13 of this act. If mediation is not
 51 successful, the council shall conduct a review process as set forth
 52 in subsection c. to determine whether or not the municipality is
 53 entitled to substantive certification.

1 16. a. For those exclusionary zoning cases instituted more than 60
 2 days before the effective date of this act, *~~no~~ exhaustion of the
 3 review and mediation procedures established in sections 14 and 15
 4 of this act shall be required unless the court determines that a
 5 transfer of the case to the council is likely to facilitate and expedite
 6 the provision of a realistic opportunity for low and moderate
 7 income housing]* **any party to the litigation may file a motion with*
 8 *the court to seek a transfer of the case to the council. In determin-*
 9 *ing whether or not to transfer, the court shall consider whether or*
 10 *not the transfer would result in a manifest injustice to any party*
 11 *to the litigation**. If the municipality fails to file a housing element
 11A and fair share plan with the council within *~~four~~* **five** months
 11B from the date of transfer, or promulgation of criteria and guide-
 11C lines by the council pursuant to section 7 of this act, whichever
 11D occurs later, jurisdiction shall revert to the court.

12 b. Any person who institutes litigation less than 60 days before
 13 the effective date of this act or after the effective date of this act
 14 challenging a municipality's zoning ordinance with respect to the
 15 opportunity to provide for low or moderate income housing, shall
 16 file a notice to request review and mediation with the council
 17 pursuant to sections 14 and 15 of this act. In the event that the
 18 municipality adopts a resolution of participation within the period
 19 established in **subsection a. of** section 9 of this act, the person
 20 shall exhaust the review and mediation process of the council before
 21 being entitled to a trial on his complaint.

1 17. a. In any exclusionary zoning case filed against a municipality
 2 which has a substantive certification and in which there is a re-
 3 quirement to exhaust the review and mediation process pursuant

4 to section 16 of this act, there shall be a presumption of validity
 5 attaching to the housing element and ordinances implementing the
 6 housing element. To rebut the presumption of validity, the com-
 7 plainant shall have the burden of proof to demonstrate that the
 8 housing element and ordinances implementing the housing element
 9 do not provide a realistic opportunity for the provision of the
 10 municipality's fair share of low and moderate income housing
 11 after allowing for the implementation of any regional contribution
 12 agreement approved by the council.

13 b. There shall be a presumption of validity attaching to any
 14 regional contribution agreement approved by the council. To
 15 rebut the presumption of validity, the complainant shall have the
 16 burden of proof to demonstrate that the agreement does not pro-
 17 vide for a realistic opportunity for the provision of low and
 18 moderate income housing within the housing region.

19 c. The council shall be made a party to any exclusionary zoning
 20 suit against a municipality which receives substantive certification,
 21 and shall be empowered to present to the court its reasons for
 22 granting substantive certification.

1 18. If a municipality which has adopted a resolution of partici-
 2 pation pursuant to section 9 of this act fails to ***[submit]*** **meet*
 3 *the deadline for submitting** its housing element to the council prior
 4 to the institution of exclusionary zoning litigation, the obligation
 5 to exhaust administrative remedies contained in subsection b. of
 6 section 16 of this act automatically expires. The obligation also
 7 expires if the council rejects the municipality's request for sub-
 8 stantive certification or conditions its certification upon changes
 9 which are not made within the period established in this act or
 10 within an extension of that period agreed to by the council and
 11 all litigants.

1 19. If the council has not completed its review and mediation
 2 process for a municipality within six months of receipt of a request
 3 by a party who has instituted litigation, the party may file a motion
 4 with a court of competent jurisdiction to be relieved of the duty
 5 to exhaust administrative remedies. In the case of review and
 6 mediation requests filed within nine months after this act takes
 7 effect, the six-month completion date shall not begin to run until
 8 nine months after this act takes effect.

1 20. There is established in the State General Fund an account
 2 entitled the "Fair Housing Trust Fund Account." There shall be
 3 established with that account the following subaccounts: a gen-
 4 eral account and an account for each housing region established
 5 by the council to be entitled the "(insert names of counties in the

6 housing region) Regional Housing Trust Fund Account." Funds
 7 in the account shall be maintained by the State Treasurer and
 8 may be held in depositories as the State Treasurer may select,
 9 and be invested and reinvested as are other funds in the custody
 10 of the State Treasurer in the manner provided by law, provided
 11 that all revenues from investments shall be credited to the account.

12 The State Treasurer shall credit to the general account all
 13 moneys appropriated to the "Fair Housing Trust Fund Account"
 14 pursuant to this act and 10% of the annual amount of realty
 15 transfer fees collected pursuant to P. L. 1968, c. 49 (C. 46:15-5
 16 et seq.) and paid to the State Treasurer pursuant to section 4 of
 17 that act (C. 46:15-8).

18 There shall be credited to each regional housing trust fund
 19 account 90% of the annual amount of realty transfer fees collected
 20 pursuant to P. L. 1968, c. 49 (C. 46:15-5 et seq.) in the housing
 21 region to which a regional housing trust fund account pertains
 22 and paid to the State Treasurer pursuant to section 4 of that act
 23 (C. 46:15-8).

24 Notwithstanding any other law to the contrary, the Fair Housing
 25 Trust Fund Account shall be an eligible fund for the purposes of
 26 providing housing to low and moderate income households, and
 27 any federal, State or local government, agency or instrumentality
 28 may appropriate, deposit or invest or reinvest its funds in the
 29 account for those purposes. No such funds shall be deposited
 30 therein without the approval of the council and the State Treas-
 31 urer, and the State Treasurer shall provide for the separate
 32 maintenance, holding and accounting for those funds within the
 33 general account of the Fair Housing Trust Fund Account to the
 34 extent required by law.

1 21. Funds in the Fair Housing Trust Fund Account shall be
 2 appropriated annually by the Legislature, and shall be used solely
 3 by the council for awards of assistance, loans or grants to or on
 4 behalf of public or private housing projects or programs which
 5 will provide affordable low and moderate income housing.

6 Amounts appropriated to the general account pursuant to this
 7 act shall be used within the first 18 months following the organi-
 8 zation of the council. Except as provided below, amounts deposited
 9 in the general account thereafter shall be applied by the council
 10 generally in the State for the purposes set forth in subsections a.
 11 through h. of this section. Amounts deposited annually in the
 12 general account from realty transfer fees shall be used annually
 13 by the council for personnel, administrative and technical services,
 14 for litigation costs incurred by the council, and for reimbursing

15 county planning boards and agencies for costs incurred in review-
16 ing regional contribution agreements. The State Treasurer shall
17 adopt regulations under which county planning boards and agencies
18 shall report costs incurred in performing these duties, for the
19 purpose of making payments from the general account within the
20 limits established by legislative appropriations.

21 Amounts deposited annually in a regional housing trust fund
22 account shall be used exclusively within the housing region to
23 which the account pertains.

24 Except as provided above, amounts in the general account of the
25 Fair Housing Trust Fund Account, and amounts in the regional
26 housing trust fund accounts shall be applied for the following
27 purposes:

28 a. Rehabilitation of substantial housing units occupied or to be
29 occupied by low and moderate income households pursuant to con-
30 tractual guarantees for at least 30 years following the awarding
31 of the loan or grant;

32 b. Accessory conversions for housing units occupied or to be
33 occupied by low and moderate income households pursuant to
34 contractual guarantees for at least 30 years following the awarding
35 of the loan or grant;

36 c. Conversion of nonresidential space to residential purposes
37 provided a substantial percentage of the resulting housing units
38 are occupied or to be occupied by low and moderate income house-
39 holds pursuant to contractual guarantees for at least 30 years
40 following the awarding of the loan or grant;

41 d. Inclusionary developments of which a substantial percentage
42 of the housing units will be occupied by low and moderate income
43 households for at least 30 years pursuant to contractual guarantees;

44 e. Grants of assistance to receiving municipalities under regional
45 contribution agreements entered into under this act for costs of
46 necessary studies, surveys, plans and permits, engineering, archi-
47 tectural and other technical services, costs of land acquisition and
48 any buildings thereon, and costs of site preparation, demolition
49 and infrastructure development for projects undertaken pursuant
50 to a regional contribution agreement;

51 f. Assistance to a local housing authority, nonprofit or limited
52 dividend housing corporation or association for rehabilitation or
53 restoration of housing units which it administers which: (1) are
54 unusable or in a serious state of disrepair; (2) can be restored in
55 an economically feasible and sound manner; and (3) can be re-
56 tained in a safe, decent and sanitary manner, upon completion of
57 rehabilitation or restoration.

58 g. Such other housing programs for low and moderate income
 59 housing, including infrastructure projects directly facilitating the
 60 construction of low and moderate income housing not to exceed a
 61 reasonable percentage of the construction costs of the low and
 62 moderate income housing to be provided, as the council may deem
 63 necessary.

64 The council shall assure that a substantial percentage of the loan
 65 or grant awards made from the general account of the Fair
 66 Housing Trust Fund Account shall be made available to projects
 67 and programs in those municipalities receiving State aid pursuant
 68 to P. L. 1978, c. 14 (C. 52:27D-178 et seq.). The council shall assure
 69 that priority shall be accorded in loan and grant awards from a
 70 regional housing trust fund account to projects and programs in
 71 municipalities in the housing region which have filed statements
 72 of intent to enter into regional contribution agreements as receiv-
 73 ing municipalities for grants of assistance pursuant to subsection e.
 74 of this section. Receiving municipalities entering into regional
 75 contribution agreements shall receive priority for additional assis-
 76 tance set forth in subsections a. through g. of this section from a
 77 regional housing trust fund account for at least one other low and
 78 moderate income housing unit for each housing unit accepted under
 79 a regional contribution agreement. Priority accorded under this
 80 section shall be subject to the availability of funds in the regional
 81 housing trust funds account and to a favorable evaluation of
 82 feasibility pursuant to section 22 of this act.

83 The council shall establish rules and regulations governing the
 84 qualifications of applicants, the application procedures, and the
 85 criteria for awarding grants and loans and the standards for
 86 establishing the amount, terms and conditions of each grant or
 87 loan.

1 22. a. Except for housing receiving assistance under subsection b.
 2 of this section, the council shall refer all housing proposed to be
 3 funded in whole or in part from amounts deposited in the Fair
 4 Housing Trust Fund Account to the ***[Division of Housing in the**
 5 **Department of Community Affairs]** * *agency* * for evaluation as to
 6 the feasibility of the housing. The council shall not finance any
 7 housing for which the ***[division]** * *agency* * does not provide a
 8 favorable evaluation of feasibility. With respect to housing to be
 9 undertaken in municipalities which have filed statements of intent
 10 to enter into regional contribution agreements, or which have
 11 entered into agreements, the ***[division]** * *agency* * may recom-
 12 mend as part of the feasibility evaluation, and the council may ap-
 13 prove, a provision that the low and moderate income housing units

14 shall be subject to contractual guarantees or resale controls for a
 15 time of less than 30 years, if it is determined that modification is
 16 necessary to assure the economic viability of the housing. The
 17 council may establish procedures and time limitations for the con-
 18 duct of the feasibility evaluations, beyond which the council may
 19 proceed with the housing notwithstanding the ***[division's]***
 19A ***agency's*** failure to complete a feasibility evaluation.

20 b. The council, may enter into agreement with the New Jersey
 21 Housing and Mortgage Financing Agency under which amounts
 22 credited to the Fair Housing Trust Fund Account shall be used
 23 to assist, in whole or in part, low and moderate income housing
 24 to be financed by the agency. An agreement shall be specific as to
 25 the housing, and shall set forth the times and schedule according
 26 to which amounts in the account shall be provided to the agency.
 27 A copy of the agreement shall be filed with the State Treasurer,
 28 who shall administer the agreement in the course of his mainte-
 29 nance of the account. Agreements entered into under this sub-
 30 section shall be subject to the requirement that amounts credited
 31 to a regional housing trust fund account shall be used exclusively
 32 within the housing region to which the account pertains.

1 23. a. A municipality which has an action pending or a judgment
 2 entered against it after the effective date of this act, or which had
 3 a judgment entered against it prior to that date and from which
 4 an appeal is pending, or which brings an action for declaratory
 5 judgment pursuant to section 13 of this act, shall upon municipal
 6 request be allowed to phase in its obligation for a fair share of low
 7 and moderate income housing. If such a phase-in is requested by
 8 the municipality, the court shall implement a phase-in for the
 9 issuance of final approvals, as defined in section 3.1 of P. L. 1975,
 10 c. 291 (C. 40:55D-4), for low and moderate income housing, which
 11 shall be based on an analysis of the following factors:

- 12 (1) The size of the municipal ***[obligation]*** **fair share**;
- 13 (2) The present and projected capacity of the community's in-
 14 frastructure, taking into account expansion and rehabilitation of
 15 existing facilities;
- 16 (3) Vacant developable land;
- 17 (4) Likely absorption rate for housing in light of market forces;
- 18 (5) Reasonable development priorities among areas of the com-
 19 munity; and
- 20 (6) Past performance in providing low and moderate income
 21 housing, including credit for low and moderate income senior or
 22 disabled citizen housing.

23 b. The phase-in schedule shall provide for the grant of pre-
 24 liminary approvals to the developer subject to the phase-in
 25 schedule for final approvals in accordance with time periods set
 26 forth in sections 34, 36 and 48 of P. L. 1975, c. 291 (C. 40:55D-46,
 27 48 and 61), provided that such preliminary approvals shall confer
 28 vested rights as defined in subsection a. of section 37 of P. L. 1975,
 29 c. 291 (C. 40:55D-49) for the period until the developer has the
 30 ability to proceed to final approval pursuant to the phase-in
 31 schedule. In any phase-in schedule for a development, all final
 32 approvals shall be cumulative.

33 c. The court shall, where appropriate, also implement a phase-in
 34 schedule for the market units in the inclusionary development
 35 which are not low and moderate income, giving due consideration
 36 to the plan for low and moderate income housing established in
 37 this section and the need to maintain the economic viability of the
 38 development.

39 d. In entering the phase-in order, the court shall consider whether
 40 or not it is necessary to condition the phase-in order upon a phase-
 41 in schedule for the construction of other development in the mu-
 42 nicipality to minimize an imbalance between available housing units
 43 and available jobs, or to prevent the sites which are the most
 44 appropriate or the only possible sites for the construction of low
 45 and moderate income housing from being used for other purposes,
 46 or to prevent limited public infrastructure capacities from being
 47 entirely utilized for other purposes.

48 e. In entering a phasing order, the court, upon municipal request,
 49 shall implement a specific phasing schedule for the issuance of
 50 final approvals in inclusionary developments. The court shall take
 51 into account the six analysis factors enumerated in subsection a.
 52 of this section, giving particular attention to:

53 (1) The size of the municipal ~~*[obligation]*~~ **fair share** which
 54 is to be provided in inclusionary developments;

55 (2) The extent and projected capacity of the community's infra-
 56 structure, taking into account expansion and rehabilitation of
 57 existing facilities; and

58 (3) The extent and pattern of growth within the municipality
 59 and region during the six years prior to the implementation of the
 60 phase-in plan.

61 The following time periods shall be guidelines for a phasing
 62 schedule for the issuance of final approvals in inclusionary de-
 63 velopments, subject, however, to upward or downward modification
 64 based upon a review of the analysis factors:

65 Any municipality which has a fair share obligation to provide

66 2,000 or more low and moderate income units in inclusionary
 67 developments shall be entitled to consideration of a phase-in
 68 schedule for the issuance of final approvals in inclusionary develop-
 69 ments of at least 20 years from the effective date of this act.

70 Any municipality which has a fair share obligation to provide
 71 between 1,500 and 1,999 low and moderate income units in inclu-
 72 sionary developments shall be entitled to consideration of a phase-
 73 in schedule for the issuance of final approvals in inclusionary
 74 developments of at least 15 years from the effective date of this act.

75 Any municipality which has a fair share obligation to provide
 76 between 1,000 and 1,499 low and moderate income units in inclu-
 77 sionary developments shall be entitled to consideration of a phase-
 78 in schedule for the issuance of final approvals in inclusionary
 79 developments of at least 10 years from the effective date of this act.

80 Any municipality which has a fair share obligation to provide
 81 between 500 and 999 low and moderate income units in inclusionary
 82 developments shall be entitled to consideration of a phase-in
 83 schedule for the issuance of final approvals in inclusionary de-
 84 velopments of at least six years from the effective date of this act.

85 Any municipality which has a fair share obligation to provide
 86 less than 500 low and moderate income units in inclusionary de-
 87 velopments shall be entitled to consideration of a phase-in schedule
 88 for the issuance of final approvals in inclusionary developments
 89 for such period of time, including a period of at least six years,
 90 as is determined to be reasonable pursuant to the analysis factors.

91 f. As part of a phasing order concerning inclusionary develop-
 92 ments, the court may approve a municipal plan, or implement
 93 another plan, concerning priorities among developers and sites,
 94 and the timing in the issuance of final approvals to particular
 95 developers. Any plan concerning priorities and the timing of final
 96 approvals shall take into consideration:

97 (1) The location of various sites and their suitability for de-
 98 velopment pursuant to environmental protection and sound plan-
 99 ning criteria, including their consistency with reasonable provisions
 100 of municipal master plans;

101 (2) Infrastructure capacity or the ability to provide the capacity
 102 for the site, and the readiness of a particular developer to com-
 103 mence construction;

104 (3) Any settlements or court orders establishing priorities
 105 among developers.

106 Consistent with the overall phasing schedule adopted pursuant
 107 to the analysis factors, the municipality shall make a good faith
 108 effort to time the issuance of final approvals for particular de-

109 velopments which it approves in a manner which enables the
 110 realistic and economically viable construction of the development.
 111 To this end, the municipality shall take into consideration the need
 112 for sufficient development in a particular project to permit timely
 113 recovery of infrastructure costs, and, in the case of a development
 114 which will have a homeowners' association, to prevent the imposi-
 115 tion of excessive homeowners' fees because of the failure to achieve
 116 economies of scale. In the case of developers who have previously
 117 constructed residential developments in this State, a municipality
 118 shall also take into consideration the greatest number of units
 119 which the developer has constructed in any one development in
 120 the State within any one year period; this factor shall be considered
 121 if the municipality seeks to phase the issuance of final approvals
 122 for the inclusionary development over a period greater than one
 123 year.

1 24. The ***[Division of Housing in the Department of Community**
 2 **Affairs]*** **agency** shall establish procedures for entering into,
 3 and shall enter into, contractual agreements with willing munici-
 4 palities or developers of inclusionary developments whereby the
 5 ***[division]*** **agency** will administer resale controls and rent con-
 6 trols in municipalities where no appropriate administrative agency
 7 exists. The contractual agreements shall be for the duration of the
 8 controls and shall involve eligibility determinations, determination
 9 of initial occupants, the marketing of units, maintenance of eligi-
 10 bility lists for subsequent purchasers or renters, and determination
 11 of maximum resale prices or rents. ***[The division may enter into**
 12 **agreements whereby some or all of these responsibilities are per-**
 13 **formed by the New Jersey Housing and Mortgage Finance**
 14 **Agency. The division may]*** **The agency may** charge the mu-
 15 nicipality or inclusionary developer a reasonable per unit fee for
 16 entering into such an agreement, or may charge a reasonable fee
 17 to a low or moderate income household at the time the home is sold
 18 subject to the resale control or both. ***[Division]*** **Agency** fees
 19 shall be established according to methods or schedules approved
 20 by the ***[council]*** **State Treasurer**.

1 25. Notwithstanding any other law to the contrary, a munici-
 2 pality may purchase, condemn or otherwise acquire real property
 3 and any estate or interest therein, which the municipal governing
 4 body determines necessary or useful for the construction or re-
 5 habilitation of low and moderate income housing or conversion
 6 to low and moderate income housing.

7 The municipality may provide for the acquisition, construction
 8 and maintenance of buildings, structures or other improvements

9 necessary or useful for the provision of low and moderate income
10 housing, and may provide for the reconstruction, conversion or
11 rehabilitation of those improvements in such manner as may be
12 necessary or useful for those purposes.

13 Notwithstanding the provisions of any other law regarding the
14 conveyance, sale or lease of real property by municipalities, the
15 municipal governing body may, by resolution, authorize the private
16 sale and conveyance or lease of a housing unit or units acquired
17 or constructed pursuant to this section, where the sale, conveyance
18 or lease is to a low or moderate income household or nonprofit
19 entity and contains a contractual guarantee that the housing unit
20 will remain available to low and moderate income households for
21 a period of at least 30 years.

1 26. Within 24 months after the effective date of this act and
2 every two years thereafter, the ***[council]*** **agency** shall report
3 to the Governor and the Legislature on the effects of this act in
4 promoting the provision of low and moderate income housing in
5 the several housing regions of this State. The report shall give
6 specific attention to the manner in which amounts expended from
7 the Fair Housing Trust Fund Account, and amounts transferred
8 between sending municipalities and receiving municipalities, have
9 or have not been sufficient in promoting this end. The report may
10 include recommendations for any revisions or changes in this act
11 which the ***[council]*** **agency** believes necessary to more nearly
11A effectuate this end.

12 Within 36 months after the effective date of this act, the council
13 shall report to the Governor and the Legislature concerning the
14 actions necessary to be taken at the State, regional, county and
15 municipal levels to provide for the implementation and admin-
16 istration of this act on a regional basis, including any revisions
17 or changes in the law necessary to accomplish that end. The council
18 may include in the report any recommendations or considerations
19 it may wish to provide regarding the advisability of implementing
20 and administering the act on a regional basis.

1 27. Amounts expended by a municipality in preparing and im-
2 plementing a housing element and fair share plan pursuant to this
3 act shall be considered a mandated expenditure exempt from the
4 limitations on final appropriations imposed pursuant to P. L. 1976,
5 c. 68 (C. 40A:4-45.1 et seq.).

1 **28. For a period of 12 months following the effective date of*
2 *this act, no judicial judgment or judgments issued on or after*
3 *January 20, 1983, which require the provision of low and moderate*
4 *income housing in a municipality, shall be implemented to the ex-*

5 *tent that the judgment or judgments require provision of any hous-*
 6 *ing in the municipality which is not affordable to low or moderate*
 7 *income households, provided that nothing in this section shall affect*
 8 *any rights heretofore granted to a developer pursuant to municipal*
 9 *approval of a development application, or as a result of any court*
 10 *judgment or order, or any settlement of litigation.*

11 *The Attorney General shall, not later than 30 days after this act*
 12 *becomes effective, file a complaint in the Superior Court for a de-*
 13 *claratory judgment determining the constitutionality of this section.*
 14 *If that complaint is not filed within 30 days after the effective date*
 15 *of this act, this section shall be null and void.*

1 *29. If any part of this act shall be held invalid, the holding shall*
 2 *not affect the validity of remaining parts of this act. If a part of*
 3 *this act is held invalid in one or more of its applications, the act*
 4 *shall remain in effect in all valid applications that are severable*
 5 *from the invalid application.**

1 ***[28.]** ***30.*** There is appropriated to the Council on Affordable
 2 Housing from the General Fund the sum of \$1,000,000.00, and there
 3 is appropriated to the Fair Housing Trust Fund Account from the
 4 General Fund the sum of \$25,000,000.00 to effectuate the purposes
 5 of that account.

1 ***[29.]** ***31.*** This act shall take effect immediately but shall re-
 2 main inoperative until the enactment of P. L. . . . , c. . . . (now
 3 pending before the Legislature as Assembly Bill No. 3117).

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE.

STATEMENT TO

ASSEMBLY, No. 3302

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 28, 1985

This bill provides for a legislative response to the Mt. Laurel II decision. The bill encompasses a comprehensive housing planning and financing assistance mechanism which provides an alternative to the planning mechanisms and remedies currently being enforced by the courts. The Assembly committee amendments would:

1. Provide for a 12 month moratorium period, during which the imposition of the builder's remedy by the courts would be prohibited.
2. Require the Attorney General to seek a declaratory judgment within 30 days of the effective date as to the constitutionality of the moratorium.
3. Extend the time which a municipality has to file its housing plan with the council from 10 months to 12 months within the protected period of the planning process.
4. Clarify that the legislation does not require a municipality to raise or expend its revenues in order to provide housing.
5. Establish that a court in determining whether to transfer pending lawsuits to the council must consider whether or not a manifest injustice to a party to the suit would result, and not just whether or not the provision of low and moderate income housing would be expedited by the transfer.
6. Clarify that municipal fair share is determined after crediting the municipality for adequate low and moderate income housing currently provided.
7. Clarify that regional housing need estimates must be adjusted by the council as municipal fair shares are adjusted based on available land, infrastructure considerations, or environmental or historic preservation factors.
8. Declare the State's preference for the review and mediation process, rather than litigation, for resolving exclusionary zoning disputes; and the Legislature's intent to provide in the act alternatives to the use of the builder's remedy.

9. Require council determinations regarding certification to be in writing.

10. Provide for a more extensive role for the proposed State Planning Commission in assisting the council and for the New Jersey Mortgage and Housing Finance Agency in reviewing housing project plans and administering resale controls.

The committee reported the bill favorably.

MINORITY STATEMENT

Although we are pleased that the committee accepted many of the suggestions offered by the Republicans, we cannot accept this bill, as amended, because it fails to remove the courts from Mount Laurel-like litigation.

This bill does not prevent the courts from continuing in their current direction. Pending Mount Laurel cases may continue to be litigated, ridiculous housing quotas established in the Warren Township decision and builders' remedy may still be applied to municipalities throughout New Jersey, and the decisions of the State Housing Council, as established by this bill, may be negated by the courts.

The Republicans offered an amendment that tied this bill to the Legislature's positive action to place a constitutional amendment (*ACR-145—Albohn*) on the ballot. This amendment guarantees that the courts will no longer be able to interfere in local zoning the way the Supreme Court did in its Mount Laurel II decision. Nothing short of a constitutional amendment would achieve this goal. This amendment also would bar imposition of the builders' remedy should the proposed moratorium be struck down by any court decision.

The Republicans also offered an amendment that required the courts, to transfer all pending litigation to the Housing Council. The language, as amended, is a step in the right direction, but does not go far enough. It is patently unfair to set up two bodies which can establish two separate housing standards. This bill could create that very situation.

It is also unfair that municipalities, which already have settled Mount Laurel cases, to now find themselves in the position of having accepted unreasonable quotas set by the courts, while a Housing Council generates new and less burdensome quotas. This bill does nothing to protect or reward those municipalities which have met far more than their obligation. Specifically, the Republican amendment protected these settled municipalities from further suits for the 12-year period following the enactment of this legislation.

While the adopted amendments allow the municipalities to adjust the figures given to them by the Housing Council in accordance with important factors, such as environmental concerns and historic pre-

servation, the adjustment does not take into account farmland preservation and the adequacy of existing public facilities. The Republican amendment included these necessary factors in any adjustment of housing quotas.

Finally, it must be underscored that there is nothing in this bill that prevents the Housing Council from using the same housing formula and imposing the same outlandish housing quotas as the courts did in the Mt. Laurel II decision and the subsequent Warren township decision.

The Republican amendment gave the Housing Council clear direction in the way the council must develop its formula. This direction uses realistic definitions of "prospective need," thereby ensuring that ephemeral projections and equations do not determine the future housing needs of a municipality.

This bill, no doubt, will be touted as the majority party's answer to Mount Laurel II. It may be a partial answer, but it is our belief that it is woefully inadequate. Even worse, we believe that this solution may turn out to be as bad as the Mount Laurel II decision. Should this occur, however, the members voting in favor of this bill will no longer be able to point their fingers at the courts. They will have to accept responsibility for the mess they created.

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April 26, 1985

SENATE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2046 AND SENATE BILL NO. 2334

To the Senate:

Pursuant to Article V, Section I, paragraph 14 of the Constitution, I herewith return Senate Committee Substitute for Senate Bill No. 2046 and Senate Bill No. 2334 with my recommendations for reconsideration.

This bill sets forth a "Fair Housing Act" which addresses the New Jersey Supreme Court rulings in South Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975) and South Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983). It is designed to provide an administrative mechanism to resolve exclusionary zoning disputes in place of protracted and expensive litigation. The expectation is that through these procedures, municipalities operating within State guidelines and with State oversight will be able to define and provide a reasonable opportunity for the implementation of their Mt. Laurel obligations.

To accomplish this the bill establishes a voluntary system through which municipalities can submit plans for providing their fair share of low and moderate income housing to a State Council on Affordable Housing which would certify the plan. This certification would give the plan a presumption of validity in court. The presumption would shift the burden of proof to the complaining party to show that the plan does not provide a realistic opportunity for the provision of the fair share before a builder's remedy could be instituted.

In addition, the bill would permit regional contribution agreements whereby a municipality could transfer up to one-third of its fair share to another municipality within the same region. The bill also provides for a phasing schedule giving municipalities a time period, in some cases more than 20 years, to provide for their fair share.

The bill establishes a Fair Housing Trust Fund to provide financial assistance for low and moderate income housing. The Fund would be financed with a \$25 million appropriation from the General Fund and with realty transfer tax revenues. This bill is tied to Assembly Bill No. 3117 which would increase the realty transfer tax revenues and places the State's portion of the realty transfer tax revenues in the Fair Housing Trust Fund account. The two bills are linked together through an effective date provision in Senate Bill No. 2046

which provides that Senate Bill No. 2046 will remain inoperative until Assembly Bill No. 3117 is enacted.

The bill also places a 12-month moratorium on the implementation of judgments imposing a builder's remedy. The Attorney General is required to seek a determination of the constitutionality of this provision in a declaratory judgment action to be filed within 30 days from the effective date of the act. If the action is not brought within that time frame, the moratorium expires. In addition, the bill contains a severability clause providing that if one portion of the act is found invalid, the remaining severable portions shall remain in effect.

This bill represents the Legislature's first attempt to address Mt. Laurel and reflects its desire, in which I heartily concur, of taking the issue out of the courts and placing it in the hands of local and State officials where land use planning properly belongs. While I am in accord with the basic approach set forth in this bill, I am compelled to return it for necessary amendments.

It is essential that the temporary moratorium on the builder's remedy be constitutionally sustainable in order to enable municipalities to take advantage of the procedures in this bill. The builder's remedy is disruptive to development and planning in a municipality. A moratorium for the planning period in this bill is needed. Unfortunately, the moratorium proposed by this bill would affect court judgments which have already been entered. This may represent an unconstitutional intrusion into the Judiciary's powers. I question whether the Legislature can, in effect, undo a court judgment in this way. Accordingly, I am recommending an amendment to make this moratorium prospective only by directing the courts not to impose a builder's remedy during the moratorium period in any case in which a final judgment providing for a builder's remedy has not been entered. I recommend that the moratorium commence on the effective date of this act and expire at the end of the time period in which municipalities have to file their housing element pursuant to section 9.a., a period of 12 months from the date the Council is confirmed.

I am also deleting the provision requiring the Attorney General to seek a declaratory judgment on the constitutionality of the moratorium. This provision suggests that the Legislature has some question about the constitutionality of

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this provision. The change I have suggested should remove that uncertainty. In addition, a provision such as this is peculiar, since the Legislature should not be enacting laws which it believes might be unconstitutional.

In place of the Fair Housing Trust Fund and its \$25 million appropriation from this bill, I propose at this time to work with existing programs, namely the New Jersey Housing and Mortgage Finance agency and the Neighborhood Preservation Program in the Department of Community Affairs. Until the Council is in operation and municipalities start receiving substantive certification and entering into regional contribution agreements, it is difficult to evaluate new funding programs. Accordingly, rather than set up a new housing funding mechanism, I believe it would be more administratively and economically efficient to work with existing State programs to provide housing for low and moderate income households. I propose to fund this Mt. Laurel housing program with \$100 million of bond funds, and a total of \$25 million from the General Fund.

The New Jersey Housing and Mortgage Finance Agency will set up a Mt. Laurel housing program to help finance Mt. Laurel housing projects. The Agency's programs will include assistance for home purchases and improvement through interest rate, down payment and closing cost assistance as well as capital buy downs; rental programs including loans or grants for projects with low and moderate income units; moderate rehabilitation of existing rental housing; congregate care and retirement facilities; conversions, infrastructure assistance, and grants and loans to municipalities, housing sponsors and community organizations for innovative affordable housing programs.

The Agency's program will be funded with a set aside of 25% of the Agency bond revenues; the set aside is estimated to be \$100 million per year. I am also recommending a State appropriation of \$15 million to the New Jersey Housing and Mortgage Finance Agency for its Mt. Laurel housing program.

The Neighborhood Preservation Program would be appropriated in total approximately \$10 million to assist municipalities in Mt. Laurel housing programs. I propose to dedicate the increase in the Realty Transfer Tax proposed by the companion bill, A-3117, to the Neighborhood Preservation Program. An outright appropriation of \$2 million from the General Fund is intended to bring the total to \$10 million.

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These funds would be used in neighborhood preservation areas for such things as rehabilitation, accessory conversions and conversions, acquisition and demolition costs, new construction, costs for technical and professional services associated with a project, assistance to qualified housing sponsors, infrastructure and other housing costs.

In addition, assistance would be limited to housing in municipalities with substantive certification of their housing elements or housing subject to a regional contribution agreement. However, in order that programs can get underway immediately, an interim provision is inserted to enable the funds to be used for Mt. Laurel housing before these determinations are made for a 12-month period following the effective date with the Council having the power to extend this time frame.

The amendments I have proposed for funding low and moderate income housing far exceeds the amounts appropriated in the original bill while utilizing existing State programs and agencies.

One key element in determining a municipality's "fair share" of low and moderate income housing is the estimate of "prospective need" in the region and municipality. This bill requires the Council to estimate the prospective need for the State and regions and to adopt criteria and guidelines for municipal determination of prospective need. When preparing its housing element, a municipality must determine its fair share of prospective and present need. Its housing element must provide a realistic opportunity for the provision of this fair share. Despite its importance, nowhere in the bill is a definition of "prospective need" provided. Accordingly, I am inserting such a definition which is designed to help assure that the prospective need numbers are realistic and not based on theoretical or speculative formulas.

The bill currently permits a municipality's fair share figure to be adjusted based upon "available vacant and developable land, infrastructure considerations or environmental or historic preservation factors." I would like to strengthen this language to assure that adjustments are provided in order to preserve historically or important architecture and sites or environmentally sensitive lands and to assure that there is adequate land for recreational, conservation, or agricultural and farmland preservation purposes and

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open space. In addition, adjustments should be provided where there is inadequate infrastructure capacity and where the established pattern of development in the community would be drastically altered, or the pattern of development is contrary to the planning designations in the State Development and Redevelopment Plan prepared pursuant to P.L. c. (now pending before the Legislature as S-1464 of 1984).

As an additional check on excessive fair share numbers which would radically change the character of a community, I propose to authorize the council, in its discretion, to place a limit on a municipality's fair share. The limit would be based on a percentage of the municipality's housing units and any other relevant criteria, such as employment opportunities, selected by the council.

Another key element in determining a municipality's "fair share" of low and moderate income housing is an estimate of the condition of existing housing stock to determine the amount of substandard housing throughout the State. In order to achieve an accurate determination of the present and prospective housing needs of all the regions in the State, a thorough housing inventory should be performed by every municipality in the State. To require housing elements which include accurate housing inventories from only municipalities in growth areas, is to obtain only a limited picture of New Jersey's true housing needs. I am therefore recommending an amendment to the Municipal Land Use Law to require municipalities to prepare a thorough and accurate housing inventory as part of the housing element in their master plan.

The current Municipal Land Use Law requires municipalities to prepare master plans which may contain a housing element. I am recommending that the Municipal Land Use Law be amended to incorporate the housing element prepared under this statute. In this way, the housing element under the Municipal Land Use Law will be identical to the housing element prepared pursuant to this act. In addition, the Municipal Land Use Law requires that a municipality have a land use element in its master plan in order to have a valid zoning ordinance. I am adding to this requirement that the municipality have a housing element. In this way, every municipality in order to have a valid zoning ordinance would have to put together a housing element as defined in this act.

To assist municipalities in obtaining numbers that are realistic, I also suggest that language be inserted in the bill to enable the municipality when conducting its housing inventory to have access on a confidential basis to the local assessor's records. I am advised that statutory authorization is needed for this.

I am also recommending that certain language changes be made in the findings section of the bill. We should state that rehabilitation of existing housing stock in the urban centers must be encouraged. I also believe we should note that the Mt. Laurel obligation is limited to changes in land use regulations and clarify that municipalities need not expend their resources for Mt. Laurel housing.

The membership on the Council on Affordable Housing consists of four local officials (one of whom must be from an urban area and no more than one representing county interests), three representatives of households in need of low and moderate income housing (one of whom shall be a builder of low and moderate income housing) and two representing the public interest.

In order to have adequate representation of the public interest, I recommend that three members represent the public interest and two the needs of low and moderate income households. I also suggest that the executive director of the New Jersey Housing and Mortgage Finance Agency hold one of the positions in the latter category, due to the expertise of that Agency in low and moderate income housing finances and the numerous responsibilities the Agency is given in this bill.

The Council is required to adopt rules and regulations within four months from the bill's effective date. In addition, within seven months from the bill's effective date, the Council must: (a) determine the State's housing regions, (b) establish the present and prospective need estimates for the State and the regions, (c) adopt guidelines and criteria for municipal fair share determinations, adjustments to fair share and phasing, and (d) provide population and household projections. However, the Council cannot begin its work until its membership is confirmed. Since I am given 30 days to make the nominations and the Senate must thereafter confirm the nominations, the Council's time to perform these functions will be significantly eroded by the appointment

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process. Accordingly, I am proposing amendments to provide that these time periods run from the date the Council members are confirmed or January 1, 1986, whichever is earlier.

With respect to pending litigation, the bill permits a party in current litigation to request the court to transfer the case to the Council on Affordable Housing for mediation procedures. When reviewing such a request, the courts must consider whether or not the transfer would result in a manifest injustice to one of the litigants.

The bill as currently drafted creates a novel mediation and review process and specifically provides that the review process should not be considered a contested case under the Administrative Procedure Act, subject to the procedures of that act and a hearing by an administrative law judge. If mediation and review by the housing council is unsuccessful, the matter will be heard in the trial court of the Superior Court.

I recommend, in place of the special procedures set forth in this bill, the regular administrative law procedure. Under this approach, if the mediation by the council is unsuccessful, the dispute will be transferred to the Office of Administrative Law as a contested case for a hearing pursuant to its rules. The ultimate decision will be made by the council and appeals will be taken from the council's decision to the Appellate Division of the Superior Court.

If a municipality receives substantive certification, its housing elements and ordinances are presumed valid. I am concerned that after going through the administrative process in this bill and receiving substantive certification, a municipality still may not have sufficient protection from a builder's remedy. I am therefore recommending that the presumption of validity be buttressed by an amendment providing that it may only be rebutted with "clear and convincing" evidence.

Senate Bill No. 2334 originally provided that a municipality could transfer up to one-half of its fair share to another municipality. In order to provide municipalities with more flexibility in their preparation of regional contribution agreements, I recommend that the one-third figure be returned to the original one-half number previously recommended by Senator Lynch, the sponsor of Senate Bill No. 2334.

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In addition, I recommend that a municipality which has reached a settlement in Mt. Laurel litigation be granted a period of repose from further litigation and be deemed to have a substantively certified housing element. This period of repose will run six years from the bill's effective date.

I recommend the deletion of the provision in this bill which allows a municipality to employ condemnation powers to acquire property for the construction and rehabilitation of low and moderate income housing. I question the authorization of such a drastic power without some evidence of its necessity in resolving our State's housing needs.

The Senate Committee Substitute as originally drafted required the Council to report to the Governor and the Legislature in the implementation of this act within two years from its effective date. The Assembly amendments place this reporting requirement upon the New Jersey Housing and Mortgage Finance Agency rather than the Council. I recommend having both the Council and Agency report to the Governor and Legislature on an annual basis.

Accordingly, I herewith return Senate Committee Substitute for Senate Bill No. 2046 and Senate Bill No. 2334 and recommend that it be amended as follows:

Page 1, Title, Line 1: After "housing," omit "and"; after "appropriation" insert "and amending the Municipal Land Use Law, P.L. 1975, c. 291 (C. 40:55D-1 et seq.)"

Page 1, Section 2, Line 6: After "provide" insert "through its land use regulations"

Page 2, Section 2, after Line 43: Insert new subsections as follows:

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

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

Page 3, Section 4, After Line 43: Insert new subsection as follows:

"j. 'Prospective Need' means a projection of housing needs-based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. In determining prospective need consideration shall be given to approvals of development application, real property transfers and economic projections prepared by the State Planning Commission established by P.L. c. (now pending before the Legislature as S-1464 of 1984)."

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Page 3, Section 5, Line 10: Omit "three" and insert "two"

Page 4, Section 5, Line 11: After "housing" omit "at least"

Page 4, Section 5, Line 14: After "issues" insert "and one of whom shall be the executive director of the agency, serving ex-officio"; and omit "two" and insert "three"

Page 4, Section 5, Line 20: Omit "four" and insert "three"

Page 4, Section 5, Line 25: After "members" insert "excluding the executive director of the agency"

Page 5, Section 7, Line 2: Omit "effective date of this act" and insert "confirmation of the last member initially appointed to the council, or January 1, 1986, whichever is earlier"

Page 5, Section 7, Line 14A: After "factors" insert " 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 P.L. c. (now pending before the Legislature as Senate Bill No. 1464 of 1984),

(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"

Page 5, Section 7, After Line 18: Insert new subsection as follows:

"e. May 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."

Page 6, Section 7, Lines 31 through 32: Delete "the Fair Housing Trust Fund Account established in Section 20 of this Act or"

Page 6, Section 7, Line 33: Delete "other"

Page 6, Section 8, Line 1: Omit "effective date of this act" and insert "confirmation of the last member initially appointed to the council, or January 1, 1986, whichever is earlier"

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- Page 6, Section 9, Line 7: Omit "adopted" and insert "fair share housing"
- Page 6, Section 9, Line 8: Omit "revisions" and insert "introduced and given first reading and second reading in a hearing pursuant to C.40:49-2" and omit "implement" and insert "implements"
- Page 6, Section 10, Line 8: After "households" insert "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"
- Page 8, Section 11, Lines 31 through 32: Delete "the Fair Housing Trust Fund Account established pursuant to Section 20 of this Act or"
- Page 8, Section 11, Line 33: Delete "other"
- Page 8, Section 12, Line 1: Delete "33 1/3%" insert "50%"
- Page 9, Section 12, Lines 53 through 56: On line 53 delete "The", delete lines 54 and 55 in entirety and on line 56 delete "the regional contribution agreement."
- Page 11, Section 12, Line 112: After "years" insert "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"
- Page 12, Section 14, After Line 24: Insert "Once substantive certification is granted the municipality shall have 45 days in which to adopt its fair share housing ordinance approved by the council."
- Page 12, Section 15, Lines 11 through 16: Delete "then the council" on line 11, delete lines 12 through 15 in entirety, delete "but the review process shall not be considered" on line 16 and insert "the matter shall be transferred to the Office of Administrative Law as"
- Page 12 to 13, Section 15, Lines 19 through 53: Delete in entirety and insert:

"The Office of Administrative Law shall expedite its hearing process as much as practicable by promptly assigning an administrative law judge to the matter; promptly scheduling an evidentiary hearing; expeditiously conducting and concluding the evidentiary hearing; limiting the time allotted for briefs, proposed findings of fact, conclusions of law, forms of order or other disposition, or other supplemental material; and the prompt preparation of the initial decision. A written transcript of all oral testimony and copies of all exhibits introduced into

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evidence shall be submitted to the Council by the Office of Administrative Law simultaneously with a copy of the initial decision. The evidentiary hearing shall be concluded and the initial decision issued no later than 90 days after the transmittal of the matter as a contested case to the Office of Administrative Law by the Council, unless the time is extended by the Director of Administrative Law for good cause shown."

Page 14, Section 17, Line 7: After "demonstrate" insert "by clear and convincing evidence"

Page 14, Section 17, Line 16: After "demonstrate" insert "by clear and convincing evidence"

Pages 14 and 15, Section 20, Lines 1 through 34: After "20." delete in entirety and insert:

"The Neighborhood Preservation Program within the Department of Community Affairs' Division of Housing and Development, established pursuant to the Commissioner of the Department of Community Affairs' authority under P.L. 1975, c. 248, Section 8 (C.52:27D-149), shall establish a separate Neighborhood Preservation Nonlapsing Revolving Fund for monies appropriated by Section 33 of this act.

- a. The Commissioner shall award grants or loans from this Fund to municipalities whose housing elements have received substantive certification from the Council, to municipalities subject to builder's remedy as defined in Section 31 of this act or to receiving municipalities in cases where the Council has approved a regional contribution agreement and a project plan developed by the receiving municipality. The Commissioner shall assure that a substantial percentage of the loan or grant awards shall be made to projects and programs in those municipalities receiving State aid pursuant to P.L. 1978, c. 14 (C.52:27D-178 et seq.).
- b. The Commissioner shall establish rules and regulations governing the qualifications of applicants, the application procedures, and the criteria for awarding grants and loans and the standards for establishing the amount, terms of conditions of each grant or loan.
- c. During the first twelve months from the effective date of this act and for any additional period which the council may approve, the Commissioner may assist affordable housing programs which are not located in municipalities whose housing elements have been granted substantive certification or which are not in furtherance of a regional contribution agreement; provided that the affordable housing program will meet all or part of a municipal low and moderate income housing obligation.
- d. Amounts deposited in the Neighborhood Preservation Fund shall be targeted to regions based on the region's percentage of the State's low and moderate income housing need as determined by the Council. Amounts in the Fund shall be applied for the following purposes in designated neighborhoods:
 - (1) Rehabilitation of substandard housing units occupied or to be occupied by low and moderate income households;
 - (2) Creation of accessory apartments to be occupied by low and moderate income households;
 - (3) Conversion of nonresidential space to residential purposes provided a substantial percentage of the resulting housing units are to be occupied by low and moderate income households;

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

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

(6) Assistance to a local housing authority, nonprofit or limited dividend housing corporation or association for rehabilitation or restoration of housing units which it administers which: (a) are unusable or in a serious state of disrepair; (b) can be restored in an economically feasible and sound manner; and (c) can be retained in a safe, decent and sanitary manner, upon completion of rehabilitation or restoration; and

(7) Such other housing programs for low and moderate income housing, including infrastructure projects directly facilitating the construction of low and moderate income housing not to exceed a reasonable percentage of the construction costs of the low and moderate income housing to be provided.

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

Pages 15 to 17, Section 21, Lines 1 through 87: After "21." delete in entirety and insert:

"The agency shall establish affordable housing programs to assist municipalities in meeting the obligation of developing communities to provide low and moderate income housing.

a. Of the bond authority allocated to it under Section 24 of P.L. 1983, c. 530 (C.55:14K-24) the agency will allocate, for a reasonable period of time established by its board, no less than 25% to be used in conjunction with housing to be constructed or rehabilitated with assistance under this Act.

b. The agency shall to the extent of available funds, award assistance to affordable housing programs located in municipalities whose housing elements have received substantive certification from the council, or which have been subject to a builder's remedy or which are in furtherance of a regional contribution agreement approved by the council. During the first twelve months from the effective date of this act and for any additional period which the council may approve, the agency may assist affordable housing programs which are not located in municipalities whose housing elements have been granted substantive certification or which are not in furtherance of a regional contribution agreement provided the affordable housing program will meet all or in part a municipal low and moderate income housing obligation.

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

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

- (1) Assistance for home purchase and improvement including interest rate assistance, down payment and closing cost assistance, and direct grants for principal reduction;
- (2) Rental programs including loans or grants for developments containing low and moderate income housing, moderate rehabilitation of existing rental housing, congregate care and retirement facilities;
- (3) Financial assistance for the conversion of nonresidential space to residences;
- (4) Such other housing programs for low and moderate income housing, including infrastructure projects directly facilitating the construction of low and moderate income housing; and
- (5) Grants or loans to municipalities, housing sponsors and community organizations to encourage development of innovative approaches to affordable housing, including:
 - (a) Such advisory, consultation, training and educational services as will assist in the planning, construction, rehabilitation and operation of housing; and
 - (b) Encouraging research in and demonstration projects to develop new and better techniques and methods for increasing the supply, types and financing of housing and housing projects in the State.

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

f. In consultation with the council, the Agency shall establish requirements and controls to insure the maintenance of housing assisted under this Act as affordable to low and moderate income households for a period of not less than 20 years; provided that the agency may establish a shorter period upon a determination that the economic feasibility of the program is jeopardized by the requirement and the public purpose served by the program outweighs the shorter period. Such controls may include, among others, requirements for recapture of assistance provided pursuant to the Act or restrictions on return on equity in the event of failure to meet the requirements of the program. With respect to rental housing financed by the agency pursuant to this act or otherwise which promotes the provision or maintenance of low and moderate income housing, the agency may waive restrictions on return on equity required pursuant to P.L. 1983, c. 530 (C.55:14K-1 et seq.) which is gained through the sale of the property or of any interest in the property or sale of any interest in the housing sponsor.

g. The agency may establish affordable housing programs through the use or establishment of subsidiary corporations or development corporations as provided in P.L. 1983, c. 530 (C.55:14K-1 et seq.). Such subsidiary corporations or development corporations shall be

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eligible to receive funds provided under this act for any permitted purpose."

Pages 17 to 18, Section 22, Lines 1 to 32: After "22." delete in entirety and insert:

"Any municipality which has reached a settlement of any exclusionary zoning litigation prior to the effective date of this act, shall not be subject to any exclusionary zoning suit for a six year period following the effective date of this act. Any such municipality shall be deemed to have a substantively certified housing element and ordinances, and shall not be required during that period to take any further actions with respect to provisions for low and moderate income housing in its land use ordinances or regulations."

Page 21, Section 25, Line 2: Delete "condemn or otherwise acquire" and insert "lease or acquire by gift"

Page 22, Section 26, Line 1: Delete "24" insert "12"

Page 22, Section 26, Line 2: Delete "two years" insert "year" and after "agency" insert "and the council" after "report" insert "separately"

Page 22, Section 26, Lines 5 through 9: Delete "The report shall give specific" on line 5, delete lines 6 through 8 in entirety and on line 9 delete "not been sufficient in promoting this end." and on line 9 delete "report" and insert "reports"

Page 22, Section 26, Line 11: Delete "believes" and insert "and the council believe"

Pages 22 and 23, Section 28, Lines 1 through 15: After "28." delete in entirety and insert new section as follows:

"No builder's remedy shall be granted to a plaintiff in any exclusionary zoning litigation which has been filed on or after January 20, 1983, unless a final judgment providing for a builder's remedy has already been rendered to that plaintiff. This provision shall terminate upon the expiration of the period set forth in section 9.a. of this act for the filing with the council of the municipality's housing element.

For the purposes of this section, 'final judgment' shall mean a judgment subject to an appeal as of right for which all right to appeal is exhausted.

For the purposes of this section 'exclusionary zoning litigation' shall mean lawsuits filed in courts of competent jurisdiction in this State challenging a municipality's zoning and land use regulations on the basis that the regulations do not make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people living within the municipality's housing region, including those of low and moderate income, who may desire to live in the municipality.

For the purpose of this section 'builder's remedy' shall mean a court imposed remedy for a litigant who is an individual or a profit-making entity in which the court requires a municipality to utilize zoning techniques such as mandatory set asides or density bonuses which provide for the economic viability of a residential development by including housing which is not for low and moderate income households."

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Page 23, Section 28, After Line 15: Insert new section 29 as follows:

"29. Section 19 of P.L. 1975, c. 291 (C.40:55D-28) is amended as follows:

19. Preparation; contents; modification.

a. The planning board may prepare and, after public hearing adopt or amend a master plan, or component parts thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare.

b. The master plan shall generally comprise a report or statement and land use and development proposals, with maps, diagrams and text, presenting where appropriate, the following elements:

(1) A statement of objectives, principles, assumptions, policies and standards upon which the constituent proposals, for the physical, economic and social development of the municipality are based;

(2) A land use plan element (a) taking into account the other master plan elements and natural conditions, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands, (b) showing the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, educational and other public and private purposes or combination of purposes, (c) showing the existing and proposed location of any airports and the boundaries of any airport hazard areas delineated pursuant to the "Air Safety and Hazardous Zoning Act of 1983," P.L. 1983, c. 260 (C.6:1-80 et seq.), and (d) including a statement of the standards of population density and development intensity recommended for the municipality;

(3) A housing plan element pursuant to section 10 of P.L. , c. (C.) (now pending before the Legislature as Senate Committee Substitute for Senate Bill No. 2046 and Senate Bill No. 2334), including but not limited to, residential standards and proposals for the construction and improvement of housing;

(4) A circulation plan element showing the location and types of facilities for all modes of transportation required for the efficient movement of people and goods into, about, and through the municipality;

(5) A utility service plan element analyzing the need for and showing the future general location of water supply and distribution facilities, drainage and flood control facilities, sewerage and waste treatment, solid waste disposal and provision for other related utilities;

(6) A community facilities plan element showing the location and type of educational or cultural facilities, historic sites, libraries, hospitals, fire houses, police stations and other related facilities, including their relation to the surrounding areas;

(7) A recreation plan element showing a comprehensive system of areas and public sites for recreation;

(8) A conservation plan element providing for the preservation, conservation, and utilization of natural resources, including, to the extent appropriate, open space, water, forests, soil,

marshes, wetlands, harbors, rivers and other waters, fisheries, wildlife and other natural resources;

(9) An energy conservation plan element which systematically analyzes the impact of each other component and element of the master plan on the present and future use of energy in the municipality, details specific measures contained in the other plan elements designed to reduce energy consumption, and proposes other measures that the municipality may take to reduce energy consumption and to provide for the maximum utilization of renewable energy sources; and

(10) Appendices or separate reports containing the technical foundation for the master plan and its constituent elements.

c. The master plan and its plan elements may be divided into subplans and subplan elements projected according to periods of time or staging sequences.

d. The master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality as developed in the master plan to (1) the master plans of contiguous municipalities, (2) the master plan of the county in which the municipality is located and (3) any comprehensive guide plan pursuant to section 15 of P.L. 1961, c. 47 (C. 13:1B-15.52)."

Page 23, Section 28, After Line 15: Insert new section 30 as follows:

"30. Section 49 of P.L. 1975, c. 291 (C. 40:55D-62) is amended as follows:

49. Power to zone.

a. The governing body may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon. Such ordinance shall be adopted after the planning board has adopted the land use plan element and the housing plan element of a master plan and all of the provisions of such zoning ordinance or any amendment or revision thereto shall either be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan [element] elements provided that the governing body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element and the housing plan element, but only by affirmative vote of a majority of the full authorized membership of the governing body with the reasons of the governing body for so acting recorded in its minutes when adopting such a zoning ordinance; and provided further that, notwithstanding anything aforesaid, the governing body may adopt an interim zoning ordinance pursuant to subsection 77 b. of this act.

The zoning ordinance shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land. The regulations in the zoning ordinance shall be uniform throughout each district for each class or kind of buildings or other structures or uses of land, including planned unit development, planned unit residential development and residential cluster, but the regulations in one district may differ from those in other districts.

b. No zoning ordinance and no amendment or revision to any zoning ordinance shall be submitted to or adopted by initiative or referendum.

c. The zoning ordinance shall provide for the regulation of any airport hazard areas delineated under the "Air Safety and Hazardous Zoning Act of 1983," P.L. 1983, c. 260 (C.6:1-80 et seq.), in conformity with standards promulgated by the Commissioner of Transportation.

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Page 23, Section 28, After Line 15: Insert new section 31 as follows:

"31. Until August 1, 1988, any municipality may continue to regulate development pursuant to a zoning ordinance in accordance with section 49 of the "Municipal Law Use Law," P.L. 1975, c. 291 (C.40:55D-62) as same read before the effective date of this act."

Page 23, Section 29, Line 1: Delete "29." insert "32."

Page 23, Section 30, Line 1: Delete "30." insert "33."

Page 23, Section 30, Line 3: Delete "to the Fair Housing Trust Fund Account"

Page 23, Section 30, Lines 4 and 5: After "sum of" delete remainder of line 4 and line 5 in entirety and insert "\$17,000,000 to be allocated as follows:

"a. \$2,000,000 to the Neighborhood Preservation Fund established pursuant to the Maintenance of Viable Neighborhoods Act (N.J.S.A. 52:127D-146 et seq.) which shall be used to effectuate the purposes set forth in section 20 of this act. b. \$15,000,000 to the Housing and Mortgage Finance Agency to be used to effectuate the purpose of section 21 of this act.

Of the amounts herein appropriated a reasonable sum, approved by the Treasurer may be expended for the administration of this act by the Department of Community Affairs and the agency."

Page 23, Section 31, Line 1: Delete "31." insert "34."

Respectfully,

/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards
Chief Counsel



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001

Contact: CARL GOLDEN
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TRENTON, N.J. 08625

Release: WED., JULY 3, 1985

Governor Thomas H. Kean today signed legislation establishing a voluntary system by which municipalities can submit plans for low and moderate income housing to a State council for certification --- the first legislative proposal ever enacted to meet the so-called Mount Laurel court decision.

The legislation, S-2046, was sponsored by Senator Wynona Lipman, D-Essex, and had been conditionally vetoed by the Governor on April 26. The Legislature accepted the Governor's recommendations late last month.

The legislation also provides for a 12-month moratorium on the so-called "builder's remedy" to protect municipalities during the administrative review process.

It appropriates \$15 million to the Housing Mortgage Finance Agency and \$2 million to the Neighborhood Preservation Program.

The Governor signed a companion measure, A-3117, sponsored by Assemblyman David Schwartz, D-Middlesex, which increases the realty transfer fee by 75 cents for each \$500 of consideration over \$150,000. The proceeds from this increase are also appropriated to the Neighborhood Preservation Program.

"This legislation, worked out over a period of many months, is a reasonable and adequate response to the court rulings involving low and moderate income housing and exclusionary zoning," Kean said. "The so-called Mount Laurel issue has eluded any legislative action since it originated ten years ago. It is to the credit of all involved that the legislation I have signed today is now law."

- more -

BILLS SIGNED

PAGE TWO

JULY 3, 1985

Other bills signed by the Governor with his recommendations made in earlier conditional vetoes are:

A-1044, sponsored by Assemblyman William Flynn, D-Middlesex, which precludes an individual who is found guilty or who pleads guilty to a criminal charge from filing a lawsuit to recover monetary damages for injuries sustained while engaged in criminal conduct.

S-1004, sponsored by Senator Christopher Jackman, D-Hudson, to increase the capital or net worth and liquidity requirements for check cashing licensee applicants.

S-1307 sponsored by Senator Joseph Hirkala, D-Passaic, to permit a veteran member of the Public Employees' Retirement System (PERS) who is 60 years of age and has 35 years of aggregate service to retire and receive an allowance of one-sixtieth of compensation received during his final year of employment for each year of credited service.

S-1356, sponsored by Senator John Caufield, D-Essex, to allow a chief investigator, assistant chief investigator, senior investigator or investigator in a county welfare agency to transfer membership into the Police and Firemen's Retirement System.

A-1821, sponsored by Assemblyman John Bennett, R-Monmouth, to permit county and municipal employers to provide health and hospital benefits coverage to retirees 62 years or older with at least 15 years of service.

S-215, sponsored by Senator Edward O'Connor, D-Hudson, which makes certain changes in the law pertaining to the Sheriff's Employees Retirement System.

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