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IS 2/28/08

§§1, 6  
C.52:27D-311a &  
52:27D-311b  
§5  
C.52:27D-123.15  
§7  
Note to §§1-6

P.L. 2005, CHAPTER 350, *approved January 12, 2006*  
Senate Committee Substitute (*First Reprint*) for  
Senate, Nos. 2696 and 2725

1 **AN ACT** concerning accessibility of affordable housing units, amending  
2 and supplementing P.L.1985, c. 222 (C.52:27D-301 et al.) and  
3 supplementing P.L.1975, c. 217 (C.52:27D-119 et seq.).  
4

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

8 1. (New section) Beginning upon the effective date of P.L. ,  
9 c. (C. ) (pending before the Legislature as this bill), any new  
10 construction for which credit is sought against a fair share obligation  
11 shall be adaptable in accordance with the provisions of section 5 of  
12 P.L. , c. (C. )(pending before the Legislature as this bill).  
13 For the purposes of P.L. , c. (C. )(pending before the  
14 Legislature as this bill), "new construction" shall mean an entirely new  
15 improvement not previously occupied or used for any purpose.  
16

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

19 As used in this act:

20 a. "Council" means the Council on Affordable Housing established  
21 in this act, which shall have primary jurisdiction for the administration  
22 of housing obligations in accordance with sound regional planning  
23 considerations in this State.

24 b. "Housing region" means a geographic area of not less than two  
25 nor more than four contiguous, whole counties which exhibit  
26 significant social, economic and income similarities, and which  
27 constitute to the greatest extent practicable the primary metropolitan  
28 statistical areas as last defined by the United States Census Bureau  
29 prior to the effective date of this act.

30 c. "Low income housing" means housing affordable according to  
31 federal Department of Housing and Urban Development or other  
32 recognized standards for home ownership and rental costs and  
33 occupied or reserved for occupancy by households with a gross  
34 household income equal to 50% or less of the median gross household

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

**Matter underlined thus is new matter.**

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

<sup>1</sup> Senate floor amendments adopted January 5, 2006.

1 income for households of the same size within the housing region in  
2 which the housing is located.

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

10 e. "Resolution of participation" means a resolution adopted by a  
11 municipality in which the municipality chooses to prepare a fair share  
12 plan and housing element in accordance with this act.

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

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

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

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

27 j. "Prospective need" means a projection of housing needs based  
28 on development and growth which is reasonably likely to occur in a  
29 region or a municipality, as the case may be, as a result of actual  
30 determination of public and private entities. In determining  
31 prospective need, consideration shall be given to approvals of  
32 development applications, real property transfers and economic  
33 projections prepared by the State Planning Commission established by  
34 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

35 k. "Disabled person" means a person with a physical disability,  
36 infirmity, malformation or disfigurement which is caused by bodily  
37 injury, birth defect, aging or illness including epilepsy and other  
38 seizure disorders, and which shall include, but not be limited to, any  
39 degree of paralysis, amputation, lack of physical coordination,  
40 blindness or visual impediment, deafness or hearing impediment,  
41 muteness or speech impediment or physical reliance on a service or  
42 guide dog, wheelchair, or other remedial appliance or device.

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

1 in accordance with the provisions of section 5 of P.L. \_\_\_\_\_, c. \_\_\_\_\_  
2 (C. \_\_\_\_\_)(pending before the Legislature as this bill).  
3 (cf: P.L.1985, c.222, s.4)

4  
5 3. Section 5 of P.L.1985, c.222 (C.52:27D-305) is amended to  
6 read as follows:

7 5. a. There is established in, but not of, the Department of  
8 Community Affairs a Council on Affordable Housing to consist of  
9 ~~[11]~~ 12 members appointed by the Governor with the advice and  
10 consent of the Senate, of whom four shall be elected officials  
11 representing the interests of local government, at least one of whom  
12 shall be representative of an urban municipality having a population in  
13 excess of 40,000 persons and a population density in excess of 3,000  
14 persons per square mile, at least one of whom shall be representative  
15 of a municipality having a population of 40,000 persons or less and a  
16 population density of 3,000 persons per square mile or less, and no  
17 more than one of whom may be a representative of the interests of  
18 county government; ~~[three]~~ four shall represent the interests of  
19 households in need of low and moderate housing, one of whom shall  
20 represent the interests of the nonprofit builders of low and moderate  
21 income housing, and shall have an expertise in land use practices and  
22 housing issues, one of whom shall be the Commissioner of Community  
23 Affairs, ex officio, or his or her designee, who shall serve as  
24 chairperson ~~[and]~~ , one of whom shall be the executive director of the  
25 agency, serving ex officio; and one of whom shall represent the  
26 interests of disabled persons and have expertise in construction  
27 accessible to disabled persons; one shall represent the interests of the  
28 for-profit builders of market rate homes, and shall have an expertise  
29 in land use practices and housing issues; and three shall represent the  
30 public interest. Not more than six of the ~~[11]~~12 shall be members of  
31 the same political party. The membership shall be balanced to the  
32 greatest extent practicable among the various housing regions of the  
33 State.

34 b. The members shall serve for terms of six years, except that of  
35 the members first appointed, two shall serve for terms of four years,  
36 three for terms of five years, and three for terms of six years. All  
37 members shall serve until their respective successors are appointed and  
38 shall have qualified. Notwithstanding the above, a member appointed  
39 to represent the interests of local government shall serve only such  
40 length of the term for which appointed as the member continues to  
41 hold elected local office, except that the term of a member so  
42 appointed shall not become vacant until 60 days after the member  
43 ceases to hold that elected office. Vacancies shall be filled in the same  
44 manner as the original appointments, but for the remainders of the  
45 unexpired terms only.

46 c. The members, excluding the executive director of the agency

1 and the Commissioner of Community Affairs, shall be compensated at  
2 the rate of \$150.00 for each six-hour day, or prorated portion thereof  
3 for more or less than six hours, spent in attendance at meetings and  
4 consultations and all members shall be eligible for reimbursement for  
5 necessary expenses incurred in connection with the discharge of their  
6 duties.

7 d. The Governor shall nominate the members within 30 days of the  
8 effective date of this act and shall designate a member to serve as  
9 chairman throughout the member's term of office and until his  
10 successor shall have been appointed and qualified. The member added  
11 by P.L. , c. (C. ) (pending before the Legislature as this bill)  
12 shall be nominated within 30 days of the effective date of that act.

13 e. Any member may be removed from office for misconduct in  
14 office, willful neglect of duty, or other conduct evidencing unfitness  
15 for the office, or for incompetence. A proceeding for removal may be  
16 instituted by the Attorney General in the Superior Court. A member  
17 or employee of the council shall automatically forfeit his office or  
18 employment upon conviction of any crime. Any member or employee  
19 of the council shall be subject to the duty to appear and testify and to  
20 removal from his office or employment in accordance with the  
21 provisions of P.L.1970, c.72 (C.2A:81-17.2a et seq.).

22 (cf: P.L.1995, c.83, s.1)

23

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

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

30 a. Determine housing regions of the State;

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

33 c. Adopt criteria and guidelines for:

34 (1) Municipal determination of its present and prospective fair  
35 share of the housing need in a given region which shall be computed  
36 for a 10-year period. Municipal fair share shall be determined after  
37 crediting on a one-to-one basis each current unit of low and moderate  
38 income housing of adequate standard, including any such housing  
39 constructed or acquired as part of a housing program specifically  
40 intended to provide housing for low and moderate income households.  
41 Notwithstanding any other law to the contrary, a municipality shall be  
42 entitled to a credit for a unit if it demonstrates that (a) the municipality  
43 issued a certificate of occupancy for the unit, which was either newly  
44 constructed or rehabilitated between April 1, 1980 and December 15,  
45 1986; (b) a construction code official certifies, based upon a visual  
46 exterior survey, that the unit is in compliance with pertinent

1 construction code standards with respect to structural elements,  
2 roofing, siding, doors and windows; (c) the household occupying the  
3 unit certifies in writing, under penalty of perjury, that it receives no  
4 greater income than that established pursuant to section 4 of P.L.1985,  
5 c.222 (C.52:27D-304) to qualify for moderate income housing; and (d)  
6 the unit for which credit is sought is affordable to low and moderate  
7 income households under the standards established by the council at  
8 the time of filing of the petition for substantive certification. It shall  
9 be sufficient if the certification required in subparagraph (c) is signed  
10 by one member of the household. A certification submitted pursuant  
11 to this paragraph shall be reviewable only by the council or its staff  
12 and shall not be a public record;

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

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

32 (a) The preservation of historically or important architecture and  
33 sites and their environs or environmentally sensitive lands may be  
34 jeopardized,

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

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

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

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

44 (f) Vacant and developable land is not available in the  
45 municipality, and

46 (g) Adequate public facilities and infrastructure capacities are not

1 available, or would result in costs prohibitive to the public if provided;  
2 and

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

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

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

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

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



1        No <sup>1</sup>[municipal]<sup>1</sup> housing [element shall be approved or  
2 certification granted by the council unless the municipality has  
3 complied with the requirements of section 5 of P.L. , c. (C. )  
4 (pending before the Legislature as this bill)] unit subject to the  
5 provisions of section 5 of P.L. , c. (C. ) (pending before the  
6 Legislature as this bill) and to the provisions of the barrier free  
7 subcode adopted by the Commissioner of Community Affairs pursuant  
8 to the "State Uniform Construction Code Act," P.L.1975, c.217  
9 (C.52:27D-119 et seq.) shall be eligible for inclusion in the municipal  
10 fair share plan certified by the council unless the unit complies with the  
11 requirements set forth thereunder<sup>1</sup>.

12 (cf: P.L. 2001, c.435, s.1)

13

14        5. (New section) a. Any new construction for which an  
15 application for a construction permit has not been declared complete  
16 by the enforcing agency before the effective date of P.L. , c.  
17 (C. ) (pending before the Legislature as this bill) and for which  
18 credit is sought pursuant to P.L.1985, c. 222 (C.52:27D-301 et al.) on  
19 or after the effective date of P.L. , c. (C. ) (pending before the  
20 Legislature as this bill) shall be adaptable; however, elevators shall not  
21 be required in any building or within any dwelling unit for the purposes  
22 of P.L. , c. (C. ) (pending before the Legislature as this bill). In  
23 buildings without elevator service, only ground floor dwelling units  
24 shall be required to be constructed to conform with the technical  
25 design standards of the barrier free subcode in order to be credited  
26 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

27        b. Notwithstanding the exemption for townhouse dwelling units  
28 in the barrier free subcode, the first floor of all townhouse dwelling  
29 units and of all other multifloor dwelling units for which credit is  
30 sought pursuant to P.L.1985, c. 222 (C.52:27D-301 et al.) on or after  
31 the effective date of P.L. , c. (C. ) (pending before the  
32 Legislature as this bill) and for which an application for a construction  
33 permit has not been declared complete by the enforcing agency  
34 pursuant to P.L. , c. (C. )(pending before the Legislature as this  
35 bill), shall be subject to the technical design standards of the barrier  
36 free subcode and shall include the following features:

- 37        (1) an <sup>1</sup>[accessible] adaptable<sup>1</sup> entrance to the dwelling unit;  
38        (2) an adaptable full service bathroom on the first floor;  
39        (3) an adaptable kitchen on the first floor;  
40        (4) an accessible interior route of travel; and  
41        (5) an adaptable room with a door or a casing where a door can  
42 be installed which may be used as a bedroom on the first floor.

43        c. (1) Full compliance with the requirements of this section shall  
44 not be required where an entity can demonstrate that it is site  
45 impracticable to meet the requirements. Full compliance shall be  
46 considered site impracticable only in those rare circumstances when

1 the unique characteristics of terrain prevent the incorporation of  
2 accessibility features.

3 (2) If full compliance with this section would be site impracticable,  
4 compliance with this section <sup>1</sup>for any portion of the dwelling<sup>1</sup> shall be  
5 required to the extent that it is not site impracticable. <sup>1</sup>[In that case,  
6 any portion of the dwelling that can be made accessible shall be made  
7 accessible to the extent that it is not site impracticable.]<sup>1</sup>

8 <sup>1</sup>[(3) If full compliance with this section concerning an accessible  
9 entrance to a dwelling unit would be site impracticable, the unit shall  
10 be constructed with an adaptable entrance.]<sup>1</sup>

11 d. In the case of a unit or units which are constructed with an  
12 adaptable entrance pursuant to subsection c. of this section, upon the  
13 request of a disabled person who is purchasing or will reside in the  
14 dwelling unit, an accessible entrance shall be installed. Additionally,  
15 the builder of the unit or units shall deposit sufficient funds to adapt  
16 10 percent of the affordable units in the project which have not been  
17 constructed with accessible entrances with the municipality in which  
18 the units are located, for deposit into the municipal affordable housing  
19 trust fund. These funds shall be available for the use of the  
20 municipality for the purpose of making the adaptable entrance of any  
21 such affordable unit accessible when requested to do so by a person  
22 with a disability who occupies or intends to occupy the unit and  
23 requires an accessible entrance.

24 For the purposes of this section:

25 "Adaptable," as used with regard to an entrance, means that the  
26 plans for the unit include a feasible building plan to adapt the entrance  
27 so as to make the unit accessible.

28 "Disabled person" means "disabled person" as defined in section 4  
29 of P.L.1985, c.222 (C.52:27D-304).

30 "Ground floor" means the first floor with a dwelling unit or portion  
31 of a dwelling unit, regardless of whether that floor is at grade. A  
32 building may have more than one ground floor.

33 "Site impracticable" means having the characteristic of "site  
34 impracticability" as set forth in <sup>1</sup>section<sup>1</sup> 100.205 (a) of title 24, Code  
35 of Federal Regulations.

36

37 6. (New section) The council may take such measures as are  
38 necessary to assure compliance with the adaptability requirements  
39 imposed pursuant to P.L. , c. (C. ) (pending before the  
40 Legislature as this bill), including the inspection of those units which  
41 are newly constructed and receive housing credit as provided under  
42 P.L. , c. (C. ) (pending before the Legislature as this  
43 bill) for adaptability, as part of the monitoring which occurs pursuant  
44 to P.L.1985, c.222 (C.52:27D-301 et al.). If any units for which credit  
45 was granted in accordance with the provisions of P.L. , c.  
46 (C. ) (pending before the Legislature as this bill) are found not

1 to conform to the requirements of P.L. , c. (C. ) (pending  
2 before the Legislature as this bill), the council may require the  
3 municipality to amend its fair share plan within 90 days of receiving  
4 notice from the council, to address its fair share obligation pursuant to  
5 P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the  
6 municipality fails to amend its fair share plan within 90 days of  
7 receiving such notice, the council may revoke substantive certification.

8

9 7. This act shall take effect on the first day of the ninth month  
10 next following enactment, except that the commissioner may take such  
11 immediate action as necessary in order to effectuate the provisions of  
12 P.L. , c. (C. ) (pending before the Legislature as this  
13 bill).

14

15

16

17

18 Requires newly constructed affordable housing units to be adaptable  
19 for use by elderly and disabled persons.

**SENATE, No. 2696**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED JUNE 23, 2005

**Sponsored by:**

**Senator FRED MADDEN**

**District 4 (Camden and Gloucester)**

**Senator RONALD L. RICE**

**District 28 (Essex)**

**SYNOPSIS**

Requires new affordable housing units constructed be accessible for use by elderly and disabled persons.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/13/2005)**

1 AN ACT concerning housing for elderly and disabled persons and  
2 amending and supplementing P.L.1985, c.222 (C.52:27D-301 et  
3 al.).

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

7  
8 1. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to  
9 read as follows:

10 4. As used in this act:

11 a. "Council" means the Council on Affordable Housing established  
12 in this act, which shall have primary jurisdiction for the administration  
13 of housing obligations in accordance with sound regional planning  
14 considerations in this State.

15 b. "Housing region" means a geographic area of not less than two  
16 nor more than four contiguous, whole counties which exhibit  
17 significant social, economic and income similarities, and which  
18 constitute to the greatest extent practicable the primary metropolitan  
19 statistical areas as last defined by the United States Census Bureau  
20 prior to the effective date of this act.

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

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

35 e. "Resolution of participation" means a resolution adopted by a  
36 municipality in which the municipality chooses to prepare a fair share  
37 plan and housing element in accordance with this act.

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

42 g. "Conversion" means the conversion of existing commercial,  
43 industrial, or residential structures for low and moderate income

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

**Matter underlined thus is new matter.**

1 housing purposes where a substantial percentage of the housing units  
2 are provided for a reasonable income range of low and moderate  
3 income households.

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

7 i. "Agency" means the New Jersey Mortgage and Housing Finance  
8 Agency established by P.L.1983, c. 30 (C.55:14K-1 et seq.).

9 j. "Prospective need" means a projection of housing needs based on  
10 development and growth which is reasonably likely to occur in a  
11 region or a municipality, as the case may be, as a result of actual  
12 determination of public and private entities. In determining  
13 prospective need, consideration shall be given to approvals of  
14 development applications, real property transfers and economic  
15 projections prepared by the State Planning Commission established by  
16 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

17 k. "Disabled person" means a person with a physical disability,  
18 infirmary, malformation or disfigurement which is caused by bodily  
19 injury, birth defect, aging or illness including epilepsy and other  
20 seizure disorders, and which shall include, but not be limited to, any  
21 degree of paralysis, amputation, lack of physical coordination,  
22 blindness or visual impediment, deafness or hearing impediment,  
23 muteness or speech impediment or physical reliance on a service or  
24 guide dog, wheelchair, or other remedial appliance or device.

25 l. "Accessible" means a housing unit constructed in compliance  
26 with the barrier free subcode adopted by the Commissioner of  
27 Community Affairs pursuant to the "State Uniform Construction Code  
28 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

29 (cf: P.L.1985, c.222, s.4)

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32 read as follows:

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34 Community Affairs a Council on Affordable Housing to consist of 11  
35 members appointed by the Governor with the advice and consent of  
36 the Senate, of whom four shall be elected officials representing the  
37 interests of local government, at least one of whom shall be  
38 representative of an urban municipality having a population in excess  
39 of 40,000 persons and a population density in excess of 3,000 persons  
40 per square mile, at least one of whom shall be representative of a  
41 municipality having a population of 40,000 persons or less and a  
42 population density of 3,000 persons per square mile or less, and no  
43 more than one of whom may be a representative of the interests of  
44 county government; three shall represent the interests of households  
45 in need of low and moderate housing, one of whom shall represent the  
46 interests of the nonprofit builders of low and moderate income

1 housing, and shall have an expertise in land use practices and housing  
2 issues, one of whom shall be the Commissioner of Community Affairs,  
3 ex officio, or his or her designee, who shall serve as chairperson and  
4 one of whom shall be the executive director of the agency, serving ex  
5 officio; one shall represent the interests of the for-profit builders of  
6 market rate homes, and shall have an expertise in land use practices  
7 and housing issues; and three shall represent the public interest, one of  
8 whom shall represent the interests of disabled persons and have  
9 expertise in construction accessible to disabled persons. Not more  
10 than six of the 11 shall be members of the same political party. The  
11 membership shall be balanced to the greatest extent practicable among  
12 the various housing regions of the State.

13 b. The members shall serve for terms of six years, except that of  
14 the members first appointed, two shall serve for terms of four years,  
15 three for terms of five years, and three for terms of six years. All  
16 members shall serve until their respective successors are appointed and  
17 shall have qualified. Notwithstanding the above, a member appointed  
18 to represent the interests of local government shall serve only such  
19 length of the term for which appointed as the member continues to  
20 hold elected local office, except that the term of a member so  
21 appointed shall not become vacant until 60 days after the member  
22 ceases to hold that elected office. Vacancies shall be filled in the same  
23 manner as the original appointments, but for the remainders of the  
24 unexpired terms only.

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

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

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

45 (cf: P.L.1995, c.83, s.1)

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

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

7       a. Determine housing regions of the State;  
8       b. Estimate the present and prospective need for low and moderate  
9 income housing at the State and regional levels;

10       c. Adopt criteria and guidelines for:

11       (1) Municipal determination of its present and prospective fair  
12 share of the housing need in a given region which shall be computed  
13 for a 10-year period. Municipal fair share shall be determined after  
14 crediting on a one-to-one basis each current unit of low and moderate  
15 income housing of adequate standard, including any such housing  
16 constructed or acquired as part of a housing program specifically  
17 intended to provide housing for low and moderate income households.  
18 Notwithstanding any other law to the contrary, a municipality shall be  
19 entitled to a credit for a unit if it demonstrates that (a) the municipality  
20 issued a certificate of occupancy for the unit, which was either newly  
21 constructed or rehabilitated between April 1, 1980 and December 15,  
22 1986; (b) a construction code official certifies, based upon a visual  
23 exterior survey, that the unit is in compliance with pertinent  
24 construction code standards with respect to structural elements,  
25 roofing, siding, doors and windows; (c) the household occupying the  
26 unit certifies in writing, under penalty of perjury, that it receives no  
27 greater income than that established pursuant to section 4 of P.L.1985,  
28 c.222 (C.52:27D-304) to qualify for moderate income housing; [and]  
29 (d) the unit for which credit is sought is affordable to low and  
30 moderate income households under the standards established by the  
31 council at the time of filing of the petition for substantive certification;  
32 and (e) the unit for which credit is sought, if newly constructed,  
33 conforms to the barrier free subcode adopted by the Commissioner of  
34 Community Affairs pursuant to the "State Uniform Construction Code  
35 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) in the manner specified  
36 in section 4 of P.L. , c. (C. ) (pending before the Legislature as  
37 this bill). It shall be sufficient if the certification required in  
38 subparagraph (c) is signed by one member of the household. A  
39 certification submitted pursuant to this paragraph shall be reviewable  
40 only by the council or its staff and shall not be a public record;

41       Nothing in P.L.1995, c.81 shall affect the validity of substantive  
42 certification granted by the council prior to November 21, 1994, or to  
43 a judgment of compliance entered by any court of competent  
44 jurisdiction prior to that date. Additionally, any municipality that  
45 received substantive certification or a judgment of compliance prior to  
46 November 21, 1994 and filed a motion prior to November 21, 1994 to



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

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

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

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

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

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

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

26 (f) Vacant and developable land is not available in the municipality,  
27 and

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

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

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

34 e. In its discretion, place a limit, based on a percentage of existing  
35 housing stock in a municipality and any other criteria including  
36 employment opportunities which the council deems appropriate, upon  
37 the aggregate number of units which may be allocated to a  
38 municipality as its fair share of the region's present and prospective  
39 need for low and moderate income housing. No municipality shall be  
40 required to address a fair share beyond 1,000 units within ten years  
41 from the grant of substantive certification, unless it is demonstrated,  
42 following objection by an interested party and an evidentiary hearing,  
43 based upon the facts and circumstances of the affected municipality  
44 that it is likely that the municipality through its zoning powers could  
45 create a realistic opportunity for more than 1,000 low and moderate  
46 income units within that ten-year period. For the purposes of this

1 section, the facts and circumstances which shall determine whether a  
2 municipality's fair share shall exceed 1,000 units, as provided above,  
3 shall be a finding that the municipality has issued more than 5,000  
4 certificates of occupancy for residential units in the ten-year period  
5 preceding the petition for substantive certification in connection with  
6 which the objection was filed.

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

16 In carrying out the above duties, including, but not limited to,  
17 present and prospective need estimations the council shall give  
18 appropriate weight to pertinent research studies, government reports,  
19 decisions of other branches of government, implementation of the  
20 State Development and Redevelopment Plan prepared pursuant to  
21 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and  
22 public comment. To assist the council, the State Planning Commission  
23 established under that act shall provide the council annually with  
24 economic growth, development and decline projections for each  
25 housing region for the next ten years. The council shall develop  
26 procedures for periodically adjusting regional need based upon the low  
27 and moderate income housing that is provided in the region through  
28 any federal, State, municipal or private housing program.  
29 (cf: P.L.2001, c.435, s.1)

30

31 4. (New section) a. The council shall require that all newly  
32 constructed housing in connection with a municipality's fair share  
33 obligation is constructed in accordance with this section. That  
34 housing, whether in the form of multi-family, single-family, townhouse  
35 dwelling units or otherwise, shall be constructed to conform with the  
36 barrier free subcode standards adopted by the Commissioner of  
37 Community Affairs pursuant to the "State Uniform Construction Code  
38 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

39 b. Notwithstanding the exemption for townhouse dwelling units in  
40 the barrier free subcode, the first floor of all townhouse dwelling units  
41 constructed on or after the effective date of P.L. , c. (C. ) (pending  
42 before the Legislature as this bill) shall be subject to all of the  
43 requirements of the barrier free subcode, and shall include the  
44 following features:

45 (1) a barrier-free entry to the dwelling unit;

46 (2) an accessible full service bathroom on the first floor;

- 1 (3) an accessible kitchen on the first floor; and  
2 (4) an accessible room which may be used as a bedroom on the  
3 first floor.  
4 c. No municipal housing element shall be approved or certification  
5 granted by the council unless the municipality has complied with the  
6 requirements of this section.  
7 d. The requirements established by P.L. , c. (C. ) (pending  
8 before the Legislature as this bill) shall not apply to a project for which  
9 an application for development has been deemed complete pursuant to  
10 section 5 of P.L.1984, c.20 (C.40:55D-10.3) prior to the effective date  
11 of P.L. , c. (C. ) (pending before the Legislature as this bill).  
12  
13 5. This act shall take effect immediately.  
14  
15

16 STATEMENT  
17

18 This bill amends the "Fair Housing Act," P.L.1985, c.222  
19 (C.52:27D-301 et al.) to require that all affordable housing newly  
20 constructed on or after the bill's effective date conforms with  
21 standards that would make it "accessible" for use by physically  
22 disabled persons. The requirements of the bill would not apply to a  
23 project for which an application for development has been approved  
24 pursuant to N.J.S.A.40:55D-10.3.

25 Under the bill, a "disabled person" is someone with a physical  
26 disability, infirmity, malformation or disfigurement which is caused by  
27 bodily injury, birth defect, aging or illness, including epilepsy and other  
28 seizure disorders, and which may include, but is not limited to, any  
29 degree of paralysis, amputation, lack of physical coordination,  
30 blindness or visual impediment, deafness or hearing impediment,  
31 muteness or speech impediment or physical reliance on a service or  
32 guide dog, wheelchair, or other remedial appliance or device. The bill  
33 defines "accessible" as a housing unit constructed in compliance with  
34 the barrier free subcode adopted by the Commissioner of Community  
35 Affairs.

36 The bill also requires that one of the public members appointed to  
37 the Council on Affordable Housing represents the interests of disabled  
38 persons and have expertise in construction accessible to disabled  
39 persons.

**SENATE, No. 2725**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED JUNE 27, 2005

**Sponsored by:**

**Senator JOSEPH V. DORIA, JR.**

**District 31 (Hudson)**

**Senator PETER A. INVERSO**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Requires new affordable housing units constructed be adaptable for use by elderly and disabled persons.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/27/2005)**

S2725 DORIA, INVERSO

2

1 AN ACT concerning housing for elderly and disabled persons,  
2 amending P.L.1985, c.222 and supplementing P.L.1975, c.217  
3 (C.52:27D-119 et seq.).  
4

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

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

10 4. As used in this act:

11 a. "Council" means the Council on Affordable Housing established  
12 in this act, which shall have primary jurisdiction for the administration  
13 of housing obligations in accordance with sound regional planning  
14 considerations in this State.

15 b. "Housing region" means a geographic area of not less than two  
16 nor more than four contiguous, whole counties which exhibit  
17 significant social, economic and income similarities, and which  
18 constitute to the greatest extent practicable the primary metropolitan  
19 statistical areas as last defined by the United States Census Bureau  
20 prior to the effective date of this act.

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

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

35 e. "Resolution of participation" means a resolution adopted by a  
36 municipality in which the municipality chooses to prepare a fair share  
37 plan and housing element in accordance with this act.

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

42 g. "Conversion" means the conversion of existing commercial,  
43 industrial, or residential structures for low and moderate income

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

**Matter underlined thus is new matter.**

1 housing purposes where a substantial percentage of the housing units  
2 are provided for a reasonable income range of low and moderate  
3 income households.

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

7 i. "Agency" means the New Jersey Mortgage and Housing Finance  
8 Agency established by P.L.1983, c. 30 (C.55:14K-1 et seq.).

9 j. "Prospective need" means a projection of housing needs based on  
10 development and growth which is reasonably likely to occur in a  
11 region or a municipality, as the case may be, as a result of actual  
12 determination of public and private entities. In determining  
13 prospective need, consideration shall be given to approvals of  
14 development applications, real property transfers and economic  
15 projections prepared by the State Planning Commission established by  
16 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

17 k. "Disabled person" means a person with a physical disability,  
18 infirmary, malformation or disfigurement which is caused by bodily  
19 injury, birth defect, aging or illness including epilepsy and other  
20 seizure disorders, and which shall include, but not be limited to, any  
21 degree of paralysis, amputation, lack of physical coordination,  
22 blindness or visual impediment, deafness or hearing impediment,  
23 muteness or speech impediment or physical reliance on a service or  
24 guide dog, wheelchair, or other remedial appliance or device.

25 l. "Adaptable" means constructed in compliance with the technical  
26 design standards of the barrier free subcode adopted by the  
27 Commissioner of Community Affairs pursuant to section 4 of  
28 P.L. , c. (C. ) (pending before the Legislature as this bill)  
29 and the "State Uniform Construction Code Act," P.L.1975, c.217  
30 (C.52:27D-119 et seq.).

31 (cf: P.L.1985, c.222, s.4)

32

33 2. Section 5 of P.L.1985, c.222 (C.52:27D-305) is amended to  
34 read as follows:

35 5. a. There is established in, but not of, the Department of  
36 Community Affairs a Council on Affordable Housing to consist of 11  
37 members appointed by the Governor with the advice and consent of  
38 the Senate, of whom four shall be elected officials representing the  
39 interests of local government, at least one of whom shall be  
40 representative of an urban municipality having a population in excess  
41 of 40,000 persons and a population density in excess of 3,000 persons  
42 per square mile, at least one of whom shall be representative of a  
43 municipality having a population of 40,000 persons or less and a  
44 population density of 3,000 persons per square mile or less, and no  
45 more than one of whom may be a representative of the interests of  
46 county government; three shall represent the interests of households

1 in need of low and moderate housing, one of whom shall represent the  
2 interests of the nonprofit builders of low and moderate income  
3 housing, and shall have an expertise in land use practices and housing  
4 issues, one of whom shall be the Commissioner of Community Affairs,  
5 ex officio, or his or her designee, who shall serve as chairperson and  
6 one of whom shall be the executive director of the agency, serving ex  
7 officio; one shall represent the interests of the for-profit builders of  
8 market rate homes, and shall have an expertise in land use practices  
9 and housing issues; and three shall represent the public interest, one of  
10 whom shall represent the interests of disabled persons and have  
11 expertise in construction accessible to disabled persons. Not more  
12 than six of the 11 shall be members of the same political party. The  
13 membership shall be balanced to the greatest extent practicable among  
14 the various housing regions of the State.

15 b. The members shall serve for terms of six years, except that of  
16 the members first appointed, two shall serve for terms of four years,  
17 three for terms of five years, and three for terms of six years. All  
18 members shall serve until their respective successors are appointed and  
19 shall have qualified. Notwithstanding the above, a member appointed  
20 to represent the interests of local government shall serve only such  
21 length of the term for which appointed as the member continues to  
22 hold elected local office, except that the term of a member so  
23 appointed shall not become vacant until 60 days after the member  
24 ceases to hold that elected office. Vacancies shall be filled in the same  
25 manner as the original appointments, but for the remainders of the  
26 unexpired terms only.

27 c. The members, excluding the executive director of the agency and  
28 the Commissioner of Community Affairs, shall be compensated at the  
29 rate of \$150.00 for each six-hour day, or prorated portion thereof for  
30 more or less than six hours, spent in attendance at meetings and  
31 consultations and all members shall be eligible for reimbursement for  
32 necessary expenses incurred in connection with the discharge of their  
33 duties.

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

38 e. Any member may be removed from office for misconduct in  
39 office, willful neglect of duty, or other conduct evidencing unfitness  
40 for the office, or for incompetence. A proceeding for removal may be  
41 instituted by the Attorney General in the Superior Court. A member  
42 or employee of the council shall automatically forfeit his office or  
43 employment upon conviction of any crime. Any member or employee  
44 of the council shall be subject to the duty to appear and testify and to  
45 removal from his office or employment in accordance with the  
46 provisions of P.L.1970, c.72 (C.2A:81-17.2a et seq.).  
47 (cf: P.L.1985, c.222, s.5)

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

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

7       a. Determine housing regions of the State;  
8       b. Estimate the present and prospective need for low and moderate  
9 income housing at the State and regional levels;

10      c. Adopt criteria and guidelines for:

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

37      Nothing in P.L.1995, c.81 shall affect the validity of substantive  
38 certification granted by the council prior to November 21, 1994, or to  
39 a judgment of compliance entered by any court of competent  
40 jurisdiction prior to that date. Additionally, any municipality that  
41 received substantive certification or a judgment of compliance prior to  
42 November 21, 1994 and filed a motion prior to November 21, 1994 to  
43 amend substantive certification or a judgment of compliance for the  
44 purpose of obtaining credits, shall be entitled to a determination of its  
45 right to credits pursuant to the standards established by the Legislature  
46 prior to P.L.1995, c.81. Any municipality that filed a motion prior to  
47 November 21, 1994 for the purpose of obtaining credits, which motion



1 was supported by the results of a completed survey performed  
2 pursuant to council rules, shall be entitled to a determination of its  
3 right to credits pursuant to the standards established by the Legislature  
4 prior to P.L.1995, c.81;

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

9 (a) The preservation of historically or important architecture and  
10 sites and their environs or environmentally sensitive lands may be  
11 jeopardized,

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

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

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

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

21 (f) Vacant and developable land is not available in the municipality,  
22 and

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

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

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

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

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

10 No municipal housing element shall be approved or certification  
11 granted by the council unless the municipality has complied with the  
12 requirements of section.

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

26 (cf: P.L.2001, c.435, s.1)

27

28 4. (New section) a. All newly constructed housing for which  
29 credit is sought by a municipality seeking to fulfill its fair share  
30 housing obligation pursuant to section 7 of P.L.1985, c.222  
31 (C.52:27D-307) shall be adaptable; however, elevators shall not be  
32 required in any building or within any dwelling unit for the purposes  
33 of P.L. , c. (C. ) (pending before the Legislature as this bill). In  
34 buildings without elevator service, only ground floor dwelling units  
35 shall be constructed to conform with the technical design standards of  
36 the barrier free subcode. For the purpose of this section, "ground  
37 floor" shall mean the first floor with a dwelling unit or portion of a  
38 dwelling unit, regardless of whether that floor is at grade. A building  
39 may have more than one ground floor.

40 b. Notwithstanding the exemption for townhouse dwelling units in  
41 the barrier free subcode, the first floor of all townhouse dwelling units  
42 and of all other multifloor dwelling units constructed on or after the  
43 effective date of P.L. , c. (C. ) (pending before the Legislature as  
44 this bill) and for which credit is sought pursuant to section 7 of  
45 P.L.1985, c.222 (C.52:27D-307) shall be subject to the technical  
46 design standards of the barrier free subcode and shall include the  
47 following features:

- 1 (1) a barrier-free entry to the dwelling unit;
- 2 (2) an adaptable full service bathroom on the first floor;
- 3 (3) an adaptable kitchen on the first floor; and
- 4 (4) an adaptable room which may be used as a bedroom on the first
- 5 floor.

6 c. The requirements established by P.L. , c. (C. ) (pending  
7 before the Legislature as this bill) shall not apply to a project for which  
8 an application for development has been deemed complete pursuant to  
9 section 5 of P.L.1984, c.20 (C.40:55D-10.3) prior to the effective date  
10 of P.L. , c. (C. ) (pending before the Legislature as this bill).

11

12 5. This act shall take effect immediately.

13

14

15

#### STATEMENT

16

17 This bill amends the "Fair Housing Act," P.L.1985, c.222  
18 (C.52:27D-301 et al.) to require that all affordable housing newly  
19 constructed on or after the bill's effective date conforms with  
20 standards that would make it "adaptable" for use by physically disabled  
21 persons. The requirements of the bill would not apply to a project for  
22 which an application for development has been deemed complete  
23 pursuant to N.J.S.A.40:55D-10.3 prior to the effective date of the bill.

24 The bill defines "adaptable" as constructed in compliance with the  
25 technical design standards of the barrier free subcode adopted by the  
26 Commissioner of Community Affairs pursuant to the "State Uniform  
27 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

28 The barrier free subcode has two types of standards, scoping  
29 standards and technical standards. Scoping standards specify what  
30 types of construction must be accessible and adaptable; the subcode's  
31 exclusions of one-, two-, and three family construction and of  
32 townhouse units are part of the scoping standards. The technical  
33 standards discuss how to make things accessible or adaptable once  
34 they are included within the scoping standards. It is the technical  
35 standards to which affordable housing units credited by COAH shall  
36 comply under the bill.

37 Notwithstanding this compliance with these technical standards,  
38 however, the bill explicitly provides that elevators shall not be required  
39 in any building or within any dwelling unit. Moreover, in buildings  
40 without elevator service, only ground floor dwelling units must be  
41 constructed to conform with the technical design standards of the  
42 barrier free subcode. The bill defines "ground floor" as the first floor  
43 with a dwelling unit or portion of a dwelling unit, regardless of  
44 whether or not that floor is at grade. A building may have more than  
45 on ground floor.

46 Under the bill, a "disabled person" is someone with a physical  
47 disability, infirmity, malformation or disfigurement which is caused by

S2725 DORIA, INVERSO

9

1 bodily injury, birth defect, aging or illness, including epilepsy and other  
2 seizure disorders, and which may include, but is not limited to, any  
3 degree of paralysis, amputation, lack of physical coordination,  
4 blindness or visual impediment, deafness or hearing impediment,  
5 muteness or speech impediment or physical reliance on a service or  
6 guide dog, wheelchair, or other remedial appliance or device. The bill  
7 defines "adaptable" as a housing unit constructed in compliance with  
8 the barrier free subcode adopted by the Commissioner of Community  
9 Affairs.

10 The bill also requires that one of the public members appointed to  
11 the Council on Affordable Housing represents the interests of disabled  
12 persons and have expertise in construction accessible to disabled  
13 persons.

# SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2696 and 2725**

# **STATE OF NEW JERSEY**

DATED: DECEMBER 15, 2005

The Senate Community and Urban Affairs Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2696 and Senate Bill No. 2725.

This committee substitute would amend the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) to require that all affordable housing newly constructed on or after the bill's effective date conforms with standards that would make it "adaptable" for use by physically disabled persons. The requirements of the committee substitute would not apply to a project for which a construction permit has not been issued prior to the effective date of the bill.

The committee substitute defines "adaptable" as constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and with certain requirements of the committee substitute.

Although new residential construction that is not comprised of multiple dwellings currently is not required to comply with the barrier free subcode, the committee substitute would require all affordable housing units to meet certain accessibility standards.

Notwithstanding this compliance with these technical standards, however, the committee substitute explicitly provides that elevators shall not be required in any building or within any dwelling unit which fall under the substitute provisions bills. Moreover, in buildings without elevator service, only ground floor dwelling units must be constructed to conform with the technical design standards of the barrier free subcode. The committee substitute defines "ground floor" as the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether or not that floor is at grade. A building may have more than one ground floor.

Under the committee substitute, a "disabled person" is someone with a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, aging or illness, including epilepsy and other seizure disorders, and which may include, but is not limited to, any degree of paralysis, amputation, lack of

physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device. The committee substitute defines "adaptable" as a housing unit constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs.

The committee substitute would increase the membership of the Council on Affordable Housing from 11 to 12 members to accommodate an additional member who would represent the interests of disabled persons and have expertise in construction accessible to disabled persons.

The committee substitute deletes an inappropriate reference and replaces it with a new supplemental section that would achieve the same purpose.

The committee substitute would notwithstanding the exemption for townhouse dwelling units set forth in the barrier free subcode and subject the first floor of all townhouse dwelling units and of all other multifloor dwelling units for which credit is sought to the technical design standards of the barrier free subcode. The following features would be required:

- (1) an accessible entrance to the dwelling unit;
- (2) an adaptable full service bathroom on the first floor;
- (3) an adaptable kitchen on the first floor;
- (4) an accessible interior route of travel; and
- (5) an adaptable room with a door or a casing where a door can be installed which may be used as a bedroom on the first floor.

The committee substitute would except from full compliance with the above provisions a dwelling unit constructed by an entity that can demonstrate that it is site impracticable to meet the requirements. Full compliance will be considered site impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

Additionally, if full compliance would be site impracticable, compliance with these requirements would be required to the extent that it is not site impracticable. In that case, any portion of the dwelling that can be made accessible would be made accessible to the extent that it is not site impracticable.

Finally, the committee substitute specifies that if providing an accessible entrance to a dwelling unit would be site impracticable, the unit must be constructed with an adaptable entrance. In the case of a unit or units which are constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance would be installed. The builder of the unit or units would be required to deposit sufficient funds to adapt 10 percent of the affordable units in the project which have not been constructed with accessible entrances with the municipality in which the units are located, for deposit into the municipal affordable

housing trust fund. These funds shall be available for the use of the municipality for the purposes of providing accessible entrances under this committee substitute.

The committee substitute would allow COAH to take such measures as are necessary to assure compliance with the adaptability requirements imposed under this committee substitute, including the inspection of those units which are newly constructed and receive housing credit as provided under this committee substitute for adaptability, as part of the monitoring which occurs pursuant to the Fair Housing Act.

STATEMENT TO  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, Nos. 2696 and 2725**

with Senate Floor Amendments  
(Proposed By Senator MADDEN)

ADOPTED: JANUARY 5, 2006

These amendments would require the entrance to a dwelling unit to be adaptable rather than accessible in order to be consistent with the language of the rest of the bill. The bill also deletes inconsistent language regarding accessibility, as opposed to adaptability, of a building entrance.

These amendments resolve a sequencing issue involving the requirement that a housing element shall not be approved or certification granted unless the municipality has complied with the bill's provisions. In reality, adaptable construction would not be demonstrated until further along in the approval process and so requiring compliance at the housing element approval stage is premature. Accordingly, the amendments would require compliance by a municipality with the filing of the fair share plan.

Finally, the amendments clarify a confusing reference to accessibility in language addressing site impracticability, providing that any portion of the dwelling that cannot comply shall be made to comply to the extent that it is not site impracticable.



# ASSEMBLY, No. 3892

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MARCH 1, 2005

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**Assemblywoman BONNIE WATSON COLEMAN**

**District 15 (Mercer)**

**SYNOPSIS**

Requires new affordable housing units constructed be accessible for use by elderly and disabled persons.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/6/2005)**

1 AN ACT concerning housing for elderly and disabled persons and  
2 amending and supplementing P.L.1985, c.222 (C.52:27D-301 et  
3 al.).

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

7  
8 1. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to  
9 read as follows:

10 4. As used in this act:

11 a. "Council" means the Council on Affordable Housing established  
12 in this act, which shall have primary jurisdiction for the administration  
13 of housing obligations in accordance with sound regional planning  
14 considerations in this State.

15 b. "Housing region" means a geographic area of not less than two  
16 nor more than four contiguous, whole counties which exhibit  
17 significant social, economic and income similarities, and which  
18 constitute to the greatest extent practicable the primary metropolitan  
19 statistical areas as last defined by the United States Census Bureau  
20 prior to the effective date of this act.

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

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

35 e. "Resolution of participation" means a resolution adopted by a  
36 municipality in which the municipality chooses to prepare a fair share  
37 plan and housing element in accordance with this act.

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

42 g. "Conversion" means the conversion of existing commercial,  
43 industrial, or residential structures for low and moderate income

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

**Matter underlined thus is new matter.**

1 housing purposes where a substantial percentage of the housing units  
2 are provided for a reasonable income range of low and moderate  
3 income households.

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

7 i. "Agency" means the New Jersey Mortgage and Housing Finance  
8 Agency established by P.L.1983, c. 30 (C.55:14K-1 et seq.).

9 j. "Prospective need" means a projection of housing needs based  
10 on development and growth which is reasonably likely to occur in a  
11 region or a municipality, as the case may be, as a result of actual  
12 determination of public and private entities. In determining  
13 prospective need, consideration shall be given to approvals of  
14 development applications, real property transfers and economic  
15 projections prepared by the State Planning Commission established by  
16 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

17 k. "Disabled person" means a person with a physical disability,  
18 infirmary, malformation or disfigurement which is caused by bodily  
19 injury, birth defect, aging or illness including epilepsy and other  
20 seizure disorders, and which shall include, but not be limited to, any  
21 degree of paralysis, amputation, lack of physical coordination,  
22 blindness or visual impediment, deafness or hearing impediment,  
23 muteness or speech impediment or physical reliance on a service or  
24 guide dog, wheelchair, or other remedial appliance or device.

25 l. "Accessible" means a housing unit constructed in compliance  
26 with the barrier free subcode adopted by the Commissioner of  
27 Community Affairs pursuant to the "State Uniform Construction Code  
28 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

29 (cf: P.L.1985, c.222, s.4)

30

31 2. Section 5 of P.L.1985, c.222 (C.52:27D-305) is amended to  
32 read as follows:

33 5. a. There is established in, but not of, the Department of  
34 Community Affairs a Council on Affordable Housing to consist of 11  
35 members appointed by the Governor with the advice and consent of  
36 the Senate, of whom four shall be elected officials representing the  
37 interests of local government, at least one of whom shall be  
38 representative of an urban municipality having a population in excess  
39 of 40,000 persons and a population density in excess of 3,000 persons  
40 per square mile, at least one of whom shall be representative of a  
41 municipality having a population of 40,000 persons or less and a  
42 population density of 3,000 persons per square mile or less, and no  
43 more than one of whom may be a representative of the interests of  
44 county government; three shall represent the interests of households  
45 in need of low and moderate housing, one of whom shall represent the  
46 interests of the nonprofit builders of low and moderate income

1 housing, and shall have an expertise in land use practices and housing  
2 issues, one of whom shall be the Commissioner of Community Affairs,  
3 ex officio, or his or her designee, who shall serve as chairperson and  
4 one of whom shall be the executive director of the agency, serving ex  
5 officio; one shall represent the interests of the for-profit builders of  
6 market rate homes, and shall have an expertise in land use practices  
7 and housing issues; and three shall represent the public interest, one of  
8 whom shall represent the interests of disabled persons and have  
9 expertise in construction accessible to disabled persons. Not more  
10 than six of the 11 shall be members of the same political party. The  
11 membership shall be balanced to the greatest extent practicable among  
12 the various housing regions of the State.

13 b. The members shall serve for terms of six years, except that of  
14 the members first appointed, two shall serve for terms of four years,  
15 three for terms of five years, and three for terms of six years. All  
16 members shall serve until their respective successors are appointed and  
17 shall have qualified. Notwithstanding the above, a member appointed  
18 to represent the interests of local government shall serve only such  
19 length of the term for which appointed as the member continues to  
20 hold elected local office, except that the term of a member so  
21 appointed shall not become vacant until 60 days after the member  
22 ceases to hold that elected office. Vacancies shall be filled in the same  
23 manner as the original appointments, but for the remainders of the  
24 unexpired terms only.

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

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

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

45 (cf: P.L.1985, c.222, s.5)

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

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

7       a. Determine housing regions of the State;  
8       b. Estimate the present and prospective need for low and moderate  
9 income housing at the State and regional levels;

10       c. Adopt criteria and guidelines for:

11       (1) Municipal determination of its present and prospective fair  
12 share of the housing need in a given region which shall be computed  
13 for a 10-year period. Municipal fair share shall be determined after  
14 crediting on a one-to-one basis each current unit of low and moderate  
15 income housing of adequate standard, including any such housing  
16 constructed or acquired as part of a housing program specifically  
17 intended to provide housing for low and moderate income households.  
18 Notwithstanding any other law to the contrary, a municipality shall be  
19 entitled to a credit for a unit if it demonstrates that (a) the municipality  
20 issued a certificate of occupancy for the unit, which was either newly  
21 constructed or rehabilitated between April 1, 1980 and December 15,  
22 1986; (b) a construction code official certifies, based upon a visual  
23 exterior survey, that the unit is in compliance with pertinent  
24 construction code standards with respect to structural elements,  
25 roofing, siding, doors and windows; (c) the household occupying the  
26 unit certifies in writing, under penalty of perjury, that it receives no  
27 greater income than that established pursuant to section 4 of P.L.1985,  
28 c.222 (C.52:27D-304) to qualify for moderate income housing; [and]  
29 (d) the unit for which credit is sought is affordable to low and  
30 moderate income households under the standards established by the  
31 council at the time of filing of the petition for substantive certification;  
32 and (e) the unit for which credit is sought, if newly constructed,  
33 conforms to the barrier free subcode adopted by the Commissioner of  
34 Community Affairs pursuant to the "State Uniform Construction Code  
35 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) in the manner specified  
36 in section 4 of P.L. , c. (C. ) (pending before the Legislature as  
37 this bill). It shall be sufficient if the certification required in  
38 subparagraph (c) is signed by one member of the household. A  
39 certification submitted pursuant to this paragraph shall be reviewable  
40 only by the council or its staff and shall not be a public record;

41       Nothing in P.L.1995, c.81 shall affect the validity of substantive  
42 certification granted by the council prior to November 21, 1994, or to  
43 a judgment of compliance entered by any court of competent  
44 jurisdiction prior to that date. Additionally, any municipality that  
45 received substantive certification or a judgment of compliance prior to  
46 November 21, 1994 and filed a motion prior to November 21, 1994 to

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

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

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

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

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

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

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

26 (f) Vacant and developable land is not available in the municipality,  
27 and

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

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

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

34 e. In its discretion, place a limit, based on a percentage of existing  
35 housing stock in a municipality and any other criteria including  
36 employment opportunities which the council deems appropriate, upon  
37 the aggregate number of units which may be allocated to a  
38 municipality as its fair share of the region's present and prospective  
39 need for low and moderate income housing. No municipality shall be  
40 required to address a fair share beyond 1,000 units within ten years  
41 from the grant of substantive certification, unless it is demonstrated,  
42 following objection by an interested party and an evidentiary hearing,  
43 based upon the facts and circumstances of the affected municipality  
44 that it is likely that the municipality through its zoning powers could  
45 create a realistic opportunity for more than 1,000 low and moderate  
46 income units within that ten-year period. For the purposes of this

1 section, the facts and circumstances which shall determine whether a  
2 municipality's fair share shall exceed 1,000 units, as provided above,  
3 shall be a finding that the municipality has issued more than 5,000  
4 certificates of occupancy for residential units in the ten-year period  
5 preceding the petition for substantive certification in connection with  
6 which the objection was filed.

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

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

29 (cf: P.L.2001, c.435, s.1)

30

31 4. (New section) a. The council shall require that all newly  
32 constructed housing in connection with a municipality's fair share  
33 obligation is constructed in accordance with this section. That  
34 housing, whether in the form of multi-family, single-family, townhouse  
35 dwelling units or otherwise, shall be constructed to conform with the  
36 barrier free subcode standards adopted by the Commissioner of  
37 Community Affairs pursuant to the "State Uniform Construction Code  
38 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

39 b. Notwithstanding the exemption for townhouse dwelling units in  
40 the barrier free subcode, the first floor of all townhouse dwelling units  
41 constructed on or after the effective date of P.L. , c. (C. ) (pending  
42 before the Legislature as this bill) shall be subject to all of the  
43 requirements of the barrier free subcode, and shall include the  
44 following features:

45 (1) a barrier-free entry to the dwelling unit;

46 (2) an accessible full service bathroom on the first floor;

- 1 (3) an accessible kitchen on the first floor; and  
2 (4) an accessible room which may be used as a bedroom on the  
3 first floor.  
4 c. No municipal housing element shall be approved or certification  
5 granted by the council unless the municipality has complied with the  
6 requirements of this section.  
7 d. The requirements established by P.L. , c. (C. ) (pending  
8 before the Legislature as this bill) shall not apply to a project for which  
9 an application for development has been deemed complete pursuant to  
10 section 5 of P.L.1984, c.20 (C.40:55D-10.3) prior to the effective date  
11 of P.L. , c. (C. ) (pending before the Legislature as this bill).  
12  
13 5. This act shall take effect immediately.  
14  
15

16 STATEMENT  
17

18 This bill amends the "Fair Housing Act," P.L.1985, c.222  
19 (C.52:27D-301 et al.) to require that all affordable housing newly  
20 constructed on or after the bill's effective date conforms with  
21 standards that would make it "accessible" for use by physically  
22 disabled persons. The requirements of the bill would not apply to a  
23 project for which an application for development has been approved  
24 pursuant to N.J.S.A.40:55D-10.3.

25 Under the bill, a "disabled person" is someone with a physical  
26 disability, infirmity, malformation or disfigurement which is caused by  
27 bodily injury, birth defect, aging or illness, including epilepsy and other  
28 seizure disorders, and which may include, but is not limited to, any  
29 degree of paralysis, amputation, lack of physical coordination,  
30 blindness or visual impediment, deafness or hearing impediment,  
31 muteness or speech impediment or physical reliance on a service or  
32 guide dog, wheelchair, or other remedial appliance or device. The bill  
33 defines "accessible" as a housing unit constructed in compliance with  
34 the barrier free subcode adopted by the Commissioner of Community  
35 Affairs.

36 The bill also requires that one of the public members appointed to  
37 the Council on Affordable Housing represents the interests of disabled  
38 persons and have expertise in construction accessible to disabled  
39 persons.



ASSEMBLY HOUSING AND LOCAL GOVERNMENT  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, No. 3892

**STATE OF NEW JERSEY**

DATED: DECEMBER 5, 2005

The Assembly Housing and Local Government Committee reports favorably Assembly Committee Substitute for Assembly Bill No. 3892.

This committee substitute amends the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) to require that all affordable housing newly constructed on or after the bill's effective date conforms with standards that would make it "adaptable" for use by physically disabled persons. The requirements of the bill would not apply to a project for which an application for development has been deemed complete pursuant to N.J.S.A.40:55D-10.3 prior to the effective date of the bill.

The bill defines "adaptable" as constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

The barrier free subcode has two types of standards, scoping standards and technical standards. Scoping standards specify the scope of the regulation; that is, what types of construction must be accessible and adaptable. The subcode currently excludes one-, two-, and three family construction and townhouse units from compliance with its provisions. The technical standards are the requirements which must be met to make the construction included within the scope of the regulations accessible or adaptable. Affordable housing units credited by COAH must comply with the technical standards under the bill.

Notwithstanding this compliance with these technical standards, however, the bill explicitly provides that elevators shall not be required in any building or within any dwelling unit for the purposes of the bill. Moreover, in buildings without elevator service, only ground floor dwelling units must be constructed to conform with the technical design standards of the barrier free subcode. The bill defines "ground floor" as the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether or not that floor is at grade. A building may have more than one ground floor. Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor

of all townhouse dwelling units and of all other multifloor dwelling units constructed on or after the effective date of the bill and for which credit is sought pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) will be subject to the technical design standards of the barrier free subcode and shall include the following features:

- (1) a barrier-free entry to the dwelling unit;
- (2) an adaptable full service bathroom on the first floor;
- (3) an adaptable kitchen on the first floor; and
- (4) an adaptable room which may be used as a bedroom on the first floor.

Under the bill, a "disabled person" is someone with a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, aging or illness, including epilepsy and other seizure disorders, and which may include, but is not limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device. The bill defines "adaptable" as a housing unit constructed in compliance with the barrier free subcode adopted by the Commissioner of Community Affairs.

The bill also requires that one of the public members appointed to the Council on Affordable Housing represents the interests of disabled persons and have expertise in construction accessible to disabled persons.

This committee substitute is identical to Senate, No. 2725 with technical corrections.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, No. 3892**

**STATE OF NEW JERSEY**

DATED: JANUARY 5, 2006

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3892 (ACS).

This Assembly Committee Substitute for Assembly Bill No. 3892 (ACS) amends the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) to require that all affordable housing units newly constructed on or after the substitute's effective date conform with standards that would make them "adaptable" for use by physically disabled persons. The requirements of the substitute would not apply to any affected housing project for which a construction permit application has not been declared complete by the enforcing agency prior to the effective date of the bill.

The substitute provides that no housing unit governed by the provisions of the substitute and subject to the barrier free subcode shall be eligible for inclusion in the municipal fair share plan certified by the council unless the unit complies with the provisions of the bill. The substitute grants the council the necessary powers to assure compliance, including the requirement that a noncompliant municipality amend its fair share plan or risk losing substantive certification.

The substitute defines "adaptable" as constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and with certain requirements of the substitute.

The substitute requires all affordable housing units to meet certain accessibility standards; notwithstanding this compliance requirement, however, the substitute explicitly provides that elevators shall not be required in any building or within any dwelling unit governed by the bill's provisions. In buildings without elevator service, only ground floor dwelling units must be adaptable. The substitute defines "ground floor" as the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether or not that floor is at grade. A building

may have more than one ground floor.

Under the substitute, a "disabled person" is someone with a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, aging or illness, including epilepsy and other seizure disorders, and which may include, but is not limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device.

The substitute increases the membership of the Council on Affordable Housing from 11 to 12 members to accommodate an additional member who would represent the interests of disabled persons and have expertise in construction accessible to disabled persons.

The substitute provides that notwithstanding the exemption for townhouse dwelling units set forth in the barrier free subcode, the first floor of all townhouse dwelling units and of all other multifloor dwelling units for which credit is sought will be subject to the technical design standards of the barrier free subcode. The following features will be required:

- (1) an adaptable entrance to the dwelling unit;
- (2) an adaptable full service bathroom on the first floor;
- (3) an adaptable kitchen on the first floor;
- (4) an accessible interior route of travel; and
- (5) an adaptable room with a door or a casing where a door can be installed which may be used as a bedroom on the first floor.

The substitute excepts from full compliance with the above provisions a dwelling unit constructed by an entity that can demonstrate that it is site impracticable to meet the requirements. Full compliance shall be considered site-impracticable only in those rare circumstances where the unique characteristics of terrain prevent the incorporation of accessibility features.

Additionally, if full compliance would be site impracticable, compliance with these requirements for any portion of the dwelling will be required to the extent that it is not site impracticable.

In the case of a unit or units which are constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance will be installed. The builder of the unit or units is required to deposit sufficient funds to adapt 10 percent of the affordable units in the project which have not been constructed with accessible entrances with the municipality in which the units are located, for deposit into the municipal affordable housing trust fund. These funds shall be available for the use of the municipality for the purposes of providing accessible entrances under the provisions of this substitute.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.