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REPORTS: No

HEARINGS: Yes

NEWSPAPER ARTICLES: Yes

974.90 Public hearing before Assembly Housing and Local Government Committee:
H842 the committee will discuss the creation of more affordable housing opportunities in New Jersey,
2007c including a comprehensive reform plan proposed by Assembly Democratic leadership.
December 10, 2007, Trenton, New Jersey. New Jersey. Legislature. General Assembly. Housing and Local
Government Committee. Trenton, N.J. New Jersey Office of Legislative Services, Public Information Office,
Hearing Unit, [2007]. <https://dspace.njstatelib.org/handle/10929/25833>

"Affordable-housing obligations can't be sold under law," Asbury Park Press, 7-18-08, p.A3

"Corzine signs affordable housing bill," Gloucester County Times, 7-18-08, p.A4

"Corzine enacts overhaul to low-income housing rules," Courier News, 7-18-08, p.A6

"Corzine signs affordable housing overhaul," Courier-Post, 7-18-08, p.B1

"Ghetto to the burbs?" The Trentonian, 7-18-08, p.10

"Housing equity is at root of new law," The Star-Ledger, 7-18-08, p.17

"Corzine OKs bill outlawing housing swap," 7-18-08, p.A1

"N.J. closes low-income loophole," The Philadelphia Inquirer, 7-18-08, p.A01

"Corzine signs overhaul of state housing law," Burlington County Times, 7-18-08, p.1

LAW

§§7-14, 18,
21-30 -
C.52:27D-329.1
to 52:27D-329.19
§§19,20 -
C.52:27D-321.1 &
52:27D-321.2
§31 -
C.52:14B-4.1b
§§32-38 -
C.40:55D-8.1 to
40:55D-8.7
§40 - Repealer

P.L. 2008, CHAPTER 46, *approved July 17, 2008*
Assembly Committee Substitute for
Assembly, No. 500

1 AN ACT concerning affordable housing, revising and supplementing
2 various parts of the statutory law.

3

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

6

7 1. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to
8 read as follows:

9 3. As used in this act:

10 “Bonds” means any bonds, notes, interim certificates, debentures
11 or other obligations issued by a municipality, county,
12 redevelopment entity, or housing authority pursuant to **[this act]**
13 P.L.1992, c.79 (C.40A:12A-1 et al.).

14 “Comparable, affordable replacement housing” means newly-
15 constructed or substantially rehabilitated housing to be offered to a
16 household being displaced as a result of a redevelopment project,
17 that is affordable to that household based on its income under the
18 guidelines established by the Council on Affordable Housing in the
19 Department of Community Affairs for maximum affordable sales
20 prices or maximum fair market rents, and that is comparable to the
21 household’s dwelling in the redevelopment area with respect to the
22 size and amenities of the dwelling unit, the quality of the
23 neighborhood, and the level of public services and facilities offered
24 by the municipality in which the redevelopment area is located.

25 “Development” means the division of a parcel of land into two or
26 more parcels, the construction, reconstruction, conversion,
27 structural alteration, relocation, or enlargement of any building or
28 other structure, or of any mining, excavation or landfill, and any use

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 or change in the use of any building or other structure, or land or
2 extension of use of land, for which permission may be required
3 pursuant to the “Municipal Land Use Law,” P.L.1975, c.291
4 (C.40:55D-1 et seq.).

5 “Governing body” means the body exercising general legislative
6 powers in a county or municipality according to the terms and
7 procedural requirements set forth in the form of government
8 adopted by the county or municipality.

9 “Housing authority” means a housing authority created or
10 continued pursuant to this act.

11 “Housing project” means a project, or distinct portion of a
12 project, which is designed and intended to provide decent, safe and
13 sanitary dwellings, apartments or other living accommodations for
14 persons of low and moderate income; such work or undertaking
15 may include buildings, land, equipment, facilities and other real or
16 personal property for necessary, convenient or desirable
17 appurtenances, streets, sewers, water service, parks, site
18 preparation, gardening, administrative, community, health,
19 recreational, educational, welfare or other purposes. The term
20 “housing project” also may be applied to the planning of the
21 buildings and improvements, the acquisition of property, the
22 demolition of existing structures, the construction, reconstruction,
23 alteration and repair of the improvements and all other work in
24 connection therewith.

25 “Persons of low and moderate income” means persons or
26 families who are, in the case of State assisted projects or programs,
27 so defined by the Council on Affordable Housing in the Department
28 of Community Affairs, or in the case of federally assisted projects
29 or programs, defined as of “low and very low income” by the
30 United States Department of Housing and Urban Development.

31 “Public body” means the State or any county, municipality,
32 school district, authority or other political subdivision of the State.

33 “Public housing” means any housing for persons of low and
34 moderate income owned by a municipality, county, the State or the
35 federal government, or any agency or instrumentality thereof.

36 “Publicly assisted housing” means privately owned housing
37 which receives public assistance or subsidy, which may be grants or
38 loans for construction, reconstruction, conservation, or
39 rehabilitation of the housing, or receives operational or maintenance
40 subsidies either directly or through rental subsidies to tenants, from
41 a federal, State or local government agency or instrumentality.

42 “Real property” means all lands, including improvements and
43 fixtures thereon, and property of any nature appurtenant thereto or
44 used in connection therewith, and every estate, interest and right,
45 legal or equitable, therein, including terms for years and liens by
46 way of judgment, mortgage or otherwise, and indebtedness secured
47 by such liens.

1 “Redeveloper” means any person, firm, corporation or public
2 body that shall enter into or propose to enter into a contract with a
3 municipality or other redevelopment entity for the redevelopment or
4 rehabilitation of an area in need of redevelopment, or an area in
5 need of rehabilitation, or any part thereof, under the provisions of
6 this act, or for any construction or other work forming part of a
7 redevelopment or rehabilitation project.

8 “Redevelopment” means clearance, replanning, development and
9 redevelopment; the conservation and rehabilitation of any structure
10 or improvement, the construction and provision for construction of
11 residential, commercial, industrial, public or other structures and
12 the grant or dedication of spaces as may be appropriate or necessary
13 in the interest of the general welfare for streets, parks, playgrounds,
14 or other public purposes, including recreational and other facilities
15 incidental or appurtenant thereto, in accordance with a
16 redevelopment plan.

17 “Redevelopment agency” means a redevelopment agency created
18 pursuant to subsection a. of section 11 of P.L.1992, c.79
19 (C.40A:12A-11) or established heretofore pursuant to the
20 “Redevelopment Agencies Law,” P.L.1949, c.306 (C.40:55C-1 et
21 seq.), repealed by this act, which has been permitted in accordance
22 with the provisions of this act to continue to exercise its
23 redevelopment functions and powers.

24 “Redevelopment area” or “area in need of redevelopment” means
25 an area determined to be in need of redevelopment pursuant to
26 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6)
27 or determined heretofore to be a “blighted area” pursuant to
28 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both
29 determinations as made pursuant to the authority of Article VIII,
30 Section III, paragraph 1 of the Constitution. A redevelopment area
31 may include lands, buildings, or improvements which of themselves
32 are not detrimental to the public health, safety or welfare, but the
33 inclusion of which is found necessary, with or without change in
34 their condition, for the effective redevelopment of the area of which
35 they are a part.

36 “Redevelopment entity” means a municipality or an entity
37 authorized by the governing body of a municipality pursuant to
38 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to
39 implement redevelopment plans and carry out redevelopment
40 projects in an area in need of redevelopment, or in an area in need
41 of rehabilitation, or in both.

42 “Redevelopment plan” means a plan adopted by the governing
43 body of a municipality for the redevelopment or rehabilitation of all
44 or any part of a redevelopment area, or an area in need of
45 rehabilitation, which plan shall be sufficiently complete to indicate
46 its relationship to definite municipal objectives as to appropriate
47 land uses, public transportation and utilities, recreational and

1 municipal facilities, and other public improvements; and to indicate
2 proposed land uses and building requirements in the redevelopment
3 area or area in need of rehabilitation, or both.

4 “Redevelopment project” means any work or undertaking
5 pursuant to a redevelopment plan; such undertaking may include
6 any buildings, land, including demolition, clearance or removal of
7 buildings from land, equipment, facilities, or other real or personal
8 properties which are necessary, convenient, or desirable
9 appurtenances, such as but not limited to streets, sewers, utilities,
10 parks, site preparation, landscaping, and administrative, community,
11 health, recreational, educational, and welfare facilities.

12 “Rehabilitation” means an undertaking, by means of extensive
13 repair, reconstruction or renovation of existing structures, with or
14 without the introduction of new construction or the enlargement of
15 existing structures, in any area that has been determined to be in
16 need of rehabilitation or redevelopment, to eliminate substandard
17 structural or housing conditions and arrest the deterioration of that
18 area.

19 “Rehabilitation area” or “area in need of rehabilitation” means
20 any area determined to be in need of rehabilitation pursuant to
21 section 14 of P.L.1992, c.79 (C.40A:12A-14).

22 (cf: P.L.1992, c.79, s.3)

23

24 2. Section 7 of P.L.1992, c.79 (C.40A:12A-7) is amended to
25 read as follows:

26 7. a. No redevelopment project shall be undertaken or carried
27 out except in accordance with a redevelopment plan adopted by
28 ordinance of the municipal governing body, upon its finding that the
29 specifically delineated project area is located in an area in need of
30 redevelopment or in an area in need of rehabilitation, or in both,
31 according to criteria set forth in section 5 or section 14 of P.L.1992,
32 c.79 (C.40A:12A-5 or 40A:12A-14), as appropriate.

33 The redevelopment plan shall include an outline for the planning,
34 development, redevelopment, or rehabilitation of the project area
35 sufficient to indicate:

36 (1) Its relationship to definite local objectives as to appropriate
37 land uses, density of population, and improved traffic and public
38 transportation, public utilities, recreational and community facilities
39 and other public improvements.

40 (2) Proposed land uses and building requirements in the project
41 area.

42 (3) Adequate provision for the temporary and permanent
43 relocation, as necessary, of residents in the project area, including
44 an estimate of the extent to which decent, safe and sanitary dwelling
45 units affordable to displaced residents will be available to them in
46 the existing local housing market.

1 (4) An identification of any property within the redevelopment
2 area which is proposed to be acquired in accordance with the
3 redevelopment plan.

4 (5) Any significant relationship of the redevelopment plan to (a)
5 the master plans of contiguous municipalities, (b) the master plan of
6 the county in which the municipality is located, and (c) the State
7 Development and Redevelopment Plan adopted pursuant to the
8 "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.).

9 (6) As of the date of the adoption of the resolution finding the
10 area to be in need of redevelopment, an inventory of all housing
11 units affordable to low and moderate income households, as defined
12 pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), that are to
13 be removed as a result of implementation of the redevelopment
14 plan, whether as a result of subsidies or market conditions, listed by
15 affordability level, number of bedrooms, and tenure.

16 (7) A plan for the provision, through new construction or
17 substantial rehabilitation of one comparable, affordable replacement
18 housing unit for each affordable housing unit that has been
19 occupied at any time within the last 18 months, that is subject to
20 affordability controls and that is identified as to be removed as a
21 result of implementation of the redevelopment plan. Displaced
22 residents of housing units provided under any State or federal
23 housing subsidy program, or pursuant to the "Fair Housing Act,"
24 P.L.1985, c.222 (C.52:27D-301 et al.), provided they are deemed to
25 be eligible, shall have first priority for those replacement units
26 provided under the plan; provided that any such replacement unit
27 shall not be credited against a prospective municipal obligation
28 under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et
29 al.), if the housing unit which is removed had previously been
30 credited toward satisfying the municipal fair share obligation. To
31 the extent reasonably feasible, replacement housing shall be
32 provided within or in close proximity to the redevelopment area. A
33 municipality shall report annually to the Department of Community
34 Affairs on its progress in implementing the plan for provision of
35 comparable, affordable replacement housing required pursuant to
36 this section.

37 b. A redevelopment plan may include the provision of
38 affordable housing in accordance with the "Fair Housing Act,"
39 P.L.1985, c.222 (C.52:27D-301 et al.) and the housing element of
40 the municipal master plan.

41 c. The redevelopment plan shall describe its relationship to
42 pertinent municipal development regulations as defined in the
43 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
44 The redevelopment plan shall supersede applicable provisions of the
45 development regulations of the municipality or constitute an
46 overlay zoning district within the redevelopment area. When the
47 redevelopment plan supersedes any provision of the development

1 regulations, the ordinance adopting the redevelopment plan shall
2 contain an explicit amendment to the zoning district map included
3 in the zoning ordinance. The zoning district map as amended shall
4 indicate the redevelopment area to which the redevelopment plan
5 applies. Notwithstanding the provisions of the "Municipal Land
6 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or of other law, no
7 notice beyond that required for adoption of ordinances by the
8 municipality shall be required for the hearing on or adoption of the
9 redevelopment plan or subsequent amendments thereof.

10 d. All provisions of the redevelopment plan shall be either
11 substantially consistent with the municipal master plan or designed
12 to effectuate the master plan; but the municipal governing body may
13 adopt a redevelopment plan which is inconsistent with or not
14 designed to effectuate the master plan by affirmative vote of a
15 majority of its full authorized membership with the reasons for so
16 acting set forth in the redevelopment plan.

17 e. Prior to the adoption of a redevelopment plan, or revision or
18 amendment thereto, the planning board shall transmit to the
19 governing body, within 45 days after referral, a report containing its
20 recommendation concerning the redevelopment plan. This report
21 shall include an identification of any provisions in the proposed
22 redevelopment plan which are inconsistent with the master plan and
23 recommendations concerning these inconsistencies and any other
24 matters as the board deems appropriate. The governing body, when
25 considering the adoption of a redevelopment plan or revision or
26 amendment thereof, shall review the report of the planning board
27 and may approve or disapprove or change any recommendation by a
28 vote of a majority of its full authorized membership and shall
29 record in its minutes the reasons for not following the
30 recommendations. Failure of the planning board to transmit its
31 report within the required 45 days shall relieve the governing body
32 from the requirements of this subsection with regard to the pertinent
33 proposed redevelopment plan or revision or amendment thereof.
34 Nothing in this subsection shall diminish the applicability of the
35 provisions of subsection d. of this section with respect to any
36 redevelopment plan or revision or amendment thereof.

37 f. The governing body of a municipality may direct the planning
38 board to prepare a redevelopment plan or an amendment or revision
39 to a redevelopment plan for a designated redevelopment area. After
40 completing the redevelopment plan, the planning board shall
41 transmit the proposed plan to the governing body for its adoption.
42 The governing body, when considering the proposed plan, may
43 amend or revise any portion of the proposed redevelopment plan by
44 an affirmative vote of the majority of its full authorized
45 membership and shall record in its minutes the reasons for each
46 amendment or revision. When a redevelopment plan or amendment
47 to a redevelopment plan is referred to the governing body by the

1 planning board under this subsection, the governing body shall be
2 relieved of the referral requirements of subsection e. of this section.
3 (cf: P.L.1992, c.79, s.7)

4
5 3. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read
6 as follows:

7 4. (a) Prior to the adoption, amendment, or repeal of any rule,
8 except as may be otherwise provided, the agency shall:

9 (1) Give at least 30 days' notice of its intended action. The
10 notice shall include a statement of either the terms or substance of
11 the intended action or a description of the subjects and issues
12 involved, and the time when, the place where, and the manner in
13 which interested persons may present their views thereon. The
14 notice shall be mailed to all persons who have made timely requests
15 of the agency for advance notice of its rule-making proceedings and
16 in addition to other public notice required by law shall be published
17 in the New Jersey Register. Notice shall also be distributed to the
18 news media maintaining a press office to cover the State House
19 Complex, and made available electronically through the largest
20 nonproprietary cooperative public computer network. Each agency
21 shall additionally publicize the intended action and shall adopt rules
22 to prescribe the manner in which it will do so, and inform those
23 persons most likely to be affected by or interested in the intended
24 action. Methods that may be employed include publication of the
25 notice in newspapers of general circulation or in trade, industry,
26 governmental or professional publications, distribution of press
27 releases to the news media and posting of notices in appropriate
28 locations. The rules shall prescribe the circumstances under which
29 each additional method shall be employed;

30 (2) Prepare for public distribution at the time the notice appears
31 in the Register a statement setting forth a summary of the proposed
32 rule, a clear and concise explanation of the purpose and effect of the
33 rule, the specific legal authority under which its adoption is
34 authorized, a description of the expected socio-economic impact of
35 the rule, a regulatory flexibility analysis, or the statement of finding
36 that a regulatory flexibility analysis is not required, as provided in
37 section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement
38 which shall include an assessment of the number of jobs to be
39 generated or lost if the proposed rule takes effect, **[and]** an
40 agriculture industry impact statement as provided in section 7 of
41 P.L.1998, c.48 (C.4:1C-10.3) , and a housing affordability impact
42 statement and a smart growth development impact statement, as
43 provided in section 31 of P.L. , c. (C.) (pending before
44 the Legislature as this bill); and

45 (3) Afford all interested persons reasonable opportunity to
46 submit data, views, or arguments, orally or in writing. The agency
47 shall consider fully all written and oral submissions respecting the

1 proposed rule. If within 30 days of the publication of the proposed
2 rule sufficient public interest is demonstrated in an extension of the
3 time for submissions, the agency shall provide an additional 30 day
4 period for the receipt of submissions by interested parties. The
5 agency shall not adopt the proposed rule until after the end of that
6 30 day extension.

7 The agency shall conduct a public hearing on the proposed rule
8 at the request of a committee of the Legislature, or a governmental
9 agency or subdivision, or if sufficient public interest is shown,
10 provided such request is made to the agency within 30 days
11 following publication of the proposed rule in the Register. The
12 agency shall provide at least 15 days' notice of such hearing, which
13 shall be conducted in accordance with the provisions of subsection
14 (g) of this section.

15 The head of each agency shall adopt as part of its rules of
16 practice adopted pursuant to section 3 of P.L.1968, c.410
17 (C.52:14B-3) definite standards of what constitutes sufficient public
18 interest for conducting a public hearing and for granting an
19 extension pursuant to this paragraph.

20 (4) Prepare for public distribution a report listing all parties
21 offering written or oral submissions concerning the rule,
22 summarizing the content of the submissions and providing the
23 agency's response to the data, views and arguments contained in the
24 submissions.

25 (b) A rule prescribing the organization of an agency may be
26 adopted at any time without prior notice or hearing. Such rules
27 shall be effective upon filing in accordance with section 5 of [this
28 act] P.L.1968, c.410 (C.52:14B-5) or upon any later date specified
29 by the agency.

30 (c) If an agency finds that an imminent peril to the public health,
31 safety, or welfare requires adoption of a rule upon fewer than 30
32 days' notice and states in writing its reasons for that finding, and the
33 Governor concurs in writing that an imminent peril exists, it may
34 proceed without prior notice or hearing, or upon any abbreviated
35 notice and hearing that it finds practicable, to adopt the rule. The
36 rule shall be effective for a period of not more than 60 days unless
37 each house of the Legislature passes a resolution concurring in its
38 extension for a period of not more than 60 additional days. The rule
39 shall not be effective for more than 120 days unless repromulgated
40 in accordance with normal rule-making procedures.

41 (d) No rule hereafter adopted is valid unless adopted in
42 substantial compliance with [this act] P.L.1968, c.410 (C.52:14B-1
43 et seq.). A proceeding to contest any rule on the ground of
44 noncompliance with the procedural requirements of [this act]
45 P.L.1968, c.410 (C.52:14B-1 et seq.) shall be commenced within
46 one year from the effective date of the rule.

1 (e) An agency may file a notice of intent with respect to a
2 proposed rule-making proceeding with the Office of Administrative
3 Law, for publication in the New Jersey Register at any time prior to
4 the formal notice of action required in subsection (a) of this section.
5 The notice shall be for the purpose of eliciting the views of
6 interested parties on an action prior to the filing of a formal rule
7 proposal. An agency may use informal conferences and
8 consultations as means of obtaining the viewpoints and advice of
9 interested persons with respect to contemplated rule-making. An
10 agency may also appoint committees of experts or interested
11 persons or representatives of the general public to advise it with
12 respect to any contemplated rule-making.

13 (f) An interested person may petition an agency to adopt a new
14 rule, or amend or repeal any existing rule. Each agency shall
15 prescribe by rule the form for the petition and the procedure for the
16 submission, consideration and disposition of the petition. The
17 petition shall state clearly and concisely:

18 (1) The substance or nature of the rule-making which is
19 requested;

20 (2) The reasons for the request and the petitioner's interest in the
21 request;

22 (3) References to the authority of the agency to take the
23 requested action.

24 The petitioner may provide the text of the proposed new rule,
25 amended rule or repealed rule.

26 Within 60 days following receipt of any such petition, the agency
27 shall either; (i) deny the petition, giving a written statement of its
28 reasons; (ii) grant the petition and initiate a rule-making proceeding
29 within 90 days of granting the petition ; or (iii) refer the matter for
30 further deliberations which shall be concluded within 90 days of
31 referring the matter for further deliberations . Upon conclusion of
32 such further deliberations, the agency shall either deny the petition
33 and provide a written statement of its reasons or grant the petition
34 and initiate a rule-making proceeding within 90 days. Upon the
35 receipt of the petition, the agency shall file a notice stating the name
36 of the petitioner and the nature of the request with the Office of
37 Administrative Law for publication in the New Jersey Register.
38 Notice of formal agency action on such petition shall also be filed
39 with the Office of Administrative Law for publication in the
40 Register.

41 If an agency fails to act in accordance with the time frame set
42 forth in the preceding paragraph, upon written request by the
43 petitioner, the Director of the Office of Administrative Law shall
44 order a public hearing on the rule-making petition and shall provide
45 the agency with a notice of the director's intent to hold the public
46 hearing if the agency does not. If the agency does not provide
47 notice of a hearing within 15 days of the director's notice, the

1 director shall schedule and provide the public with a notice of that
2 hearing at least 15 days prior thereto. If the public hearing is held
3 by the Office of Administrative Law, it shall be conducted by an
4 administrative law judge, a person on assignment from another
5 agency, a person from the Office of Administrative Law assigned
6 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-
7 5), or an independent contractor assigned by the director. The
8 petitioner and the agency shall participate in the public hearing and
9 shall present a summary of their positions on the petition, a
10 summary of the factual information on which their positions on the
11 petition are based and shall respond to questions posed by any
12 interested party. The hearing procedure shall otherwise be
13 consistent with the requirements for the conduct of a public hearing
14 as prescribed in subsection (g) of section 4 of P.L.1968, c.410
15 (C.52:14B-4), except that the person assigned to conduct the
16 hearing shall make a report summarizing the factual record
17 presented and the arguments for and against proceeding with a rule
18 proposal based upon the petition. This report shall be filed with the
19 agency and delivered or mailed to the petitioner. A copy of the
20 report shall be filed with the Legislature along with the petition for
21 rule-making.

22 (g) All public hearings shall be conducted by a hearing officer,
23 who may be an official of the agency, a member of its staff, a
24 person on assignment from another agency, a person from the
25 Office of Administrative Law assigned pursuant to subsection o. of
26 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent
27 contractor. The hearing officer shall have the responsibility to
28 make recommendations to the agency regarding the adoption,
29 amendment or repeal of a rule. These recommendations shall be
30 made public. At the beginning of each hearing, or series of
31 hearings, the agency, if it has made a proposal, shall present a
32 summary of the factual information on which its proposal is based,
33 and shall respond to questions posed by any interested party.
34 Hearings shall be conducted at such times and in locations which
35 shall afford interested parties the opportunity to attend. A verbatim
36 record of each hearing shall be maintained, and copies of the record
37 shall be available to the public at no more than the actual cost ,
38 which shall be that of the agency where the petition for rule-making
39 originated.

40 (cf: P.L.2001, c.5, s.2)

41

42 4. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to
43 read as follows:

44 2. The Legislature finds that:

45 a. The New Jersey Supreme Court, through its rulings in South
46 Burlington County NAACP v. Mount Laurel, 67 N.J.151 (1975) and
47 South Burlington County NAACP v. Mount Laurel, 92 N.J.158

- 1 (1983), has determined that every municipality in a growth area has
2 a constitutional obligation to provide through its land use
3 regulations a realistic opportunity for a fair share of its region's
4 present and prospective needs for housing for low and moderate
5 income families.
- 6 b. In the second Mount Laurel ruling, the Supreme Court stated
7 that the determination of the methods for satisfying this
8 constitutional obligation "is better left to the Legislature," that the
9 court has "always preferred legislative to judicial action in their
10 field," and that the judicial role in upholding the Mount Laurel
11 doctrine "could decrease as a result of legislative and executive
12 action."
- 13 c. The interest of all citizens, including low and moderate
14 income families in need of affordable housing, and the needs of the
15 workforce, would be best served by a comprehensive planning and
16 implementation response to this constitutional obligation.
- 17 d. There are a number of essential ingredients to a
18 comprehensive planning and implementation response, including
19 the establishment of reasonable fair share housing guidelines and
20 standards, the initial determination of fair share by officials at the
21 municipal level and the preparation of a municipal housing
22 element, State review of the local fair share study and housing
23 element, and continuous State funding for low and moderate income
24 housing to replace the federal housing subsidy programs which
25 have been almost completely eliminated.
- 26 e. The State can maximize the number of low and moderate
27 income units provided in New Jersey by allowing its municipalities
28 to adopt appropriate phasing schedules for meeting their fair share,
29 so long as the municipalities permit a timely achievement of an
30 appropriate fair share of the regional need for low and moderate
31 income housing as required by the Mt. Laurel I and II opinions and
32 other relevant court decisions.
- 33 f. The State can also maximize the number of low and
34 moderate income units by creating new affordable housing and by
35 rehabilitating existing, but substandard, housing in the State [, and,
36 in order to achieve this end, it is appropriate to permit the transfer
37 of a limited portion of the fair share obligations among
38 municipalities in a housing region, so long as the transfer occurs on
39 the basis of sound, comprehensive planning, with regard to an
40 adequate housing financing plan, and in relation to the access of
41 low and moderate income households to employment
42 opportunities]. Because the Legislature has determined, pursuant
43 to P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
44 bill), that it is no longer appropriate or in harmony with the *Mount*
45 *Laurel* doctrine to permit the transfer of the fair share obligations
46 among municipalities within a housing region, it is necessary and
47 appropriate to create a new program to create new affordable

1 housing and to foster the rehabilitation of existing, but substandard,
2 housing.

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

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

16 i. Certain amendments to the enabling act of the Council on
17 Affordable Housing are necessary to provide guidance to the
18 council to ensure consistency with the legislative intent, while at the
19 same time clarifying the limitations of the council in its rulemaking.
20 Although the court has remarked in several decisions that the
21 Legislature has granted the council considerable deference in its
22 rulemaking, the Legislature retains its power and obligation to
23 clarify and amend the enabling act from which the council derives
24 its rulemaking power, from time to time, in order to better guide the
25 council.

26 j. The Legislature finds that the use of regional contribution
27 agreements, which permits municipalities to transfer a certain
28 portion of their fair share housing obligation outside of the
29 municipal borders, should no longer be utilized as a mechanism for
30 the creation of affordable housing by the council.

31 (cf: P.L.1985, c.222, s.2)

32

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

35 4. As used in this act:

36 a. "Council" means the Council on Affordable Housing
37 established in this act, which shall have primary jurisdiction for the
38 administration of housing obligations in accordance with sound
39 regional planning considerations in this State.

40 b. "Housing region" means a geographic area of not less than
41 two nor more than four contiguous, whole counties which exhibit
42 significant social, economic and income similarities, and which
43 constitute to the greatest extent practicable the primary metropolitan
44 statistical areas as last defined by the United States Census Bureau
45 prior to the effective date of **[this act]** P.L.1985, c.222 (C.52:27D-
46 301 et al.).

- 1 c. "Low income housing" means housing affordable according
2 to federal Department of Housing and Urban Development or other
3 recognized standards for home ownership and rental costs and
4 occupied or reserved for occupancy by households with a gross
5 household income equal to 50% or less of the median gross
6 household income for households of the same size within the
7 housing region in which the housing is located.
- 8 d. "Moderate income housing" means housing affordable
9 according to federal Department of Housing and Urban
10 Development or other recognized standards for home ownership
11 and rental costs and occupied or reserved for occupancy by
12 households with a gross household income equal to more than 50%
13 but less than 80% of the median gross household income for
14 households of the same size within the housing region in which the
15 housing is located.
- 16 e. "Resolution of participation" means a resolution adopted by
17 a municipality in which the municipality chooses to prepare a fair
18 share plan and housing element in accordance with this act.
- 19 f. "Inclusionary development" means a residential housing
20 development in which a substantial percentage of the housing units
21 are provided for a reasonable income range of low and moderate
22 income households.
- 23 g. "Conversion" means the conversion of existing commercial,
24 industrial, or residential structures for low and moderate income
25 housing purposes where a substantial percentage of the housing
26 units are provided for a reasonable income range of low and
27 moderate income households.
- 28 h. "Development" means any development for which
29 permission may be required pursuant to the "Municipal Land Use
30 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 31 i. "Agency" means the New Jersey Mortgage and Housing
32 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
33 seq.).
- 34 j. "Prospective need" means a projection of housing needs
35 based on development and growth which is reasonably likely to
36 occur in a region or a municipality, as the case may be, as a result
37 of actual determination of public and private entities. In
38 determining prospective need, consideration shall be given to
39 approvals of development applications, real property transfers and
40 economic projections prepared by the State Planning Commission
41 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-
42 196 et seq.).
- 43 k. "Disabled person" means a person with a physical disability,
44 infirmity, malformation or disfigurement which is caused by bodily
45 injury, birth defect, aging or illness including epilepsy and other
46 seizure disorders, and which shall include, but not be limited to, any
47 degree of paralysis, amputation, lack of physical coordination,

1 blindness or visual impediment, deafness or hearing impediment,
2 muteness or speech impediment or physical reliance on a service or
3 guide dog, wheelchair, or other remedial appliance or device.

4 l. "Adaptable" means constructed in compliance with the
5 technical design standards of the barrier free subcode adopted by
6 the Commissioner of Community Affairs pursuant to the "State
7 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
8 et seq.) and in accordance with the provisions of section 5 of
9 P.L.2005, c.350 (C.52:27D-123.15).

10 m. "Very low income housing" means housing affordable
11 according to federal Department of Housing and Urban
12 Development or other recognized standards for home ownership
13 and rental costs and occupied or reserved for occupancy by
14 households with a gross household income equal to 30% or less of
15 the median gross household income for households of the same size
16 within the housing region in which the housing is located.

17 (cf: P.L.2005, c.350, s.2)

18

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

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

25 a. Determine housing regions of the State;

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

28 c. Adopt criteria and guidelines for:

29 (1) Municipal determination of its present and prospective fair
30 share of the housing need in a given region which shall be
31 computed for a 10-year period.

32 Municipal fair share shall be determined after crediting on a one-
33 to-one basis each current unit of low and moderate income housing
34 of adequate standard, including any such housing constructed or
35 acquired as part of a housing program specifically intended to
36 provide housing for low and moderate income households.
37 Notwithstanding any other law to the contrary, a municipality shall
38 be entitled to a credit for a unit if it demonstrates that (a) the
39 municipality issued a certificate of occupancy for the unit, which
40 was either newly constructed or rehabilitated between April 1, 1980
41 and December 15, 1986; (b) a construction code official certifies,
42 based upon a visual exterior survey, that the unit is in compliance
43 with pertinent construction code standards with respect to structural
44 elements, roofing, siding, doors and windows; (c) the household
45 occupying the unit certifies in writing, under penalty of perjury, that
46 it receives no greater income than that established pursuant to
47 section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for
48 moderate income housing; and (d) the unit for which credit is

1 sought is affordable to low and moderate income households under
2 the standards established by the council at the time of filing of the
3 petition for substantive certification. It shall be sufficient if the
4 certification required in subparagraph (c) is signed by one member
5 of the household. A certification submitted pursuant to this
6 paragraph shall be reviewable only by the council or its staff and
7 shall not be a public record;

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

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

27 (a) The preservation of historically or important architecture and
28 sites and their environs or environmentally sensitive lands may be
29 jeopardized,

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

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

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

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

39 (f) Vacant and developable land is not available in the
40 municipality, and

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

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

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

1 e. In its discretion, place a limit, based on a percentage of
2 existing housing stock in a municipality and any other criteria
3 including employment opportunities which the council deems
4 appropriate, upon the aggregate number of units which may be
5 allocated to a municipality as its fair share of the region's present
6 and prospective need for low and moderate income housing. No
7 municipality shall be required to address a fair share of housing
8 units affordable to households with a gross household income of
9 less than 80% of the median gross household income beyond 1,000
10 units within ten years from the grant of substantive certification,
11 unless it is demonstrated, following objection by an interested party
12 and an evidentiary hearing, based upon the facts and circumstances
13 of the affected municipality that it is likely that the municipality
14 through its zoning powers could create a realistic opportunity for
15 more than 1,000 low and moderate income units within that ten-
16 year period. For the purposes of this section, the facts and
17 circumstances which shall determine whether a municipality's fair
18 share shall exceed 1,000 units, as provided above, shall be a finding
19 that the municipality has issued more than 5,000 certificates of
20 occupancy for residential units in the ten-year period preceding the
21 petition for substantive certification in connection with which the
22 objection was filed.

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

32 The council, with respect to any municipality seeking substantive
33 certification, shall require that a minimum percentage of housing
34 units in any residential development resulting from a zoning change
35 made to a previously non-residentially-zoned property, where the
36 change in zoning precedes or follows the application for residential
37 development by no more than 24 months, be reserved for occupancy
38 by low or moderate income households, which percentage shall be
39 determined by the council based on economic feasibility with
40 consideration for the proposed density of development.

41 In carrying out the above duties, including, but not limited to,
42 present and prospective need estimations the council shall give
43 appropriate weight to pertinent research studies, government
44 reports, decisions of other branches of government, implementation
45 of the State Development and Redevelopment Plan prepared
46 pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196
47 et seq.) and public comment. To assist the council, the State

1 Planning Commission established under that act shall provide the
2 council annually with economic growth, development and decline
3 projections for each housing region for the next ten years. The
4 council shall develop procedures for periodically adjusting regional
5 need based upon the low and moderate income housing that is
6 provided in the region through any federal, State, municipal or
7 private housing program.

8 No housing unit subject to the provisions of section 5 of
9 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the
10 barrier free subcode adopted by the Commissioner of Community
11 Affairs pursuant to the "State Uniform Construction Code Act,"
12 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for
13 inclusion in the municipal fair share plan certified by the council
14 unless the unit complies with the requirements set forth thereunder.
15 (cf: P.L.2005, c.350, s.4)

16

17 7. (New section) The council shall coordinate and review the
18 housing elements as filed pursuant to section 11 of P.L.1985, c.222,
19 (C.52:27D-311), and the housing activities under section 20 of
20 P.L.1985, c.222 (C.52:27D-320), at least once every three years, to
21 ensure that at least 13 percent of the housing units made available
22 for occupancy by low-income and moderate income households will
23 be reserved for occupancy by very low income households, as that
24 term is defined pursuant to section 4 of P.L.1985, c.222, (C.52:27D-
25 304). Nothing in this section shall require that a specific percentage
26 of the units in any specific project be reserved as very low income
27 housing; provided, however, that a municipality shall not receive
28 bonus credits for the provision of housing units reserved for
29 occupancy by very low income households unless the 13 percent
30 target has been exceeded within that municipality. The council
31 shall coordinate all efforts to meet the goal of this section in a
32 manner that will result in a balanced number of housing units being
33 reserved for very low income households throughout all housing
34 regions. For the purposes of this section, housing activities under
35 section 20 of P.L.1985, c.222 (C.52:27D-320) shall include any
36 project-based assistance provided from the "New Jersey Affordable
37 Housing Trust Fund" pursuant to P.L.2004, c.140 (C.52:27D-287.1
38 et seq.), regardless of whether the housing activity is counted
39 toward the municipal obligation under the "Fair Housing Act,"
40 P.L.1985, c.222 (C.52:27D-301 et al.).

41

42 8. (New section) a. The council may authorize a municipality
43 that has petitioned for substantive certification, or that has been so
44 authorized by a court of competent jurisdiction, and which has
45 adopted a municipal development fee ordinance to impose and
46 collect development fees from developers of residential property, in
47 accordance with rules promulgated by the council. Each amount

1 collected shall be deposited and shall be accounted for separately,
2 by payer and date of deposit.

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

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

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

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

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

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

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

45 (4) Municipalities may contract with a private or public entity to
46 administer any part of its housing element and fair share plan,
47 including the requirement for affordability assistance, or any

1 program or activity for which the municipality expends
2 development fee proceeds, in accordance with rules of the council.

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

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

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

24 This section shall not apply to the collection of a Statewide
25 development fee imposed upon non-residential development
26 pursuant to sections 32 through 38 of P.L. , c. (C.) (pending
27 before the Legislature as this bill) by the State Treasurer, when such
28 collection is not authorized to be retained by a municipality.

29
30 9. (New section) a. The council may authorize a municipality
31 that has petitioned for substantive certification to impose and
32 collect payments-in-lieu of constructing affordable units on site
33 upon the construction of residential development, which payments
34 may be imposed and collected as provided pursuant to the rules of
35 the council. Payment-in-lieu fees shall be deposited into a trust
36 fund, and accounted for separately from any other fees collected by
37 a municipality. Whenever a payment-in-lieu is charged by a
38 municipality pursuant to this subsection, a development fee
39 authorized pursuant to section 8 of P.L. , c. (C.) (pending
40 before the Legislature as this bill) shall not be charged in
41 connection with the same development.

42 b. A municipality shall commit to expend collections from
43 payments-in-lieu imposed pursuant to subsection a. of this section
44 within four years of the date of collection. The council may extend
45 this deadline if the municipality submits sufficient proof of building
46 or other permits, or other efforts concerning land acquisition or
47 project development. The council shall provide such administrative

1 assistance as may be required to aid in the construction of
2 affordable housing units. A municipality that fails to commit to
3 expend the amounts collected pursuant to this section within the
4 timeframes established shall be required to transfer any unexpended
5 revenue collected pursuant to subsection a. of this section to the
6 "New Jersey Affordable Housing Trust Fund," established pursuant
7 to section 20 of P.L.1985, c.222 (C.52:27D-320), to be used within
8 the same housing region for the authorized purposes of that fund, in
9 accordance with regulations promulgated by the council.

10
11 10. (New section) The council shall maintain on its website,
12 and also publish on a regular basis, an up-to-date municipal status
13 report concerning the petitions for substantive certification of each
14 municipality that has submitted to the council's jurisdiction, and
15 shall collect and publish information concerning the number of
16 housing units actually constructed, construction starts, certificates
17 of occupancy granted, rental units maintained, and the number of
18 housing units transferred or sold within the previous 12-month
19 period. With respect to units actually constructed, the information
20 shall specify the characteristics of the housing, including housing
21 type, tenure, affordability level, number of bedrooms, and whether
22 occupancy is reserved for families, senior citizens, or other special
23 populations. No later than 60 months after the effective date of
24 P.L. , c. (C.) (pending before the Legislature as this bill), the
25 council shall require each municipality, as a condition of
26 substantive certification, to provide, in a standardized electronic
27 media format as determined by the council, the details of the fair
28 share plan as adopted by the municipality and approved by the
29 council. The council shall publish and maintain such approved
30 plans on its website.

31
32 11. (New section) Sections 11 through 14 of P.L. , c. (C.)
33 (pending before the Legislature as this bill) shall be known and may
34 be cited as the "Housing Rehabilitation and Assistance Program
35 Act."

36
37 12. (New section) The Legislature finds and declares that:

38 a. The transfer of a portion of the fair share obligations among
39 municipalities has proven to not be a viable method of ensuring that
40 an adequate supply and variety of housing choices are provided in
41 municipalities experiencing growth. Therefore, the use of a
42 regional contribution agreement shall no longer be permitted under
43 P.L.1985, c.222 (C.52:27D-301 et al.).

44 b. Although the elimination of the regional contribution
45 agreement as a tool for the production of affordable housing
46 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), will impact on
47 some proposed agreements awaiting approval, it is for a public

1 purpose and for the public good that such contracts be declared void
2 for the current and future housing obligation rounds.

3 c. There is a need to assist municipalities in the rehabilitation
4 of housing for occupancy by low and moderate income households.
5 To this end, a specific program for housing rehabilitation by
6 municipalities would best serve this need. It is the intent of the
7 Legislature that this program, as well as funds earmarked for the
8 purposes of the program, will be utilized, especially in urban areas
9 which were the main recipients of regional contribution agreements,
10 to continue to upgrade housing stock in order to provide a wide
11 variety and choice of housing for persons living in those areas.

12 d. There is also a need to provide funding to municipalities to
13 create additional incentives and assistance for the production of
14 safe, decent, and affordable rental and other housing.

15

16 13. (New section) a. There is established within the
17 Department of Community Affairs an Urban Housing Assistance
18 Program for the purposes of assisting certain municipalities in the
19 provision of housing through the rehabilitation of existing buildings
20 or the construction of affordable housing.

21 b. Within the program there shall be established a trust fund to
22 be known as the "Urban Housing Assistance Fund," into which may
23 be deposited:

24 (1) monies which may be available to the fund from any other
25 programs established for the purposes of housing rehabilitation,
26 other than monies from the "New Jersey Affordable Housing Trust
27 Fund," established pursuant to section 20 of P.L.1985, c.222
28 (C.52:27D-320);

29 (2) monies appropriated by the Legislature to the fund; and

30 (3) any other funds made available through State or federal
31 housing programs for the purposes of producing affordable housing,
32 other than monies from the "New Jersey Affordable Housing Trust
33 Fund," established pursuant to section 20 of P.L.1985, c.222
34 (C.52:27D-320).

35 c. The Commissioner of Community Affairs shall develop a
36 strategic five-year plan for the program aimed at developing
37 strategies to assist municipalities in creating rehabilitation programs
38 and other programs to produce safe, decent housing within the
39 municipality.

40 d. The commissioner may award a housing rehabilitation grant
41 to a municipality that qualifies for aid pursuant to P.L.1978, c.14
42 (C.52:27D-178 et seq.) and that has submitted a valid application to
43 the Department of Community Affairs which details the manner in
44 which the municipality will utilize funding in order to meet the
45 municipality's need to rehabilitate or create safe, decent, and
46 affordable housing.

1 e. The commissioner shall promulgate rules and regulations,
2 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
3 (C.52:14B-1 et seq.), to effectuate the purposes of P.L. , c. (C.)
4 (pending before the Legislature as this bill); provided that the
5 regulations shall permit a municipality broad discretion in shaping
6 its housing rehabilitation and construction program, but shall not
7 permit a municipality to provide assistance to any household having
8 an income greater than 120% of median household income for the
9 housing region. The department may require a return of a grant
10 upon its determination that a municipality is not performing in
11 accordance with its grant or with the regulations.

12

13 14. (New section) a. There shall be appropriated annually from
14 the amounts collected by the State Treasurer from the imposition of
15 Statewide non-residential development fees and retained by the
16 State pursuant to P.L. , c. (C.) (pending before the
17 Legislature as this bill), the sum of \$20,000,000 for deposit into the
18 "Urban Housing Assistance Fund," established pursuant to section
19 13 of P.L. , c. (C.) (pending before the Legislature as this
20 bill), to be used for the purposes authorized under that section. Any
21 surplus amounts remaining after crediting the "Urban Housing
22 Assistance Fund," in the amount required under this section from
23 the collection of Statewide non-residential development fees, shall
24 be annually appropriated to the "New Jersey Affordable Housing
25 Trust Fund," established pursuant to section 20 of P.L.1985, c.222
26 (C.52:27D-320).

27 b. In the event the full amount required to be transferred
28 pursuant to subsection a. of this section is not transferred in any
29 fiscal year, the Legislature shall subsequently appropriate in the
30 same fiscal year from the General Fund an amount equal to the
31 difference between the amount actually transferred and the amount
32 required to be transferred pursuant to subsection a. of this section,
33 so that the total funds made available to the "Urban Housing
34 Assistance Fund" annually shall be equal to the amount established
35 pursuant to subsection a. of this section.

36

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

39 11. a. In adopting its housing element, the municipality may
40 provide for its fair share of low and moderate income housing by
41 means of any technique or combination of techniques which provide
42 a realistic opportunity for the provision of the fair share. The
43 housing element shall contain an analysis demonstrating that it will
44 provide such a realistic opportunity, and the municipality shall
45 establish that its land use and other relevant ordinances have been
46 revised to incorporate the provisions for low and moderate income
47 housing. In preparing the housing element, the municipality shall

1 consider the following techniques for providing low and moderate
2 income housing within the municipality, as well as such other
3 techniques as may be published by the council or proposed by the
4 municipality:

5 (1) Rezoning for densities necessary to assure the economic
6 viability of any inclusionary developments, either through
7 mandatory set-asides or density bonuses, as may be necessary to
8 meet all or part of the municipality's fair share in accordance with
9 the regulations of the council and the provision of subsection h. of
10 this section;

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

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

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

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

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

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

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

30 (9) The purchase of privately owned real property used for
31 residential purposes at the value of all liens secured by the property;
32 excluding any tax liens, notwithstanding that the total amount of
33 debt secured by liens exceeds the appraised value of the property,
34 pursuant to regulations promulgated by the Commissioner of
35 Community Affairs pursuant to subsection b. of section 41 of
36 P.L.2001, c.126 (C.52:27D-311.2).

37 b. The municipality may provide for a phasing schedule for the
38 achievement of its fair share of low and moderate income housing.

39 c. **【**The municipality may propose that a portion of its fair share
40 be met through a regional contribution agreement. The housing
41 element shall demonstrate, however, the manner in which that
42 portion will be provided within the municipality if the regional
43 contribution agreement is not entered into. The municipality shall
44 provide a statement of its reasons for the proposal.**】** (Deleted by
45 amendment, P.L. _____, c. _____.) (pending before the Legislature as
46 this bill)

1 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall require
2 a municipality to raise or expend municipal revenues in order to
3 provide low and moderate income housing.

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

14 f. It having been determined by the Legislature that the
15 provision of housing under **[this act]** P.L.1985, c.222 (C.52:27D-
16 301 et al.) is a public purpose, a municipality or municipalities may
17 utilize public monies to make donations, grants or loans of public
18 funds for the rehabilitation of deficient housing units and the
19 provision of new or substantially rehabilitated housing for low and
20 moderate persons, providing that any private advantage is
21 incidental.

22 g. A municipality which has received substantive certification
23 from the council, and which has actually effected the construction
24 of the affordable housing units it is obligated to provide, may
25 amend its affordable housing element or zoning ordinances without
26 the approval of the council.

27 h. Whenever affordable housing units are proposed to be
28 provided through an inclusionary development, a municipality shall
29 provide, through its zoning powers, incentives to the developer,
30 which shall include increased densities and reduced costs, in
31 accordance with the regulations of the council and this subsection.

32 i. The council, upon the application of a municipality and a
33 developer, may approve reduced affordable housing set-asides or
34 increased densities to ensure the economic feasibility of an
35 inclusionary development.

36 (cf: P.L.2001, c.441, s.1)

37
38 16. Section 12 of P.L.1985, c.222 (52:27D-312) is amended to
39 read as follows:

40 12. a. **[A]** Except as prohibited under P.L. , c. (C.)
41 (pending before the Legislature as this bill), a municipality may
42 propose the transfer of up to 50% of its fair share to another
43 municipality within its housing region by means of a contractual
44 agreement into which two municipalities voluntarily enter. A
45 municipality may also propose a transfer by contracting with the
46 agency or another governmental entity designated by the council if
47 the council determines that the municipality has exhausted all

1 possibilities within its housing region. A municipality proposing to
2 transfer to another municipality, whether directly or by means of a
3 contract with the agency or another governmental entity designated
4 by the council, shall provide the council with the housing element
5 and statement required under subsection c. of section 11 of
6 P.L.1985, c.222 (C.52:27D-311), and shall request the council to
7 determine a match with a municipality filing a statement of intent
8 pursuant to subsection e. of this section. Except as provided in
9 subsection b. of this section, the agreement may be entered into
10 upon obtaining substantive certification under section 14 of
11 P.L.1985, c.222 (C.52:27D-314), or anytime thereafter. The
12 regional contribution agreement entered into shall specify how the
13 housing shall be provided by the second municipality, hereinafter
14 the receiving municipality, and the amount of contributions to be
15 made by the first municipality, hereinafter the sending municipality.

16 b. A municipality which is a defendant in an exclusionary
17 zoning suit and which has not obtained substantive certification
18 pursuant to P.L.1985, c.222 may request the court to be permitted to
19 fulfill a portion of its fair share by entering into a regional
20 contribution agreement. If the court believes the request to be
21 reasonable, the court shall request the council to review the
22 proposed agreement and to determine a match with a receiving
23 municipality or municipalities pursuant to this section. The court
24 may establish time limitations for the council's review, and shall
25 retain jurisdiction over the matter during the period of council
26 review. If the court determines that the agreement provides a
27 realistic opportunity for the provision of low and moderate income
28 housing within the housing region, it shall provide the sending
29 municipality a credit against its fair share for housing to be
30 provided through the agreement in the manner provided in this
31 section. The agreement shall be entered into prior to the entry of a
32 final judgment in the litigation. In cases in which a final judgment
33 was entered prior to the date P.L.1985, c.222 takes effect and in
34 which an appeal is pending, a municipality may request
35 consideration of a regional contribution agreement; provided that it
36 is entered into within 120 days after P.L.1985, c.222 takes effect.
37 In a case in which a final judgment has been entered, the court shall
38 consider whether or not the agreement constitutes an expeditious
39 means of providing part of the fair share. Notwithstanding this
40 subsection, no consideration shall be given to any regional
41 contribution agreement of which the council did not complete its
42 review and formally approve a recommendation to the court prior to
43 the effective date of P.L. , c. (C.) (pending before the
44 Legislature as this bill).

45 c. **[Regional]** Except as prohibited under P.L. , c. (C.)
46 (pending before the Legislature as this bill), regional contribution
47 agreements shall be approved by the council, after review by the

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

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

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

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

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

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

34 No consideration shall be given to any regional contribution
35 agreement for which the council did not complete its review and
36 grant approval prior to the effective date of P.L. , c. (C.)
37 (pending before the Legislature as this bill). On or after the
38 effective date of P.L. , c. (C.) (pending before the
39 Legislature as this bill), no regional contribution agreement shall be
40 entered into by a municipality, or approved by the council or the
41 court.

42 (cf: P.L.2001, c.435, s.4)

43
44 17. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended
45 to read as follows:

46 20. **[**The Neighborhood Preservation Program within the
47 Department of Community Affairs' Division of Housing and

1 Development, established pursuant to the Commissioner of
2 Community Affairs' authority under section 8 of P.L.1975, c.248
3 (C.52:27D-149), shall establish a separate Neighborhood
4 Preservation Nonlapsing Revolving Fund for monies appropriated
5 by section 33 of P.L.1985, c.222, or other monies as may be
6 appropriated by the Legislature for the purposes of the fund.】

7 There is established in the Department of Community Affairs a
8 separate trust fund, to be used for the exclusive purposes as
9 provided in this section, and which shall be known as the “New
10 Jersey Affordable Housing Trust Fund.” The fund shall be a non-
11 lapsing, revolving trust fund, and all monies deposited or received
12 for purposes of the fund shall be accounted for separately, by source
13 and amount, and remain in the fund until appropriated for such
14 purposes. The fund shall be the repository of all State funds
15 appropriated for affordable housing purposes, including the
16 proceeds from the receipts of the additional fee collected pursuant
17 to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49
18 (C.46:15-7), proceeds from available receipts of the Statewide non-
19 residential development fees collected pursuant to section 35 of
20 P.L. , c. (C.) (pending before the Legislature as this bill),
21 monies lapsing or reverting from municipal development trust
22 funds, or other monies as may be dedicated, earmarked, or
23 appropriated by the Legislature for the purposes of the fund. All
24 references in any law, order, rule, regulation, contract, loan,
25 document, or otherwise, to the “Neighborhood Preservation
26 Nonlapsing Revolving Fund” shall mean the “New Jersey
27 Affordable Housing Trust Fund.” The department shall be
28 permitted to utilize annually up to 7.5 percent of the monies
29 available in the fund for the payment of any necessary
30 administrative costs related to the administration of the “Fair
31 Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.), the State
32 Housing Commission, or any costs related to administration of
33 P.L. , c. (C.) (pending before the Legislature as this bill).

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

44 Of those monies deposited into the “New Jersey Affordable
45 Housing Trust Fund” that are derived from municipal development
46 fee trust funds, or from available collections of Statewide non-
47 residential development fees, a priority for funding shall be

1 established for projects in municipalities that have petitioned the
2 council for substantive certification.

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

6 b. The commissioner shall establish rules and regulations
7 governing the qualifications of applicants, the application
8 procedures, and the criteria for awarding grants and loans and the
9 standards for establishing the amount, terms and conditions of each
10 grant or loan.

11 c. **[During the first 12 months from the effective date of**
12 **P.L.1985, c.222 (C.52:27D-301 et al.) and for]** For any
13 **[additional]** period which the council may approve, the
14 commissioner may assist affordable housing programs which are
15 not located in municipalities whose housing elements have been
16 granted substantive certification or which are not in furtherance of a
17 regional contribution agreement; provided that the affordable
18 housing program will meet all or part of a municipal low and
19 moderate income housing obligation.

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

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

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

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

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

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

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

1 be retained in a safe, decent and sanitary manner, upon completion
2 of rehabilitation or restoration; and

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

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

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

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

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

17 (cf: P.L.2004, c.140, s.4)

18
19 18. (New section) a. Notwithstanding any rules of the council
20 to the contrary, for developments consisting of newly-constructed
21 residential units located, or to be located, within the jurisdiction of
22 any regional planning entity required to adopt a master plan or
23 comprehensive management plan pursuant to statutory law,
24 including the New Jersey Meadowlands Commission pursuant to
25 subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6), the
26 Pinelands Commission pursuant to section 7 of the "Pinelands
27 Protection Act," P.L.1979, c.111 (C.13:18A-8), the Fort Monmouth
28 Economic Revitalization Planning Authority pursuant to section 5
29 of P.L.2006, c.16 (C.52:27I-5), or its successor, and the Highlands
30 Water Protection and Planning Council pursuant to section 11 of
31 P.L.2004, c.120 (C.13:20-11), but excluding joint planning boards
32 formed pursuant to section 64 of P.L.1965, c.291 (C.40:55D-77),
33 there shall be required to be reserved for occupancy by low or
34 moderate income households at least 20 percent of the residential
35 units constructed, to the extent this is economically feasible.

36 b. A developer of a project consisting of newly-constructed
37 residential units being financed in whole or in part with State funds,
38 including, but not limited to, transit villages designated by the
39 Department of Transportation, units constructed on State-owned
40 property, and urban transit hubs as defined pursuant to section 2 of
41 P.L.2007, c.346 (C.34:1B-208), shall be required to reserve at least
42 20 percent of the residential units constructed for occupancy by low
43 or moderate income households, as those terms are defined in
44 section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability
45 controls as required under the rules of the council, unless the
46 municipality in which the property is located has received
47 substantive certification from the council and such a reservation is

1 not required under the approved affordable housing plan, or the
2 municipality has been given a judgment of repose or a judgment of
3 compliance by the court, and such a reservation is not required
4 under the approved affordable housing plan.

5 c. (1) The Legislature recognizes that regional planning entities
6 are appropriately positioned to take a broader role in the planning
7 and provision of affordable housing based on regional planning
8 considerations. In recognition of the value of sound regional
9 planning, including the desire to foster economic growth, create a
10 variety and choice of housing near public transportation, protect
11 critical environmental resources, including farmland and open space
12 preservation, and maximize the use of existing infrastructure, there
13 is created a new program to foster regional planning entities.

14 (2) The regional planning entities identified in subsection a. of
15 this section shall identify and coordinate regional affordable
16 housing opportunities in cooperation with municipalities in areas
17 with convenient access to infrastructure, employment opportunities,
18 and public transportation. Coordination of affordable housing
19 opportunities may include methods to regionally provide housing in
20 line with regional concerns, such as transit needs or opportunities,
21 environmental concerns, or such other factors as the council may
22 permit; provided, however, that such provision by such a regional
23 entity may not result in more than a 50 percent change in the fair
24 share obligation of any municipality; provided that this limitation
25 shall not apply to affordable housing units directly attributable to
26 development by the New Jersey Sports and Exposition Authority
27 within the New Jersey Meadowlands District.

28 (3) In addition to the entities identified in subsection a. of this
29 section, the Casino Reinvestment Development Authority, in
30 conjunction with the Atlantic County Planning Board, shall identify
31 and coordinate regional affordable housing opportunities directly
32 attributable to Atlantic City casino development, which may be
33 provided anywhere within Atlantic County, subject to the
34 restrictions of paragraph (4) of this subsection.

35 (4) The coordination of affordable housing opportunities by
36 regional entities as identified in this section shall not include
37 activities which would provide housing units to be located in those
38 municipalities that are eligible to receive aid under the "Special
39 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or
40 are coextensive with a school district which qualified for
41 designation as a "special needs district" pursuant to the "Quality
42 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et seq.), or at
43 any time in the last 10 years has been qualified to receive assistance
44 under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the
45 jurisdiction of any of the regional entities specified in subsection a.
46 of this section.

1 19. (New section) Notwithstanding any rules of the New Jersey
2 Housing and Mortgage Finance Agency to the contrary, the
3 allocation of low income tax credits shall be made by the agency to
4 the full extent such credits are permitted to be allocated under
5 federal law, including allocations of 4 percent or 9 percent federal
6 low income tax credits, and including allocations allowable for
7 partial credits. The affordable portion of any mixed income or
8 mixed use development that is part of a fair share housing plan
9 approved by the council, or a court-approved judgment of repose or
10 compliance, including, but not limited to, a development that has
11 received a density bonus, shall be permitted to receive allocations
12 of low income tax credits, provided that the applicant can
13 conclusively demonstrate that the market rate residential or
14 commercial units are unable to internally subsidize the affordable
15 units, and the affordable units are developed contemporaneously
16 with the commercial or market rate residential units.

17
18 20. (New section) The New Jersey Housing and Mortgage
19 Finance Agency shall maintain on its website and publish annually
20 a report concerning its activities during the year in promotion of
21 affordable housing, including any activity pursuant to section 21 of
22 P.L.1985, c.222 (C.52:27D-321). The report shall detail the number
23 and amounts of grants, loans, the average loan amount made, the
24 amounts of low income tax credits allocated by the agency, by
25 location, and the number of proposed units, and any additional
26 information which the agency deems informative to the public.

27
28 21. (New section) Sections 21 through 30 of P.L. , c. (C.)
29 (pending before the Legislature as this bill) shall be known and may
30 be cited as the “Strategic Housing Plan Act.”

31
32 22. (New section) The Legislature finds that:

33 a. High housing prices, escalating property taxes, increasing
34 municipal fees, rising energy costs, and the costs to implement
35 various State rules and regulations have put housing out of the
36 reach of many citizens;

37 b. The State of New Jersey suffers from a serious lack of
38 housing affordable to its low and moderate income households,
39 reflected in the large number of households living in overcrowded
40 and substandard housing conditions, or burdened by unreasonable
41 and excessive housing costs;

42 c. As housing costs have increased in many parts of the State,
43 and the process of urban revitalization has taken hold in many of
44 the State’s cities, these problems have become more severe and
45 have come to affect a wide range of households at many income
46 levels;

- 1 d. While new housing affordable to households at all income
2 levels is urgently needed, the need to preserve existing housing
3 owned or rented by low and moderate income households, much of
4 which is at risk of loss, is also urgent;
- 5 e. The production of new housing and the preservation of the
6 existing housing stock, including but not limited to subsidized
7 affordable housing, has a significant positive impact on the health
8 and well-being of the State as a whole, in particular its older cities
9 and their neighborhoods, and should be encouraged as a matter of
10 public policy by the State government;
- 11 f. Although the State has devoted substantial public resources
12 for many years towards alleviating the housing needs of lower
13 income households, the effective use of those resources and their
14 impact on urban revitalization has been limited by inadequate
15 strategic planning in the allocation of public resources, as well as
16 inadequate coordination with and leveraging of private resources;
- 17 g. The development of a strategic housing plan that will
18 establish priorities to effectively targeted State resources should
19 significantly enhance the impact of those resources in meeting the
20 State's housing needs and fostering urban revitalization;
- 21 h. A strategic housing plan should provide for a means of
22 coordinating the activities of the many State departments and
23 agencies whose activities affect the ability of the State to meet its
24 housing needs;
- 25 i. The active involvement of individuals outside State
26 government with knowledge and experience in all phases of housing
27 preservation, development, and management, as well as planning
28 and urban revitalization, in the preparation and adoption of the plan,
29 and the monitoring of State activities pursuant to the plan, should
30 significantly enhance the value and effectiveness of the plan in
31 increasing the State's ability to meet its housing needs and foster
32 urban revitalization.
- 33
- 34 23. (New section) As used in sections 21 through 30 of P.L. ,
35 c. (C.) (pending before the Legislature as this bill):
- 36 "Agency" means the New Jersey Housing and Mortgage Finance
37 Agency.
- 38 "Commission" means the State Housing Commission established
39 pursuant to section 24 of P.L. , c. (C.) (pending before
40 the Legislature as this bill).
- 41 "Council" means the New Jersey Council on Affordable
42 Housing.
- 43 "Department" means the Department of Community Affairs.
- 44 "Middle income housing" means housing affordable according to
45 federal Department of Housing and Urban Development or other
46 recognized standards for home ownership and rental costs and
47 occupied or reserved for occupancy by households with a gross

1 household income equal to or more than 80% but less than 120% of
2 the median gross household income for households of the same size
3 within the housing region in which the housing is located.

4 “Plan” means the Annual Strategic Housing Plan prepared
5 pursuant to section 27 of P.L. , c. (C.) (pending before
6 the Legislature as this bill).

7 “Report” means the Annual Housing Performance Report
8 required to be prepared pursuant to section 29 of P.L. , c.
9 (C.) (pending before the Legislature as this bill).

10 “Senior Deputy Commissioner for Housing” means the position
11 established within the department which is charged with overseeing
12 all housing programs.

13 “Working group” means the interdepartmental working group
14 created pursuant to section 26 of P.L. , c. (C.) (pending
15 before the Legislature as this bill).

16

17 24. (New section) a. The State Housing Commission is created
18 and established in the Executive Branch of the State Government.
19 For the purposes of complying with the provisions of Article V,
20 Section IV, paragraph 1 of the New Jersey Constitution, the
21 commission is allocated within the Department of Community
22 Affairs, but notwithstanding this allocation, the commission shall be
23 independent of any supervision or control by the department except
24 as expressly authorized under P.L. , c. (C.) (pending
25 before the Legislature as this bill). The commission shall consist of
26 15 public members and shall also include the Commissioner of
27 Community Affairs, the Commissioner of Environmental
28 Protection, the Commissioner of Human Services, the
29 Commissioner of Transportation, the Commissioner of Education,
30 the Chairman of the State Planning Commission, and the State
31 Treasurer, who shall be nonvoting, ex-officio members of the
32 commission. The non-public members may each designate a
33 qualified employee to serve in their stead.

34 Thirteen of the public members shall be appointed by the
35 Governor with the advice and consent of the Senate as follows:
36 four members shall be individuals qualified by expertise in housing
37 preservation, development, and management and who do not hold
38 public office or public employment, and one of the four shall have
39 particular experience in addressing the needs of the homeless; two
40 of the four members shall be individuals qualified by expertise in
41 urban revitalization and redevelopment and who do not hold public
42 office, one of whom shall be a nonprofit builder, and another
43 member of the four shall be a for-profit developer; two members
44 shall be elected local officials at the time of initial appointment, one
45 of whom shall be an elected official in a municipality having a
46 population greater than 50,000; two members shall be individuals
47 who do not hold public office and are qualified by their position and

1 experience to represent the interests of low and moderate income
2 and middle income families and individuals; one member shall be
3 an individual who does not hold public office and who is qualified
4 by expertise in planning and land use, one member who does not
5 hold public office shall be a licensed real estate broker or a licensed
6 real estate salesperson, and one member who shall be an executive
7 director of a public housing authority within the State. Two
8 additional public members who do not hold public office or public
9 employment shall be appointed as follows: one member by the
10 Speaker of the General Assembly and one member by the President
11 of the Senate. The public members of the commission shall reflect
12 the diversity of housing sector professionals.

13 b. The Governor shall nominate 13 public members of the
14 commission, within 90 days following the effective date of P.L. ,
15 c. (C.) (pending before the Legislature as this bill), and shall
16 designate a public member to preside over the commission until a
17 chair and vice-chair are elected by the members of the commission.
18 The Speaker of the General Assembly and the President of the
19 Senate shall each appoint a member, respectively, within 90 days
20 following the effective date of P.L. , c. (C.) (pending before
21 the Legislature as this bill).

22 c. Each public member of the commission shall serve for a
23 term of three years, except that of the initial members so appointed:
24 three members appointed by the Governor shall serve for terms of
25 one year; one member appointed by the President of the Senate, one
26 member appointed by the Speaker of the General Assembly and five
27 members appointed by the Governor shall serve for terms of two
28 years; and the remaining appointees shall serve for terms of three
29 years. Public members shall be eligible for reappointment. They
30 shall serve until their successors are appointed and qualified, and
31 the term of the successor of any incumbent shall be calculated from
32 the expiration of the term of that incumbent. A vacancy occurring
33 other than by expiration of term shall be filled in the same manner
34 as the original appointment, but for the unexpired term only.

35 The members of the commission shall serve without
36 compensation, but shall be entitled to reimbursement for all
37 necessary expenses incurred in the performance of their duties.
38 Each member of the commission may be removed from office by
39 the Governor, for cause, upon notice and opportunity to be heard.

40 d. The commission shall elect annually a chair and vice-chair
41 from among the public members of the commission, who shall serve
42 for one year and until a successor is elected.

43 e. The executive secretary of the commission shall be the
44 Senior Deputy Commissioner for Housing. In the event the
45 commissioner designates the Senior Deputy Commissioner for
46 Housing to serve in his or her stead as a member of the commission,
47 the Senior Deputy Commissioner for Housing shall designate a

1 qualified employee of the department to serve as executive
2 secretary of the commission. Eight of the voting members of the
3 commission shall constitute a quorum and a vote of the majority of
4 the members present shall be necessary for any action taken by the
5 commission.

6 f. The duties of the commission shall be as follows:

7 (1) To provide guidance and direction with respect to the
8 policies and strategies to be pursued by State agencies with respect
9 to housing which are incorporated into the plan.

10 (2) To prepare and adopt the Annual Strategic Housing Plan as
11 set forth in section 28 of P.L. , c. (C.) (pending before the
12 Legislature as this bill).

13 (3) To hold such public hearings and other activities as may be
14 desirable to ensure adequate public input into the preparation of the
15 plan and increase public awareness of the strategies and activities
16 contained in the plan.

17 (4) To gather and disseminate such information on housing
18 needs and strategies as may be useful for the work of the
19 commission and informative to the public.

20

21 25. (New section) The department shall provide such staff
22 services as may be needed for the commission to carry out its
23 responsibilities, including assembly of necessary information and
24 statistics, preparation of draft reports and analyses, and preparation
25 of the draft plan for review by the members of the commission,
26 acting under the supervision of the Senior Deputy Commissioner
27 for Housing.

28

29 26. (New section) a. An interdepartmental working group is
30 established for the purpose of supporting the activities of the
31 commission and its preparation of the draft plan.

32 b. The membership of the working group shall consist of the
33 commissioners or executive directors of the following departments
34 or agencies of State government: the Department of Community
35 Affairs, the Council on Affordable Housing, the New Jersey
36 Housing and Mortgage Finance Agency, the Department of Human
37 Services, the Department of Children and Families, the Department
38 of Health and Senior Services, the Public Advocate, the Department
39 of Education, the Department of Environmental Protection, the
40 Department of Transportation, the Office of Smart Growth, the
41 Department of the Treasury, the Highlands Council, the Pinelands
42 Commission, and the New Jersey Meadowlands Commission.

43 c. The Commissioner of Community Affairs may appoint the
44 Senior Deputy Commissioner for Housing as his or her
45 representative to serve on the working group.

46 d. Each other commissioner or executive director may appoint
47 a representative to serve on the working group, who shall be a

1 senior employee of the department or agency with substantial
2 background, experience, or training relevant to the mission of the
3 working group.

4 e. The working group shall be chaired by the Commissioner of
5 Community Affairs or by the Senior Deputy Commissioner for
6 Housing as the commissioner's designee, if so appointed.

7 f. Meetings of the working group shall be called by the chair as
8 needed during the course of preparation of the plan or the annual
9 performance report.

10 g. Each department or agency constituting the working group
11 shall make available such personnel and information as may be
12 necessary to enable the working group to perform its
13 responsibilities.

14

15 27. (New section) a. It shall be the duty of the commission
16 annually to prepare and adopt an Annual Strategic Housing Plan as
17 set forth in this section.

18 The objectives of the plan shall be as follows:

19 (1) To ensure that quality housing for people of all income
20 levels is made available throughout the State of New Jersey.

21 (2) To overcome the shortage of housing affordable to low,
22 moderate, and middle income households, in order to ensure the
23 viability of New Jersey's communities and maintain the State's
24 economic strength.

25 (3) To meet the need for safe and accessible affordable housing
26 and supportive services for people with disabilities.

27 (4) To foster a full range of quality housing choices for people
28 of diverse incomes through mixed income development in urban
29 areas and in locations appropriate for growth, including transit hubs
30 and corridors, and areas of job concentration.

31 (5) To address the needs of communities that have been
32 historically underserved and segregated due to barriers and trends in
33 the housing market, and frame strategies to address the needs of
34 those communities.

35 (6) To facilitate the preservation of existing affordable rental
36 housing, including both subsidized and private market rental
37 housing.

38 (7) To further the preservation of low and moderate income and
39 middle income homeownership, including strategies to protect
40 lower income homeowners from the loss of their homes through
41 foreclosure.

42 b. In addressing these objectives, the plan shall explicitly take
43 into consideration the needs of the following distinct populations:

44 (1) Households earning below 50% of the area median income,
45 with particular emphasis on households earning less than 30% of
46 the area median income;

47 (2) Low income senior citizens of 62 years of age or older;

- 1 (3) Low income persons with disabilities, including but not
2 limited to physical disability, developmental disability, mental
3 illness, co-occurring mental illness and substance abuse disorder,
4 and HIV/AIDS;
 - 5 (4) Homeless persons and families, and persons deemed at high
6 risk of homelessness;
 - 7 (5) Low and moderate income and middle income households
8 unable to find housing near work or transportation;
 - 9 (6) Low and moderate income and middle income persons and
10 families in existing affordable housing that is at risk of becoming
11 unaffordable or being lost for any reason;
 - 12 (7) Any other part of the population that the commission finds
13 to have significant housing needs, either Statewide or in particular
14 areas of the State.
- 15 c. The plan shall include, but not be limited to, the following:
- 16 (1) The identification of all funds which any agency or
17 department of the State controls and uses for housing construction,
18 rehabilitation, preservation, operating or rental subsidies and
19 supportive services, including bond proceeds, the allocation of
20 federal Low Income Housing Tax Credits, and the use of
21 administrative funds by the agency or the department;
 - 22 (2) Goals for the number and type of housing units to be
23 constructed, rehabilitated, or preserved each year for the
24 underserved populations identified in subsection b. of this section,
25 taking into account realistic assessments of financial resources and
26 delivery capacity survey, and shall include an assessment aimed at
27 identifying and estimating the number of substandard housing units
28 within the State;
 - 29 (3) Specific recommendations for the manner in which all funds
30 identified in paragraph (1) of this subsection should be prioritized
31 and used, either through new construction, rehabilitation,
32 preservation, rental subsidies, or other activities, to address the
33 needs of the underserved populations set forth in subsection b. of
34 this section;
 - 35 (4) Specific actions needed to ensure the integrated use of State
36 government resources that can be used to create or preserve
37 affordable housing, provide supportive services, facilitate the use of
38 housing for urban revitalization, and prevent homelessness,
39 including an identification of the specific agencies and programs
40 responsible for each action;
 - 41 (5) An assessment of the State's performance during the
42 preceding year;
 - 43 (6) Recommendations for changes to any program or use of
44 funds which the State controls available for land use planning,
45 housing construction, rehabilitation, preservation, operating or
46 rental subsidies and supportive services, including both procedural

1 and substantive changes, and the specific agencies responsible for
2 each change;

3 (7) Recommendations for State and local actions to promote the
4 creation and preservation of subsidized affordable and market-rate
5 housing by private sector, non-profit, and government agencies,
6 with particular reference to changes to programs, regulations, and
7 other activities that impede such activities;

8 (8) Recommendations for State and local actions for programs
9 and strategies through which the provision of affordable and mixed-
10 income housing can better further citywide and neighborhood
11 revitalization in the State's urban areas; and

12 (9) Identification of strategies that local government can take to
13 create or preserve affordable housing, including specific
14 recommendations for the use of monies collected through developer
15 fees in local housing development trust funds.

16 d. The plan shall provide for both annual and long-term targets
17 and priorities.

18

19 28. (New section) a. The commission shall complete a draft
20 plan on or before October 1 of each year. The commission shall
21 adopt the plan by a vote of a majority of its members and transmit
22 the plan to the Governor and the Joint Committee on Housing
23 Affordability, or its successor, on or before the next January 1. The
24 plan shall cover the fiscal year from July 1 to June 30th, beginning
25 with July 1 of the preceding year, except that the first annual plan
26 shall be transmitted on the first January 1 that falls after the annual
27 anniversary of the effective date of P.L. , c. (C.) (pending
28 before the Legislature as this bill).

29 b. With respect to the plans for the second through fourth years
30 following the initial plan, the commission may adopt and submit
31 either a plan de novo or an update to, or revision of, the initial
32 year's plan, based on its judgment as to the extent of housing needs,
33 funding resources, or other conditions that have or have not
34 changed since the initial plan was prepared. In the fifth year
35 following the initial plan, and every five years thereafter, the
36 commission shall adopt and submit a complete plan de novo.

37 c. The plan and all supporting documentation thereof shall be
38 made available both in printed form by the department and in
39 downloadable form on the department's web site.

40

41 29. (New section) a. On or before January 1 of each year,
42 beginning with the first January 1 that falls after the annual
43 anniversary of the effective date of P.L. , c. (C.) (pending
44 before the Legislature as this bill), the department, in consultation
45 with the commission and the working group, shall prepare and
46 submit to the Governor and the Joint Committee on Housing
47 Affordability, or its successor, an Annual Housing Performance

1 Report. Within 30 days following receipt of the Annual Housing
2 Performance Report, a hearing shall be held by the Joint Committee
3 on Housing Affordability, or its successor, to provide an
4 opportunity for public comment and discussion.

5 b. The report shall include, but shall not be limited to, the
6 following information:

7 (1) All housing units constructed, rehabilitated, or preserved in
8 which funds controlled by any agency of the State were utilized,
9 including the number of units by:

10 (a) Location;

11 (b) Affordability and income ranges of occupants;

12 (c) Target population; i.e., small family, large family, senior
13 citizens, people with disabilities;

14 (d) Type of housing, including ownership, rental, and other
15 forms of tenure; physical type such as single family or multifamily;
16 and whether the unit was newly constructed, rehabilitated, or
17 preserved; and

18 (e) The amount and source of all State-controlled funds used.

19 (2) All bond issuance activity by the agency, including interest
20 rates and the use of bond proceeds.

21 (3) All other activities, including financial support, technical
22 assistance, or other support conducted by the State to further
23 affordable housing.

24 (4) Municipal performance pursuant to the "Fair Housing Act,"
25 P.L.1985, c.222 (C.52:27D-301 et al.), including the number of
26 units listed for the distinct populations as enumerated in subsection
27 b. of section 27 of P.L. , c. (C.) (pending before the
28 Legislature as this bill), and the monies collected and the use of all
29 developer fee proceeds deposited into municipal housing trust
30 funds.

31 (5) For every report issued subsequent to the end of the first
32 year for which a plan has been prepared pursuant to sections 27 and
33 28 of P.L. , c. (C.) (pending before the Legislature as this
34 bill):

35 (a) A comparison between the goals, strategies, and priorities
36 set forth in the plan and the outcomes of programs and strategies
37 carried out by the State during the year, and a statement of the
38 reasons for any differences between the plan and the State's
39 programs and strategies; and

40 (b) A description of the manner in which the State has addressed
41 the recommendations, if any, for procedural or substantive changes
42 to any State program or activity set forth in the plan.

43 (6) Statistical appendices providing information on individual
44 projects and funding allocations.

45 c. The report, appendices, and all supporting documentation
46 thereof shall be made available both in printed form from the
47 department and in downloadable form on the department's web site.

1 30. (New section) a. The position of Senior Deputy
2 Commissioner for Housing is established within the department,
3 which position shall be filled by an individual with recognized and
4 extensive experience in housing policy, planning, and development
5 with particular emphasis on the planning and development of
6 housing affordable to low, moderate, and middle income
7 households.

8 b. The Senior Deputy Commissioner for Housing shall exercise
9 oversight over the housing programs of the department, including,
10 but not limited to, programs of the agency and the council.

11 c. The commissioner may appoint the Senior Deputy
12 Commissioner for Housing as his or her designee to chair the
13 agency, the commission, or the council, in which capacity or
14 capacities the Senior Deputy Commissioner for Housing will have
15 all of the powers vested in those positions by law.

16

17 31. (New section) a. In proposing a rule for adoption, the
18 agency involved shall issue a housing affordability impact analysis
19 regarding the rule, which shall be included in the notice of a
20 proposed rule as required by subsection (a) of section 4 of
21 P.L.1968, c.410 (C.52:14B-4). Each housing affordability impact
22 analysis shall contain:

23 (1) A description of the types and an estimate of the number of
24 housing units to which the proposed rule will apply; and

25 (2) A description of the estimated increase or decrease in the
26 average cost of housing which will be affected by the regulation.

27 This subsection shall not apply to any proposed rule which the
28 agency finds would impose an insignificant impact, either because
29 the scope of the regulation is minimal, or there is an extreme
30 unlikelihood that the regulation would evoke a change in the
31 average costs associated with housing. The agency's finding and an
32 indication of the basis for its finding shall be included in the notice
33 of a proposed rule as required by subsection (a) of section 4 of
34 P.L.1968, c.410 (C.52:14B-4).

35 b. In proposing a rule for adoption, the agency involved shall
36 issue a smart growth development impact analysis regarding the
37 rule, which shall be included in the notice of a proposed rule as
38 required by subsection (a) of section 4 of P.L.1968, c.410
39 (C.52:14B-4). Each smart growth development impact analysis
40 shall contain:

41 (1) A description of the types and an estimate of the number of
42 housing units to which the proposed rule will apply;

43 (2) A description of the estimated increase or decrease in the
44 availability of affordable housing which will be affected by the
45 regulation; and

46 (3) A description as to whether the proposed rule will affect in
47 any manner new construction within Planning areas 1 or 2, or

1 within designated centers, under the State Development and
2 Redevelopment Plan.

3 This subsection shall not apply to any proposed rule which the
4 agency finds would impose an insignificant impact, either because
5 the scope of the regulation is minimal, or there is an extreme
6 unlikelihood that the regulation would evoke a change in the
7 housing production within Planning areas 1 or 2, or within
8 designated centers, under the State Development and
9 Redevelopment Plan. The agency's finding and an indication of the
10 basis for its finding shall be included in the notice of a proposed
11 rule as required by subsection (a) of section 4 of P.L.1968, c.410
12 (C.52:14B-4).

13 For the purposes of complying with this subsection, and in order
14 to avoid duplicative action, an agency may consider a series of
15 closely related rules as one rule.

16 c. For the purposes of this section, "types" means housing
17 groups distinguished by the following categories: housing reserved
18 for occupancy by very low, low and moderate and middle income
19 households, respectively; single family, two-family, and multi-
20 family housing; rental housing and for-sale housing.

21

22 32. (New section) Sections 32 through 38 of P.L. , c. (C.)
23 (pending before the Legislature as this bill) shall be known and may
24 be cited as the "Statewide Non-residential Development Fee Act."

25

26 33. (New section) The Legislature finds and declares:

27 a. The collection of development fees from builders of
28 residential and non-residential properties has been authorized by the
29 court through the powers delegated to the Council on Affordable
30 Housing established pursuant to the "Fair Housing Act," P.L.1985,
31 c.222 (C.52:27D-301 et al.).

32 b. New Jersey's land resources are becoming more scarce,
33 while its redevelopment needs are increasing. In order to balance
34 the needs of developing and redeveloping communities, a
35 reasonable method of providing for the housing needs of low and
36 moderate income and middle income households, without
37 mandating the inclusion of housing in every non-residential project,
38 must be established.

39 c. A Statewide non-residential development fee program which
40 permits municipalities under the council's jurisdiction to retain
41 these fees for use in the municipality will provide a fair and
42 balanced funding method to address the State's affordable housing
43 needs, while providing an incentive to all municipalities to seek
44 substantive certification from the council.

45 d. Whereas pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),
46 organizations are directed to invest in the Casino Reinvestment
47 Development Authority to ensure that the development of housing

1 for families of low and moderate income shall be provided. The
2 Casino Reinvestment Development Authority, in consultation with
3 the council, shall work to effectuate the purpose and intent of P.L.
4 1985, c. 222 (C. 52:27D-301 et al.).

5

6 34. (New section) As used in sections 32 through 38 of P.L. ,
7 c. (C.) (pending before the legislature as this bill).

8 "Construction" means new construction and additions, but does
9 not include alterations, reconstruction, renovations, and repairs as
10 those terms are defined under the State Uniform Construction Code
11 promulgated pursuant to the "State Uniform Construction Code
12 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

13 "Commissioner" means the Commissioner of Community
14 Affairs.

15 "Council" means the Council on Affordable Housing, established
16 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

17 "Developer" means the legal or beneficial owner or owners of a
18 lot or of any land proposed to be included in a proposed
19 development, including the holder of an option or contract to
20 purchase, or other person having an enforceable proprietary interest
21 in such land.

22 "Equalized assessed value" means the assessed value of a
23 property divided by the current average ratio of assessed to true
24 value for the municipality in which the property is situated, as
25 determined in accordance with sections 1, 5, and 6 of P.L.1973,
26 c.123 (C.54:1-35a through C.54:1-35c).

27 "Mixed use development" means any development which
28 includes both a non-residential development component and a
29 residential development component, and shall include developments
30 for which (1) there is a common developer for both the residential
31 development component and the non-residential development
32 component, provided that for purposes of this definition, multiple
33 persons and entities may be considered a common developer if there
34 is a contractual relationship among them obligating each entity to
35 develop at least a portion of the residential or non-residential
36 development, or both, or otherwise to contribute resources to the
37 development; and (2) the residential and non-residential
38 developments are located on the same lot or adjoining lots,
39 including but not limited to lots separated by a street, a river, or
40 another geographical feature.

41 "Non-residential development" means: (1) any building or
42 structure, or portion thereof, including but not limited to any
43 appurtenant improvements, which is designated to a use group other
44 than a residential use group according to the State Uniform
45 Construction Code promulgated to effectuate the "State Uniform
46 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),
47 including any subsequent amendments or revisions thereto; (2)

1 hotels, motels, vacation timeshares, and child-care facilities, and (3)
2 the entirety of all continuing care facilities within a continuing care
3 retirement community which is subject to the "Continuing Care
4 Retirement Community Regulation and Financial Disclosure Act,"
5 P.L.1986, c.103 (C.52:27D-330 et seq.).

6 "Non-residential development fee" means the fee authorized to
7 be imposed pursuant to sections 32 through 38 of P.L. , c. (C.)
8 (pending before the Legislature as this bill).

9 "Relating to the provision of housing" shall be liberally
10 construed to include the construction, maintenance, or operations of
11 housing, including but not limited to the provision of services to
12 such housing and the funding of any of the above.

13 "Spending plan" means a method of allocating funds collected
14 and to be collected pursuant to an approved municipal development
15 fee ordinance, or pursuant to P.L. , c. (C.) (pending before
16 the Legislature as this bill) for the purpose of meeting the housing
17 needs of low and moderate income individuals.

18 "Treasurer" means the Treasurer of the State of New Jersey.

19

20 35. (New section) a. Beginning on the effective date of P.L. ,
21 c. (C.) (pending before the Legislature as this bill), a fee is
22 imposed on all construction resulting in non-residential
23 development, as follows:

24 (1) A fee equal to two and one-half percent of the equalized
25 assessed value of the land and improvements, for all new non-
26 residential construction on an unimproved lot or lots; or

27 (2) A fee equal to two and one-half percent of the increase in
28 equalized assessed value, of the additions to existing structures to
29 be used for non-residential purposes.

30 b. All non-residential construction of buildings or structures on
31 property used by churches, synagogues, mosques, and other houses
32 of worship, and property used for educational purposes, which is
33 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the
34 imposition of a non-residential development fee pursuant to this
35 section, provided that the property continues to maintain its tax
36 exempt status under that statute for a period of at least three years
37 from the date of issuance of the certificate of occupancy. In
38 addition, the following shall be exempt from the imposition of a
39 non-residential development fee:

40 (1) parking lots and parking structures, regardless of whether the
41 parking lot or parking structure is constructed in conjunction with a
42 non-residential development, such as an office building, or whether
43 the parking lot is developed as an independent non-residential
44 development;

45 (2) any non-residential development which is an amenity to be
46 made available to the public, including, but not limited to,
47 recreational facilities, community centers, and senior centers, which

1 are developed in conjunction with or funded by a non-residential
2 developer;

3 (3) non-residential construction resulting from a relocation of or
4 an on-site improvement to a nonprofit hospital or a nursing home
5 facility;

6 (4) projects that are located within a specifically delineated
7 urban transit hub, as defined pursuant to section 2 of P.L.2007,
8 c.346 (C.34:1B-208);

9 (5) projects that are located within an eligible municipality, as
10 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a
11 majority of the project is located within a one-half mile radius of
12 the midpoint of a platform area for a light rail system; and

13 (6) projects determined by the New Jersey Transit Corporation to
14 be consistent with a transit village plan developed by a transit
15 village designated by the Department of Transportation.

16 A developer of a non-residential development exempted from the
17 non-residential development fee pursuant to this section shall be
18 subject to it at such time the basis for the exemption set forth in this
19 subsection no longer applies, and shall make the payment of the
20 non-residential development fee, in that event, within three years
21 after that event or after the issuance of the final certificate of
22 occupancy of the non-residential development whichever is later.

23 For purposes of this subsection, “recreational facilities and
24 community center” means any indoor or outdoor buildings, spaces,
25 structures, or improvements intended for active or passive
26 recreation, including but not limited to ball fields, meeting halls,
27 and classrooms, accommodating either organized or informal
28 activity; and “senior center” means any recreational facility or
29 community center with activities and services oriented towards
30 serving senior citizens.

31 If a property which was exempted from the collection of a non-
32 residential development fee thereafter ceases to be exempt from
33 property taxation, the owner of the property shall remit the fees
34 required pursuant to this section within 45 days of the termination
35 of the property tax exemption. Unpaid non-residential development
36 fees under these circumstances may be enforceable by the
37 municipality as a lien against the real property of the owner.

38 c. (1) Unless authorized to pay directly to the municipality in
39 which the non-residential construction is occurring in accordance
40 with paragraph (2) of this subsection, developers shall pay non-
41 residential development fees imposed pursuant to P.L. , c. (C.)
42 (pending before the Legislature as this bill) to the Treasurer, in
43 accordance with subsection h. of this section in a manner and on
44 such forms as required by the Treasurer, provided that a certified
45 proof concerning the payment shall be furnished by the Treasurer,
46 to the municipality.

1 (2) The council shall maintain on its website a list of each
2 municipality that is authorized to use the development fees
3 collected pursuant to this section and that has a confirmed status of
4 compliance with the “Fair Housing Act,” P.L.1985, c.222
5 (C.52:27D-301 et al.), which compliance shall include a spending
6 plan authorized by the council for all development fees collected.

7 d. The payment of non-residential development fees required
8 pursuant to sections 32 through 38 of P.L. , c. (C.) (pending
9 before the Legislature as this bill) shall be made prior to the
10 issuance of a certificate of occupancy for such development. A
11 final certificate of occupancy shall not be issued for any non-
12 residential development until such time as the fee imposed pursuant
13 to this section has been paid by the developer. A non-residential
14 developer may deposit with the appropriate entity the development
15 fees as calculated by the municipality under protest, and the local
16 code enforcement official shall thereafter issue the certificate of
17 occupancy provided that the construction is otherwise eligible for a
18 certificate of occupancy.

19 e. The construction official responsible for the issuance of a
20 building permit shall notify the local tax assessor of the issuance of
21 the first building permit for a development which may be subject to
22 a non-residential development fee. Within 90 days of receipt of that
23 notice, the municipal tax assessor, based on the plans filed, shall
24 provide an estimate of the equalized assessed value of the non-
25 residential development. The construction official responsible for
26 the issuance of a final certificate of occupancy shall notify the local
27 assessor of any and all requests for the scheduling of a final
28 inspection on property which may be subject to a non-residential
29 development fee. Within 10 business days of a request for the
30 scheduling of a final inspection, the municipal assessor shall
31 confirm or modify the previously estimated equalized assessed
32 value of the improvements of the non-residential development in
33 accordance with the regulations adopted by the Treasurer pursuant
34 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential
35 development fee pursuant to sections 32 through 38 of P.L. , c.
36 (C.) (pending before the Legislature as this bill); and thereafter
37 notify the developer of the amount of the non-residential
38 development fee. Should the municipality fail to determine or
39 notify the developer of the amount of the non-residential
40 development fee within 10 business days of the request for final
41 inspection, the developer may estimate the amount due and pay that
42 estimated amount consistent with the dispute process set forth in
43 subsection b. of section 37 of P.L. , c. (C.) (pending before
44 the Legislature as this bill). Upon tender of the estimated non-
45 residential development fee, provided the developer is in full
46 compliance with all other applicable laws, the municipality shall
47 issue a final certificate of occupancy for the subject property.

1 Failure of the municipality to comply with the timeframes or
2 procedures set forth in this subsection may subject it to penalties to
3 be imposed by the commissioner; any penalties so imposed shall be
4 deposited into the "New Jersey Affordable Housing Trust Fund"
5 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
6 320).

7 A developer of a mixed use development shall be required to pay
8 the Statewide non-residential development fee relating to the non-
9 residential development component of a mixed use development
10 subject to the provisions of P.L. , c. (C.) (pending before
11 the Legislature as this bill).

12 Non-residential construction which is connected with the
13 relocation of the facilities of a for-profit hospital shall be subject to
14 the fee authorized to be imposed under this section to the extent of
15 the increase in equalized assessed valuation in accordance with
16 regulations to be promulgated by the Director of the Division of
17 Taxation, Department of the Treasury.

18 f. Any municipality that is not in compliance with the
19 requirements established pursuant to sections 32 through 38 of P.L.,
20 c. (C.) (pending before the Legislature as this bill), or
21 regulations of the council adopted thereto, may be subject to
22 forfeiture of any or all funds remaining within its municipal
23 development trust fund. Any funds so forfeited shall be deposited
24 into the "New Jersey Affordable Housing Trust Fund" established
25 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

26 g. The Treasurer shall credit to the "Urban Housing Assistance
27 Fund," established pursuant to section 13 of P.L. , c. (C.)
28 (pending before the Legislature as this bill) annually from the
29 receipts of the fees authorized to be imposed pursuant to this
30 section an amount equal to \$20 million; all receipts in excess of this
31 amount shall be deposited into the "New Jersey Affordable Housing
32 Trust Fund," established pursuant to section 20 of P.L.1985, c.222
33 (C.52:27D-320), to be used for the purposes of that fund.

34 The Treasurer shall adopt such regulations as necessary to
35 effectuate sections 32 through 38 of P.L. , c. (C.) (pending
36 before the Legislature as this bill), in accordance with the
37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
38 seq.

39

40 36. (New section) a. The commissioner, in consultation with
41 the council, shall promulgate, in accordance with the provisions of
42 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
43 seq.), such regulations as are necessary for the prompt and effective
44 implementation of the provisions and purposes of P.L. , c. (C.)
45 (pending before the Legislature as this bill), including, but not
46 limited to, provisions for the payment of any necessary

1 administrative costs related to the assessment of properties and
2 collection of any development fees by a municipality.

3 b. Notwithstanding the authority granted to the commissioner
4 herein, the council shall adopt and promulgate, in accordance with
5 the provisions of the "Administrative Procedure Act," P.L.1968,
6 c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the
7 effectuation of P.L. , c. (C.) (pending before the Legislature
8 as this bill), including but not limited to, regulations necessary for
9 the establishment, implementation, review, monitoring, and
10 enforcement of a municipal affordable housing trust fund and
11 spending plan.

12

13 37. (New section) a. The provisions of sections 32 through 38
14 of P.L. , c. (C.) (pending before the Legislature as this bill)
15 shall not apply to:

16 (1) Non-residential property for which a certificate of occupancy
17 has been issued prior to the effective date of P.L. , c. (C.)
18 (pending before the Legislature as this bill); or

19 (2) A non-residential planned development which has received
20 approval of a general development plan pursuant to section 5 of
21 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
22 for which the developer has entered into a developer's agreement
23 pursuant to a development approval granted pursuant to P.L.1975,
24 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
25 into a redevelopment agreement pursuant to P.L.1992, c.79
26 (C.40A:12A-1 et seq.) prior to the effective date of P.L. , c. (C.)
27 (pending before the Legislature as this bill); provided, however, that
28 the general development plan, developer's agreement,
29 redevelopment agreement, or any development agreement pursuant
30 to the "Municipal Land Use Law," P.L.1975, c.291 (C. 40:55D-1 et
31 seq.) provides that the developer or redeveloper pay a fee for
32 affordable housing of at least one percent of the equalized assessed
33 value of the improvements which are the subject of the development
34 plan, developer's agreement, or redevelopment agreement.

35 b. A developer may challenge non-residential development fees
36 imposed pursuant to P.L. , c. (C.) (pending before the
37 Legislature as this bill) by filing a challenge with the Director of the
38 Division of Taxation. Pending a review and determination by the
39 director, which shall be made within 45 days of receipt of the
40 challenge, collected fees shall be placed in an interest bearing
41 escrow account by the municipality or by the State, as the case may
42 be. Appeals from a determination of the director may be made to
43 the to the tax court in accordance with the provisions of the State
44 Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days
45 after the date of such determination. Interest earned on amounts
46 escrowed shall be credited to the prevailing party.

1 c. Whenever non-residential development is situated on real
2 property that has been previously developed with a building,
3 structure, or other improvement, the non-residential development
4 fee shall be equal to two and a half (2.5) percent of the equalized
5 assessed value of the land and improvements on the property where
6 the non-residential development is situated at the time the final
7 certificate of occupancy is issued, less the equalized assessed value
8 of the land and improvements on the property where the non-
9 residential development is situated, as determined by the tax
10 assessor of the municipality at the time the developer or owner,
11 including any previous owners, first sought approval for a
12 construction permit, including, but not limited to, demolition
13 permits, pursuant to the State Uniform Construction Code, or
14 approval under the "Municipal Land Use Law," P.L.1975, c.291
15 (C.40:55D-1 et seq.). If the calculation required under this section
16 results in a negative number, the non-residential development fee
17 shall be zero.

18 Whenever the developer of a non-residential development has
19 made or committed itself to make a financial or other contribution
20 relating to the provision of housing affordable to low and moderate
21 income households prior to the enactment of P.L. , c. (C.)
22 (pending before the Legislature as this bill), the non-residential
23 development fee shall be reduced by the amount of the financial
24 contribution and the fair market value of any other contribution
25 made by or committed to be made by the developer. For purposes
26 of this section, a developer is considered to have made or
27 committed itself to make a financial or other contribution, if and
28 only if: (1) the contribution has been transferred, including but not
29 limited to when the funds have already been received by the
30 municipality; (2) the developer has obligated itself to make a
31 contribution as set forth in a written agreement with the
32 municipality, such as a developer's agreement; or (3) the
33 developer's obligation to make a contribution is set forth as a
34 condition in a land use approval issued by a municipal land use
35 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
36 (C.40:55D-1 et seq.).

37 d. Unless otherwise provided for by law, no municipality shall
38 be required to return a financial or any other contribution made by
39 or committed to be made by the developer of a non-residential
40 development prior to the enactment of P.L. , c. (C.)
41 (pending before the Legislature as this bill) relating to the provision
42 of housing affordable to low and moderate income households,
43 provided that the developer does not obtain an amended, modified,
44 or new municipal land use approval with a substantial change in the
45 non-residential development. If the developer obtains an amended,
46 modified, or new land use approval for non-residential
47 development, the municipality, person, or entity shall be required to

1 return to the developer any funds or other contribution provided by
2 the developer for the provision of housing affordable to low and
3 moderate income households and the developer shall not be entitled
4 to a reduction in the affordable housing development fee based
5 upon that contribution.

6 e. The provisions of sections 32 through 38 of P.L. , c. (C.)
7 (pending before the Legislature as this bill) shall not be construed in
8 any manner as affecting the method or timing of assessing real
9 property for property taxation purposes. The payment of a non-
10 residential development fee shall not increase the equalized
11 assessed value of any property.

12
13 38. a. (New section) Except as expressly provided in P.L. , c.
14 (C.) (pending before the Legislature as this bill) including
15 subsection b. of this section, any provision of a local ordinance
16 which imposes a fee for the development of affordable housing
17 upon a developer of non-residential property, including any and all
18 development fee ordinances adopted in accordance with any
19 regulations of the Council on Affordable Housing, or any provision
20 of an ordinance which imposes an obligation relating to the
21 provision of housing affordable to low and moderate income
22 households, or payment in-lieu of building as a condition of non-
23 residential development, shall be void and of no effect. A provision
24 of an ordinance which imposes a development fee which is not
25 prohibited by any provision of P.L. , c. (C.) (pending before
26 the Legislature as this bill) shall not be invalidated by this section.

27 b. No affordable housing obligation shall be imposed
28 concerning a mixed use development that would result in an
29 affordable housing obligation greater than that which would have
30 been imposed if the residential portion of the mixed use
31 development had been developed independently of the non-
32 residential portion of the mixed use development.

33 c. Whenever the developer of a non-residential development
34 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or
35 committed itself to make a financial or other contribution relating to
36 the provision of housing affordable to low and moderate income
37 households, the non-residential development fee authorized
38 pursuant to P.L. , c. (C.) (pending before the Legislature as
39 this bill) shall be satisfied through the investment obligations made
40 pursuant to P.L.1977, c.110 (C.5:12-1 et seq.).

41
42 39. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended
43 to read as follows:

44 1. When computing a municipal adjustment regarding available
45 land resources as part of the determination of a municipality's fair
46 share of affordable housing, the Council on Affordable Housing
47 shall exclude from designating as vacant land;

1 (a) any land that is owned by a local government entity that as of
2 January 1, 1997, has adopted, prior to the institution of a lawsuit
3 seeking a builder's remedy or prior to the filing of a petition for
4 substantive certification of a housing element and fair share plan, a
5 resolution authorizing an execution of agreement that the land be
6 utilized for a public purpose other than housing;

7 (b) any land listed on a master plan of a municipality as being
8 dedicated, by easement or otherwise, for purposes of conservation,
9 park lands or open space and which is owned , leased, licensed, or
10 in any manner operated by a county, municipality or tax-exempt,
11 nonprofit organization including a local board of education , or by
12 more than one municipality by joint agreement pursuant to
13 P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity
14 maintains such ownership, lease, license, or operational control of
15 such land ; **[and]**

16 (c) any vacant contiguous parcels of land in private ownership of
17 a size which would accommodate fewer than five housing units if
18 current standards of the council were applied pertaining to housing
19 density;

20 (d) historic and architecturally important sites listed on the State
21 Register of Historic Places or National Register of Historic Places
22 prior to the submission of the petition of substantive certification;

23 (e) agricultural lands when the development rights to these lands
24 have been purchased or restricted by covenant;

25 (f) sites designated for active recreation that are designated for
26 recreational purposes in the municipal master plan; and

27 (g) environmentally sensitive lands where development is
28 prohibited by any State or federal agency.

29 No municipality shall be required to utilize for affordable
30 housing purposes land that is excluded from being designated as
31 vacant land.

32 (cf: P.L.1997, c.49, s.1)

33

34 40. (New section) Sections 1 through 37 of P.L.1949, c.303
35 (C.55:14H-1 et seq.) and P.L.1950, c.108 (C.55:14H-9.1) are
36 repealed.

37

38 41. This act shall take effect immediately.

39

40

41

42

43

Revises laws concerning the provision of affordable housing.

ASSEMBLY, No. 500

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED MARCH 13, 2008

Sponsored by:

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblywoman MILA M. JASEY

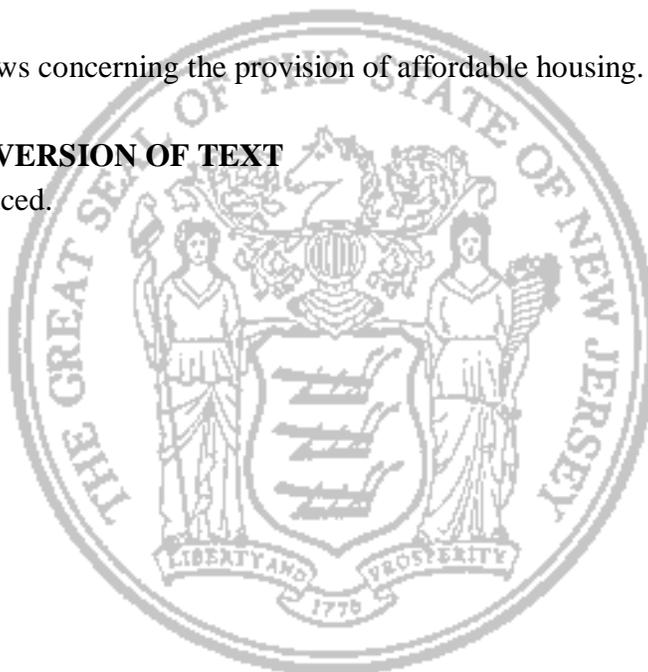
District 27 (Essex)

SYNOPSIS

Revises laws concerning the provision of affordable housing.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/6/2008)

1 AN ACT concerning affordable housing, revising and supplementing
2 various parts of the statutory law.

3

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

6

7 1. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to
8 read as follows:

9 3. As used in this act:

10 “Bonds” means any bonds, notes, interim certificates, debentures
11 or other obligations issued by a municipality, county,
12 redevelopment entity, or housing authority pursuant to **[this act]**
13 P.L.1992, c.79 (C.40A:12A-1 et seq.).

14 “Comparable, affordable replacement housing” means housing
15 offered to households being displaced as a result of a
16 redevelopment project, that is affordable to that household based on
17 its income under the guidelines established by the Council on
18 Affordable Housing in the Department of Community Affairs for
19 maximum affordable sales prices or maximum fair market rents,
20 and that is comparable to the household’s dwelling in the
21 redevelopment area with respect to the size and amenities of the
22 dwelling unit, the quality of the neighborhood, and the level of
23 public services and facilities offered by the municipality in which
24 the redevelopment area is located.

25 “Development” means the division of a parcel of land into two or
26 more parcels, the construction, reconstruction, conversion,
27 structural alteration, relocation, or enlargement of any building or
28 other structure, or of any mining, excavation or landfill, and any use
29 or change in the use of any building or other structure, or land or
30 extension of use of land, for which permission may be required
31 pursuant to the “Municipal Land Use Law,” P.L.1975, c.291
32 (C.40:55D-1 et seq.).

33 “Governing body” means the body exercising general legislative
34 powers in a county or municipality according to the terms and
35 procedural requirements set forth in the form of government
36 adopted by the county or municipality.

37 “Housing authority” means a housing authority created or
38 continued pursuant to this act.

39 “Housing project” means a project, or distinct portion of a
40 project, which is designed and intended to provide decent, safe and
41 sanitary dwellings, apartments or other living accommodations for
42 persons of low and moderate income; such work or undertaking
43 may include buildings, land, equipment, facilities and other real or
44 personal property for necessary, convenient or desirable
45 appurtenances, streets, sewers, water service, parks, site

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 preparation, gardening, administrative, community, health,
2 recreational, educational, welfare or other purposes. The term
3 “housing project” also may be applied to the planning of the
4 buildings and improvements, the acquisition of property, the
5 demolition of existing structures, the construction, reconstruction,
6 alteration and repair of the improvements and all other work in
7 connection therewith.

8 “Persons of low and moderate income” means persons or
9 families who are, in the case of State assisted projects or programs,
10 so defined by the Council on Affordable Housing in the Department
11 of Community Affairs, or in the case of federally assisted projects
12 or programs, defined as of “low and very low income” by the
13 United States Department of Housing and Urban Development.

14 “Public body” means the State or any county, municipality,
15 school district, authority or other political subdivision of the State.

16 “Public housing” means any housing for persons of low and
17 moderate income owned by a municipality, county, the State or the
18 federal government, or any agency or instrumentality thereof.

19 “Publicly assisted housing” means privately owned housing
20 which receives public assistance or subsidy, which may be grants or
21 loans for construction, reconstruction, conservation, or
22 rehabilitation of the housing, or receives operational or maintenance
23 subsidies either directly or through rental subsidies to tenants, from
24 a federal, State or local government agency or instrumentality.

25 “Real property” means all lands, including improvements and
26 fixtures thereon, and property of any nature appurtenant thereto or
27 used in connection therewith, and every estate, interest and right,
28 legal or equitable, therein, including terms for years and liens by
29 way of judgment, mortgage or otherwise, and indebtedness secured
30 by such liens.

31 “Redeveloper” means any person, firm, corporation or public
32 body that shall enter into or propose to enter into a contract with a
33 municipality or other redevelopment entity for the redevelopment or
34 rehabilitation of an area in need of redevelopment, or an area in
35 need of rehabilitation, or any part thereof, under the provisions of
36 this act, or for any construction or other work forming part of a
37 redevelopment or rehabilitation project.

38 “Redevelopment” means clearance, replanning, development and
39 redevelopment; the conservation and rehabilitation of any structure
40 or improvement, the construction and provision for construction of
41 residential, commercial, industrial, public or other structures and
42 the grant or dedication of spaces as may be appropriate or necessary
43 in the interest of the general welfare for streets, parks, playgrounds,
44 or other public purposes, including recreational and other facilities
45 incidental or appurtenant thereto, in accordance with a
46 redevelopment plan.

47 “Redevelopment agency” means a redevelopment agency created
48 pursuant to subsection a. of section 11 of P.L.1992, c.79

1 (C.40A:12A-11) or established heretofore pursuant to the
2 “Redevelopment Agencies Law,” P.L.1949, c.306 (C.40:55C-1 et
3 seq.), repealed by this act, which has been permitted in accordance
4 with the provisions of this act to continue to exercise its
5 redevelopment functions and powers.

6 “Redevelopment area” or “area in need of redevelopment” means
7 an area determined to be in need of redevelopment pursuant to
8 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6)
9 or determined heretofore to be a “blighted area” pursuant to
10 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both
11 determinations as made pursuant to the authority of Article VIII,
12 Section III, paragraph 1 of the Constitution. A redevelopment area
13 may include lands, buildings, or improvements which of themselves
14 are not detrimental to the public health, safety or welfare, but the
15 inclusion of which is found necessary, with or without change in
16 their condition, for the effective redevelopment of the area of which
17 they are a part.

18 “Redevelopment entity” means a municipality or an entity
19 authorized by the governing body of a municipality pursuant to
20 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to
21 implement redevelopment plans and carry out redevelopment
22 projects in an area in need of redevelopment, or in an area in need
23 of rehabilitation, or in both.

24 “Redevelopment plan” means a plan adopted by the governing
25 body of a municipality for the redevelopment or rehabilitation of all
26 or any part of a redevelopment area, or an area in need of
27 rehabilitation, which plan shall be sufficiently complete to indicate
28 its relationship to definite municipal objectives as to appropriate
29 land uses, public transportation and utilities, recreational and
30 municipal facilities, and other public improvements; and to indicate
31 proposed land uses and building requirements in the redevelopment
32 area or area in need of rehabilitation, or both.

33 “Redevelopment project” means any work or undertaking
34 pursuant to a redevelopment plan; such undertaking may include
35 any buildings, land, including demolition, clearance or removal of
36 buildings from land, equipment, facilities, or other real or personal
37 properties which are necessary, convenient, or desirable
38 appurtenances, such as but not limited to streets, sewers, utilities,
39 parks, site preparation, landscaping, and administrative, community,
40 health, recreational, educational, and welfare facilities.

41 “Rehabilitation” means an undertaking, by means of extensive
42 repair, reconstruction or renovation of existing structures, with or
43 without the introduction of new construction or the enlargement of
44 existing structures, in any area that has been determined to be in
45 need of rehabilitation or redevelopment, to eliminate substandard
46 structural or housing conditions and arrest the deterioration of that
47 area.

1 “Rehabilitation area” or “area in need of rehabilitation” means
2 any area determined to be in need of rehabilitation pursuant to
3 section 14 of P.L.1992, c.79 (C.40A:12A-14).
4 (cf: P.L.1992, c.79, s.3)

5
6 2. Section 7 of P.L.1992, c.79 (C.40A:12A-7) is amended to
7 read as follows:

8 7. a. No redevelopment project shall be undertaken or carried
9 out except in accordance with a redevelopment plan adopted by
10 ordinance of the municipal governing body, upon its finding that the
11 specifically delineated project area is located in an area in need of
12 redevelopment or in an area in need of rehabilitation, or in both,
13 according to criteria set forth in section 5 or section 14 of P.L.1992,
14 c.79 (C.40A:12A-5 or 40A:12A-14), as appropriate.

15 The redevelopment plan shall include an outline for the planning,
16 development, redevelopment, or rehabilitation of the project area
17 sufficient to indicate:

18 (1) Its relationship to definite local objectives as to appropriate
19 land uses, density of population, and improved traffic and public
20 transportation, public utilities, recreational and community facilities
21 and other public improvements.

22 (2) Proposed land uses and building requirements in the project
23 area.

24 (3) Adequate provision for the temporary and permanent
25 relocation, as necessary, of residents in the project area, including
26 an estimate of the extent to which decent, safe and sanitary dwelling
27 units affordable to displaced residents will be available to them in
28 the existing local housing market.

29 (4) An identification of any property within the redevelopment
30 area which is proposed to be acquired in accordance with the
31 redevelopment plan.

32 (5) Any significant relationship of the redevelopment plan to (a)
33 the master plans of contiguous municipalities, (b) the master plan of
34 the county in which the municipality is located, and (c) the State
35 Development and Redevelopment Plan adopted pursuant to the
36 "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.).

37 (6) As of the date of the adoption of the resolution finding the
38 area to be in need of redevelopment, an inventory of all housing
39 units affordable to low and moderate income households, as defined
40 pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), that are to
41 be removed as a result of implementation of the redevelopment
42 plan, whether as a result of subsidies or market conditions, listed by
43 affordability level, number of bedrooms, and tenure.

44 (7) A plan for the provision, through new construction or
45 substantial rehabilitation of one comparable, affordable replacement
46 housing unit for each affordable housing unit that is identified as to
47 be removed as a result of implementation of the redevelopment
48 plan. Displaced residents of housing units provided under any State

1 or federal housing subsidy program, or pursuant to the "Fair
2 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), provided they
3 are deemed to be eligible, shall have first priority for those
4 replacement units provided under the plan; provided that any such
5 replacement unit shall not be counted toward the municipal
6 obligation under the "Fair Housing Act," P.L.1985, c.222
7 (C.52:27D-301 et al.), if the housing unit which is removed had
8 previously been credited toward satisfying the municipal fair share
9 obligation. To the extent reasonably feasible, replacement housing
10 shall be provided within or in close proximity to the redevelopment
11 area. A municipality shall report annually to the Department of
12 Community Affairs on its progress in implementing the plan for
13 provision of comparable, affordable replacement housing required
14 pursuant to this section.

15 b. A redevelopment plan may include the provision of
16 affordable housing in accordance with the "Fair Housing Act,"
17 P.L.1985, c.222 (C.52:27D-301 et al.) and the housing element of
18 the municipal master plan.

19 c. The redevelopment plan shall describe its relationship to
20 pertinent municipal development regulations as defined in the
21 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
22 The redevelopment plan shall supersede applicable provisions of the
23 development regulations of the municipality or constitute an
24 overlay zoning district within the redevelopment area. When the
25 redevelopment plan supersedes any provision of the development
26 regulations, the ordinance adopting the redevelopment plan shall
27 contain an explicit amendment to the zoning district map included
28 in the zoning ordinance. The zoning district map as amended shall
29 indicate the redevelopment area to which the redevelopment plan
30 applies. Notwithstanding the provisions of the "Municipal Land
31 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or of other law, no
32 notice beyond that required for adoption of ordinances by the
33 municipality shall be required for the hearing on or adoption of the
34 redevelopment plan or subsequent amendments thereof.

35 d. All provisions of the redevelopment plan shall be either
36 substantially consistent with the municipal master plan or designed
37 to effectuate the master plan; but the municipal governing body may
38 adopt a redevelopment plan which is inconsistent with or not
39 designed to effectuate the master plan by affirmative vote of a
40 majority of its full authorized membership with the reasons for so
41 acting set forth in the redevelopment plan.

42 e. Prior to the adoption of a redevelopment plan, or revision or
43 amendment thereto, the planning board shall transmit to the
44 governing body, within 45 days after referral, a report containing its
45 recommendation concerning the redevelopment plan. This report
46 shall include an identification of any provisions in the proposed
47 redevelopment plan which are inconsistent with the master plan and
48 recommendations concerning these inconsistencies and any other

1 matters as the board deems appropriate. The governing body, when
2 considering the adoption of a redevelopment plan or revision or
3 amendment thereof, shall review the report of the planning board
4 and may approve or disapprove or change any recommendation by a
5 vote of a majority of its full authorized membership and shall
6 record in its minutes the reasons for not following the
7 recommendations. Failure of the planning board to transmit its
8 report within the required 45 days shall relieve the governing body
9 from the requirements of this subsection with regard to the pertinent
10 proposed redevelopment plan or revision or amendment thereof.
11 Nothing in this subsection shall diminish the applicability of the
12 provisions of subsection d. of this section with respect to any
13 redevelopment plan or revision or amendment thereof.

14 f. The governing body of a municipality may direct the planning
15 board to prepare a redevelopment plan or an amendment or revision
16 to a redevelopment plan for a designated redevelopment area. After
17 completing the redevelopment plan, the planning board shall
18 transmit the proposed plan to the governing body for its adoption.
19 The governing body, when considering the proposed plan, may
20 amend or revise any portion of the proposed redevelopment plan by
21 an affirmative vote of the majority of its full authorized
22 membership and shall record in its minutes the reasons for each
23 amendment or revision. When a redevelopment plan or amendment
24 to a redevelopment plan is referred to the governing body by the
25 planning board under this subsection, the governing body shall be
26 relieved of the referral requirements of subsection e. of this section.
27 (cf: P.L.1992, c.79, s.7)

28

29 3. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read
30 as follows:

31 4. (a) Prior to the adoption, amendment, or repeal of any rule,
32 except as may be otherwise provided, the agency shall:

33 (1) Give at least 30 days' notice of its intended action. The
34 notice shall include a statement of either the terms or substance of
35 the intended action or a description of the subjects and issues
36 involved, and the time when, the place where, and the manner in
37 which interested persons may present their views thereon. The
38 notice shall be mailed to all persons who have made timely requests
39 of the agency for advance notice of its rule-making proceedings and
40 in addition to other public notice required by law shall be published
41 in the New Jersey Register. Notice shall also be distributed to the
42 news media maintaining a press office to cover the State House
43 Complex, and made available electronically through the largest
44 nonproprietary cooperative public computer network. Each agency
45 shall additionally publicize the intended action and shall adopt rules
46 to prescribe the manner in which it will do so, and inform those
47 persons most likely to be affected by or interested in the intended
48 action. Methods that may be employed include publication of the

1 notice in newspapers of general circulation or in trade, industry,
2 governmental or professional publications, distribution of press
3 releases to the news media and posting of notices in appropriate
4 locations. The rules shall prescribe the circumstances under which
5 each additional method shall be employed;

6 (2) Prepare for public distribution at the time the notice appears
7 in the Register a statement setting forth a summary of the proposed
8 rule, a clear and concise explanation of the purpose and effect of the
9 rule, the specific legal authority under which its adoption is
10 authorized, a description of the expected socio-economic impact of
11 the rule, a regulatory flexibility analysis, or the statement of finding
12 that a regulatory flexibility analysis is not required, as provided in
13 section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement
14 which shall include an assessment of the number of jobs to be
15 generated or lost if the proposed rule takes effect, **[and]** an
16 agriculture industry impact statement as provided in section 7 of
17 P.L.1998, c.48 (C.4:1C-10.3) , and a housing affordability impact
18 statement and a smart growth development impact statement, as
19 provided in section 32 of P.L. _____, c. _____ (C. _____) (pending before
20 the Legislature as this bill); and

21 (3) Afford all interested persons reasonable opportunity to
22 submit data, views, or arguments, orally or in writing. The agency
23 shall consider fully all written and oral submissions respecting the
24 proposed rule. If within 30 days of the publication of the proposed
25 rule sufficient public interest is demonstrated in an extension of the
26 time for submissions, the agency shall provide an additional 30 day
27 period for the receipt of submissions by interested parties. The
28 agency shall not adopt the proposed rule until after the end of that
29 30 day extension.

30 The agency shall conduct a public hearing on the proposed rule
31 at the request of a committee of the Legislature, or a governmental
32 agency or subdivision, or if sufficient public interest is shown,
33 provided such request is made to the agency within 30 days
34 following publication of the proposed rule in the Register. The
35 agency shall provide at least 15 days' notice of such hearing, which
36 shall be conducted in accordance with the provisions of subsection
37 (g) of this section.

38 The head of each agency shall adopt as part of its rules of
39 practice adopted pursuant to section 3 of P.L.1968, c.410
40 (C.52:14B-3) definite standards of what constitutes sufficient public
41 interest for conducting a public hearing and for granting an
42 extension pursuant to this paragraph.

43 (4) Prepare for public distribution a report listing all parties
44 offering written or oral submissions concerning the rule,
45 summarizing the content of the submissions and providing the
46 agency's response to the data, views and arguments contained in the
47 submissions.

1 (b) A rule prescribing the organization of an agency may be
2 adopted at any time without prior notice or hearing. Such rules
3 shall be effective upon filing in accordance with section 5 of [this
4 act] P.L.1968, c.410 (C.52:14B-5) or upon any later date specified
5 by the agency.

6 (c) If an agency finds that an imminent peril to the public
7 health, safety, or welfare requires adoption of a rule upon fewer
8 than 30 days' notice and states in writing its reasons for that finding,
9 and the Governor concurs in writing that an imminent peril exists, it
10 may proceed without prior notice or hearing, or upon any
11 abbreviated notice and hearing that it finds practicable, to adopt the
12 rule. The rule shall be effective for a period of not more than 60
13 days unless each house of the Legislature passes a resolution
14 concurring in its extension for a period of not more than 60
15 additional days. The rule shall not be effective for more than 120
16 days unless repromulgated in accordance with normal rule-making
17 procedures.

18 (d) No rule hereafter adopted is valid unless adopted in
19 substantial compliance with [this act] P.L.1968, c.410 (C.52:14B-1
20 et seq.). A proceeding to contest any rule on the ground of
21 noncompliance with the procedural requirements of [this act]
22 P.L.1968, c.410 (C.52:14B-1 et seq.) shall be commenced within
23 one year from the effective date of the rule.

24 (e) An agency may file a notice of intent with respect to a
25 proposed rule-making proceeding with the Office of Administrative
26 Law, for publication in the New Jersey Register at any time prior to
27 the formal notice of action required in subsection (a) of this section.
28 The notice shall be for the purpose of eliciting the views of
29 interested parties on an action prior to the filing of a formal rule
30 proposal. An agency may use informal conferences and
31 consultations as means of obtaining the viewpoints and advice of
32 interested persons with respect to contemplated rule-making. An
33 agency may also appoint committees of experts or interested
34 persons or representatives of the general public to advise it with
35 respect to any contemplated rule-making.

36 (f) An interested person may petition an agency to adopt a new
37 rule, or amend or repeal any existing rule. Each agency shall
38 prescribe by rule the form for the petition and the procedure for the
39 submission, consideration and disposition of the petition. The
40 petition shall state clearly and concisely:

41 (1) The substance or nature of the rule-making which is
42 requested;

43 (2) The reasons for the request and the petitioner's interest in the
44 request;

45 (3) References to the authority of the agency to take the
46 requested action.

47 The petitioner may provide the text of the proposed new rule,
48 amended rule or repealed rule.

1 Within 60 days following receipt of any such petition, the agency
2 shall either; (i) deny the petition, giving a written statement of its
3 reasons; (ii) grant the petition and initiate a rule-making proceeding
4 within 90 days of granting the petition ; or (iii) refer the matter for
5 further deliberations which shall be concluded within 90 days of
6 referring the matter for further deliberations . Upon conclusion of
7 such further deliberations, the agency shall either deny the petition
8 and provide a written statement of its reasons or grant the petition
9 and initiate a rule-making proceeding within 90 days. Upon the
10 receipt of the petition, the agency shall file a notice stating the name
11 of the petitioner and the nature of the request with the Office of
12 Administrative Law for publication in the New Jersey Register.
13 Notice of formal agency action on such petition shall also be filed
14 with the Office of Administrative Law for publication in the
15 Register.

16 If an agency fails to act in accordance with the time frame set
17 forth in the preceding paragraph, upon written request by the
18 petitioner, the Director of the Office of Administrative Law shall
19 order a public hearing on the rule-making petition and shall provide
20 the agency with a notice of the director's intent to hold the public
21 hearing if the agency does not. If the agency does not provide
22 notice of a hearing within 15 days of the director's notice, the
23 director shall schedule and provide the public with a notice of that
24 hearing at least 15 days prior thereto. If the public hearing is held
25 by the Office of Administrative Law, it shall be conducted by an
26 administrative law judge, a person on assignment from another
27 agency, a person from the Office of Administrative Law assigned
28 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-
29 5), or an independent contractor assigned by the director. The
30 petitioner and the agency shall participate in the public hearing and
31 shall present a summary of their positions on the petition, a
32 summary of the factual information on which their positions on the
33 petition are based and shall respond to questions posed by any
34 interested party. The hearing procedure shall otherwise be
35 consistent with the requirements for the conduct of a public hearing
36 as prescribed in subsection (g) of section 4 of P.L.1968, c.410
37 (C.52:14B-4), except that the person assigned to conduct the
38 hearing shall make a report summarizing the factual record
39 presented and the arguments for and against proceeding with a rule
40 proposal based upon the petition. This report shall be filed with the
41 agency and delivered or mailed to the petitioner. A copy of the
42 report shall be filed with the Legislature along with the petition for
43 rule-making.

44 (g) All public hearings shall be conducted by a hearing officer,
45 who may be an official of the agency, a member of its staff, a
46 person on assignment from another agency, a person from the
47 Office of Administrative Law assigned pursuant to subsection o. of
48 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent

1 contractor. The hearing officer shall have the responsibility to
2 make recommendations to the agency regarding the adoption,
3 amendment or repeal of a rule. These recommendations shall be
4 made public. At the beginning of each hearing, or series of
5 hearings, the agency, if it has made a proposal, shall present a
6 summary of the factual information on which its proposal is based,
7 and shall respond to questions posed by any interested party.
8 Hearings shall be conducted at such times and in locations which
9 shall afford interested parties the opportunity to attend. A verbatim
10 record of each hearing shall be maintained, and copies of the record
11 shall be available to the public at no more than the actual cost ,
12 which shall be that of the agency where the petition for rule-making
13 originated.

14 (cf: P.L.2001, c.5, s.2)

15

16 4. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to
17 read as follows:

18 2. The Legislature finds that:

19 a. The New Jersey Supreme Court, through its rulings in South
20 Burlington County NAACP v. Mount Laurel, 67 N.J.151 (1975) and
21 South Burlington County NAACP v. Mount Laurel, 92 N.J.158
22 (1983), has determined that every municipality in a growth area has
23 a constitutional obligation to provide through its land use
24 regulations a realistic opportunity for a fair share of its region's
25 present and prospective needs for housing for low and moderate
26 income families.

27 b. In the second Mount Laurel ruling, the Supreme Court stated
28 that the determination of the methods for satisfying this
29 constitutional obligation "is better left to the Legislature," that the
30 court has "always preferred legislative to judicial action in their
31 field," and that the judicial role in upholding the Mount Laurel
32 doctrine "could decrease as a result of legislative and executive
33 action."

34 c. The interest of all citizens, including low and moderate
35 income families in need of affordable housing, and the needs of the
36 workforce, would be best served by a comprehensive planning and
37 implementation response to this constitutional obligation.

38 d. There are a number of essential ingredients to a
39 comprehensive planning and implementation response, including
40 the establishment of reasonable fair share housing guidelines and
41 standards, the initial determination of fair share by officials at the
42 municipal level and the preparation of a municipal housing
43 element, State review of the local fair share study and housing
44 element, and continuous State funding for low and moderate income
45 housing to replace the federal housing subsidy programs which
46 have been almost completely eliminated.

47 e. The State can maximize the number of low and moderate
48 income units provided in New Jersey by allowing its municipalities

1 to adopt appropriate phasing schedules for meeting their fair share,
2 so long as the municipalities permit a timely achievement of an
3 appropriate fair share of the regional need for low and moderate
4 income housing as required by the Mt. Laurel I and II opinions and
5 other relevant court decisions.

6 f. The State can also maximize the number of low and moderate
7 income units by rehabilitating existing, but substandard, housing in
8 the State[, and, in order to achieve this end, it is appropriate to
9 permit the transfer of a limited portion of the fair share obligations
10 among municipalities in a housing region, so long as the transfer
11 occurs on the basis of sound, comprehensive planning, with regard
12 to an adequate housing financing plan, and in relation to the access
13 of low and moderate income households to employment
14 opportunities]. Because the Legislature has determined, pursuant
15 to P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
16 bill), that it is no longer appropriate or in harmony with the *Mount*
17 *Laurel* doctrine to permit the transfer of the fair share obligations
18 among municipalities within a housing region, it is necessary and
19 appropriate to create a new program to foster the rehabilitation of
20 existing, but substandard, housing.

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

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

34 i. Certain amendments to the enabling act of the Council on
35 Affordable Housing are necessary to provide guidance to the
36 council to ensure consistency with the Legislative intent, while at
37 the same time clarifying the limitations of the council in its
38 rulemaking. Although the court has remarked in several decisions
39 that the Legislature has granted the council considerable deference
40 in its rulemaking, the Legislature retains its power and obligation to
41 clarify and amend the enabling act from which the council derives
42 its rulemaking power, from time to time, in order to better guide the
43 council.

44 j. The Legislature finds that the use of regional contribution
45 agreements, which permits municipalities to transfer a certain
46 portion of their fair share housing obligation outside of the
47 municipal borders, should no longer be utilized as a tool under the

1 methodology adopted by the council.

2 (cf: P.L.1985, c.222, s.2)

3

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

6 4. As used in this act:

7 a. "Council" means the Council on Affordable Housing
8 established in this act, which shall have primary jurisdiction for the
9 administration of housing obligations in accordance with sound
10 regional planning considerations in this State.

11 b. "Housing region" means a geographic area of not less than
12 two nor more than four contiguous, whole counties which exhibit
13 significant social, economic and income similarities, and which
14 constitute to the greatest extent practicable the primary metropolitan
15 statistical areas as last defined by the United States Census Bureau
16 prior to the effective date of **[this act]** P.L.1985, c.222 (C.52:27D-
17 301 et al.).

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

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

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

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

40 g. "Conversion" means the conversion of existing commercial,
41 industrial, or residential structures for low and moderate , or middle
42 income housing purposes where a substantial percentage of the
43 housing units are provided for a reasonable income range of low
44 and moderate, or middle income households.

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

- 1 i. "Agency" means the New Jersey Mortgage and Housing
2 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
3 seq.).
- 4 j. "Prospective need" means a projection of housing needs
5 based on development and growth which is reasonably likely to
6 occur in a region or a municipality, as the case may be, as a result
7 of actual determination of public and private entities. In
8 determining prospective need, consideration shall be given to
9 approvals of development applications, real property transfers and
10 economic projections prepared by the State Planning Commission
11 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-
12 196 et seq.).
- 13 k. "Disabled person" means a person with a physical disability,
14 infirmity, malformation or disfigurement which is caused by bodily
15 injury, birth defect, aging or illness including epilepsy and other
16 seizure disorders, and which shall include, but not be limited to, any
17 degree of paralysis, amputation, lack of physical coordination,
18 blindness or visual impediment, deafness or hearing impediment,
19 muteness or speech impediment or physical reliance on a service or
20 guide dog, wheelchair, or other remedial appliance or device.
- 21 l. "Adaptable" means constructed in compliance with the
22 technical design standards of the barrier free subcode adopted by
23 the Commissioner of Community Affairs pursuant to the "State
24 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
25 et seq.) and in accordance with the provisions of section 5 of
26 P.L.2005, c.350 (C.52:27D-123.15).
- 27 m. "Middle income housing" means housing affordable
28 according to federal Department of Housing and Urban
29 Development or other recognized standards for home ownership
30 and rental costs and occupied or reserved for occupancy by
31 households with a gross household income equal to or more than
32 80% but less than 110% of the median gross household income for
33 households of the same size within the housing region in which the
34 housing is located.
- 35 n. "Very low income housing" means housing affordable
36 according to federal Department of Housing and Urban
37 Development or other recognized standards for home ownership
38 and rental costs and occupied or reserved for occupancy by
39 households with a gross household income equal to 30% or less of
40 the median gross household income for households of the same size
41 within the housing region in which the housing is located.
42 (cf: P.L.2005, c.350, s.2)
- 43
- 44 6. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
45 read as follows:
- 46 7. It shall be the duty of the council, seven months after the
47 confirmation of the last member initially appointed to the council,

1 or January 1, 1986, whichever is earlier, and from time to time
2 thereafter, to:

- 3 a. Determine housing regions of the State;
- 4 b. Estimate the present and prospective need for low and
5 moderate income housing at the State and regional levels. The
6 present and prospective need for moderate income households with
7 a gross household income of less than 80% of the median gross
8 household income shall be calculated separately from the present
9 and prospective need for middle income households with a gross
10 household income of between 80% and 110% of the median gross
11 household income;

12 c. Adopt criteria and guidelines for:

- 13 (1) Municipal determination of its present and prospective fair
14 share of the housing need in a given region which shall be
15 computed for a 10-year period.

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

41 In order to avoid dilution of the constitutional obligation to
42 provide housing affordable to households with a gross household
43 income less than 80% of the median gross household income, under
44 no circumstance, including but not limited to credits for housing
45 constructed or rehabilitated between April 1, 1980 and December
46 15, 1986 and secondary sources such as filtering, shall the Council
47 credit housing affordable to households with a gross household
48 income equal to more than 80% but less than 110% of the median

1 gross household income for households of the same size within the
2 housing region in which the housing is located against the present
3 and prospective fair share of the housing need in a given region
4 calculated based on households with a gross household income less
5 than 80% of the median gross household income for households of
6 the same size within the housing region in which the housing is
7 located;

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

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

27 (a) The preservation of historically or important architecture and
28 sites and their environs or environmentally sensitive lands may be
29 jeopardized,

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

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

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

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

39 (f) Vacant and developable land is not available in the
40 municipality, and

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

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

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

47 e. In its discretion, place a limit, based on a percentage of
48 existing housing stock in a municipality and any other criteria

1 including employment opportunities which the council deems
2 appropriate, upon the aggregate number of units which may be
3 allocated to a municipality as its fair share of the region's present
4 and prospective need for low and moderate and middle income
5 housing. No municipality shall be required to address a fair share
6 of housing units affordable to households with a gross household
7 income of less than 80% of the median gross household income
8 beyond 1,000 units within ten years from the grant of substantive
9 certification, unless it is demonstrated, following objection by an
10 interested party and an evidentiary hearing, based upon the facts
11 and circumstances of the affected municipality that it is likely that
12 the municipality through its zoning powers could create a realistic
13 opportunity for more than 1,000 **[low and moderate]** housing units
14 affordable to households with a gross household income of less than
15 80% of the median gross household income units within that ten-
16 year period. For the purposes of this section, the facts and
17 circumstances which shall determine whether a municipality's fair
18 share shall exceed 1,000 units, as provided above, shall be a finding
19 that the municipality has issued more than 5,000 certificates of
20 occupancy for residential units in the ten-year period preceding the
21 petition for substantive certification in connection with which the
22 objection was filed.

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

32 The council, with respect to any municipality seeking substantive
33 certification, shall require that a minimum number of housing units
34 be reserved for occupancy by low and moderate or middle income
35 households, or such percentage as may be consistent with the rules
36 of the council regarding the percentage to be reserved relative to the
37 density of development, for any residential development resulting
38 from a zoning change made to a non-residentially-zoned property
39 changing it from or to residential use within the 12-month period
40 preceding or succeeding the filing of the application for residential
41 development.

42 In carrying out the above duties, including, but not limited to,
43 present and prospective need estimations the council shall give
44 appropriate weight to pertinent research studies, government
45 reports, decisions of other branches of government, implementation
46 of the State Development and Redevelopment Plan prepared
47 pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196
48 et seq.) and public comment. To assist the council, the State

1 Planning Commission established under that act shall provide the
2 council annually with economic growth, development and decline
3 projections for each housing region for the next ten years. The
4 council shall develop procedures for periodically adjusting regional
5 need based upon the low and moderate income housing that is
6 provided in the region through any federal, State, municipal or
7 private housing program.

8 No housing unit subject to the provisions of section 5 of
9 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the
10 barrier free subcode adopted by the Commissioner of Community
11 Affairs pursuant to the "State Uniform Construction Code Act,"
12 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for
13 inclusion in the municipal fair share plan certified by the council
14 unless the unit complies with the requirements set forth thereunder.

15 The requirements of P.L. _____, c. _____ (C. _____) (pending before
16 the Legislature as this bill) for the calculation and crediting of
17 affordable housing needs for middle income households shall be
18 phased in proportionally over a five-year period, such that on the
19 first day of the 61st month next following enactment of P.L. _____,
20 c. _____ (C. _____) (pending before the Legislature as this bill), the
21 housing needs of middle income households will be fully addressed
22 under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et
23 al.). Affordability controls for middle income housing shall not
24 extend beyond a ten-year period, and any rules of the council
25 requiring a percentage of resale profit return to the municipality
26 upon resale of a housing unit after the expiration of any
27 affordability controls shall not be applied to housing reserved for
28 middle income households.

29 (cf: P.L.2005, c.350, s.4)

30

31 7. (New section) The council shall coordinate and review the
32 housing elements as filed pursuant to section 11 of P.L.1985, c.222,
33 (C.52:27D-311), and the housing activities under section 20 of
34 P.L.1985, c.222 (C.52:27D-320), at least once every three years, to
35 ensure that at least 25 percent of the housing units made available
36 for occupancy by low-income, moderate income and middle income
37 households will be reserved for occupancy by very low income
38 households, as that term is defined pursuant to section 4 of
39 P.L.1985, c.222, (C.52:27D-304). Nothing in this section shall
40 require that a specific percentage of the units in any specific
41 municipality be reserved as very low income housing; provided,
42 however, that a municipality shall not receive bonus credits for the
43 provision of housing units reserved for occupancy by very low
44 income households unless the 25 percent target has been exceeded
45 within that municipality. The council shall coordinate all efforts to
46 meet the goal of this section in a manner that will result in a
47 balanced number of housing units being reserved for very low
48 income households throughout all housing regions.

1 8. (New section) a. The council may authorize a municipality
2 that has been granted substantive certification, or that has been so
3 authorized by a court of competent jurisdiction, to impose and
4 collect development fees from developers of residential property, in
5 accordance with rules promulgated by the council. Each amount
6 collected shall be deposited and shall be accounted for separately,
7 by payer and date of deposit.

8 b. A municipality shall deposit all fees collected into a trust fund
9 dedicated to those purposes as required under this section, and such
10 additional purposes as may be approved by the council. A
11 municipality collecting at least \$1,000 per year in development fees
12 shall deposit the funds collected in accordance with its cash
13 management plan in the manner required pursuant to N.J.S.40A:5-
14 14.

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

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

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

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

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

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

42 (5) Not more than 20 percent of the revenues collected from
43 development fees each year shall be expended on administration, in
44 accordance with rules of the council.

45 d. The council shall establish a time by which all development
46 fees collected within a calendar year shall be expended; provided,
47 however, that all fees shall be required to be expended within four
48 years from the date of collection. A municipality that fails to

1 expend the balance required in the development fee trust fund by
2 the time set forth in this section shall be required by the council to
3 transfer the remaining unspent balance at the end of the four-year
4 period to the New Jersey Affordable Housing Trust Fund,
5 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
6 320), as amended by P.L. , c. (C.) (pending before the
7 Legislature as this bill), to be used in the housing region of the
8 transferring municipality for the authorized purposes of that fund.

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

14 This section shall not apply to the collection of a Statewide
15 development fee imposed upon non-residential development
16 pursuant to sections 33 through 39 of P.L. , c. (C.)
17 (pending before the Legislature as this bill).

18

19 9. (New section) a. The council may authorize a municipality
20 that has been granted substantive certification to impose and collect
21 payments-in-lieu of constructing affordable units on site which
22 payments may be imposed and collected whenever a developer of
23 residential housing is unable to provide all of the affordable housing
24 units required under the fair share housing methodology, as
25 provided pursuant to the rules of the council. Payment-in-lieu fees
26 shall be deposited into a trust fund, and accounted for separately
27 from any other fees collected by a municipality. Payments-in-lieu
28 shall be expended solely to construct new units or to substantially
29 rehabilitate existing substandard housing units. Whenever a
30 payment-in-lieu is charged by a municipality, pursuant to this
31 subsection a development fee authorized pursuant to section 8 of
32 P.L. , c. (C.) (pending before the legislature as this bill) shall
33 not be charged in connection with the same development.

34 b. Collected from payments-in-lieu imposed pursuant to
35 subsection a. of this section shall be expended within four years of
36 the date of collection. The council may extend this deadline if the
37 municipality submits sufficient proof of building or other permits,
38 or other efforts concerning land acquisition or project development.
39 The council shall provide such administrative assistance as may be
40 required to aid in the construction of affordable housing units.
41 Payment-in-lieu-of revenue collected pursuant to subsection a. of
42 this section shall be spent solely on the construction of new
43 affordable housing or substantial rehabilitation of existing housing
44 for conversion to affordable housing. A municipality that is unable
45 to construct new affordable housing because of a lack of available
46 land resources, or that does not have available substandard housing
47 to rehabilitate, shall be required to transfer any unexpended revenue
48 collected pursuant to subsection a. of this section to the New Jersey

1 Affordable Housing Trust Fund, established pursuant to section 20
2 of P.L.1985, c.222 (C.52:27D-320), to be used within the same
3 housing region for the authorized purposes of that fund, in
4 accordance with regulations promulgated by the council.

5
6 10. (New section) The council shall maintain on its website,
7 and also publish on a regular basis, an up-to-date municipal status
8 report concerning the petitions for substantive certification of each
9 municipality that has submitted to the council's jurisdiction, and
10 shall collect and publish information concerning the number of
11 housing units actually constructed, construction starts, certificates
12 of occupancy granted, rental units maintained, and the number of
13 housing units transferred or sold within the previous 12 month
14 period. With respect to units actually constructed, the information
15 shall specify the characteristics of the housing, including housing
16 type, tenure, affordability level, number of bedrooms, and whether
17 occupancy is reserved for families, senior citizens, or other special
18 populations. In addition, the council shall require each
19 municipality, as a condition of substantive certification, to provide,
20 in a standardized electronic media format as determined by the
21 council, the details of the fair share plan as adopted by the
22 municipality and approved by the council. The council shall
23 publish and maintain such approved plans on its website.

24
25 11. (New section) Sections 11 through 14 of P.L. , c.
26 (C.) (pending before the Legislature as this bill) shall be known
27 and may be cited as the "Housing Rehabilitation and Assistance
28 Program Act."

29
30 12. (New section) The Legislature finds and declares that:

31 a. The transfer of a portion of the fair share obligations among
32 municipalities has proven to not be a viable method of ensuring that
33 an adequate supply and variety of housing choices are provided in
34 municipalities experiencing growth. Therefore, the use of a
35 regional contribution agreement shall no longer be permitted under
36 P.L.1985, c.222 (C.52:27D-301 et al.).

37 b. Although the elimination of the regional contribution
38 agreement as a tool for the production of affordable housing
39 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), will impact on
40 some proposed agreements awaiting approval, it is for a public
41 purpose and for the public good that such contracts be declared void
42 for the current and future housing obligation rounds.

43 c. There is a need to assist municipalities in the rehabilitation of
44 housing for occupancy by low and moderate income households.
45 To this end, a specific program for housing rehabilitation by
46 municipalities would best serve this need. It is the intent of the
47 Legislature that this program, as well as funds earmarked for the
48 purposes of the program, will be utilized especially in urban areas,

1 which were the main recipients of regional contribution agreements,
2 to continue to upgrade housing stock in order to provide a wide
3 variety and choice of housing for persons living in those areas.

4 d. There is also a need to provide funding to municipalities to
5 create additional incentives and assistance for the production of
6 safe, decent, and affordable rental and other housing.

7
8 13. (New section) a. There is established within the
9 Department of Community Affairs a Housing Rehabilitation
10 Program for the purposes of assisting certain municipalities in the
11 provision of housing through the rehabilitation of existing
12 buildings.

13 b. Within the program there shall be established a trust fund to
14 be known as the "Housing Rehabilitation Assistance Fund," into
15 which may be deposited:

16 (1) monies which may be available to the fund from any other
17 programs established for the purposes of housing rehabilitation;

18 (2) monies appropriated by the Legislature to the fund; and

19 (3) any other funds made available through State or federal
20 housing programs for the purposes of producing affordable housing.

21 c. The Commissioner of Community Affairs shall develop a
22 strategic five-year plan for the program aimed at:

23 (1) identifying and estimating the number of substandard housing
24 units within the State; and

25 (2) developing strategies to assist municipalities in creating
26 rehabilitation programs.

27 d. The commissioner may award a housing rehabilitation grant
28 to a municipality that qualifies for aid pursuant to P.L.1978, c.14
29 (C.52:27D-178 et seq.) and that has submitted a copy of its housing
30 plan to the department, including a survey of the number of housing
31 units in need of rehabilitation within the municipality.

32 e. The commissioner shall promulgate rules and regulations,
33 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
34 (C.52:14B-1 et seq.), to effectuate the purposes of P.L. , c.
35 (C.) (pending before the Legislature as this bill); provided that
36 the rules shall permit a municipality broad discretion in shaping its
37 housing rehabilitation program. The department may require a
38 return of a grant upon its determination that a municipality is not
39 rehabilitating housing in accordance with its plan or with the
40 regulations.

41
42 14. (New section) a. There shall be appropriated annually from
43 the amounts required to be set aside from the collections of the
44 realty transfer fees pursuant to section 4 of P.L.1968, c.49 (C.46:15-
45 8), the sum of \$20,000,000 for deposit into the "Housing
46 Rehabilitation Assistance Fund," established pursuant to section 13
47 of P.L. , c. (C.) (pending before the Legislature as this
48 bill), to be used for the purposes authorized under that section.

1 b. In the event the full amount required to be transferred
2 pursuant to subsection a. of this section is not transferred in any
3 fiscal year, the Legislature shall subsequently appropriate in the
4 same fiscal year from the General Fund an amount equal to the
5 difference between the amount actually transferred and the amount
6 required to be transferred pursuant to subsection a. of this section,
7 so that the total funds made available to the "Housing
8 Rehabilitation Assistance Fund" annually shall be equal to the
9 amount established pursuant to subsection a. of this section.

10
11 15. Section 4 of P.L.1968, c.49 (C.46:15-8) is amended to read
12 as follows:

13 4. a. The proceeds of the fees collected by the county recording
14 officer, as authorized by P.L.1968, c.49 (C.46:15-5 et seq.), shall be
15 accounted for and remitted to the county treasurer.

16 b. (1) The county portion of the basic fee collected pursuant to
17 paragraph (1) of subsection a. of section 3 of P.L.1968, c.49
18 (C.46:15-7) shall be retained by the county treasurer for the use of
19 the county.

20 (2) The State portion of the basic fee, the additional fee, and the
21 general purpose fee shall be paid to the State Treasurer for the use
22 of the State, provided that the portion of the fees collected pursuant
23 to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49
24 (C.46:15-7) shall be accounted for separately and remitted by
25 separate transmittal to the State Treasurer. Payments shall be made
26 to the State Treasurer on the tenth day of each month following the
27 month of collection.

28 c. (1) Amounts, not in excess of \$25,000,000, paid during the
29 State fiscal year to the State Treasurer from the payment of the
30 State portion of the basic fee shall be credited to the "Shore
31 Protection Fund" created pursuant to section 1 of P.L.1992, c.148
32 (C.13:19-16.1), in the manner established under that section.

33 (2) In addition to the amounts credited to the "Shore Protection
34 Fund" pursuant to paragraph (1) of this subsection, amounts equal
35 to \$12,000,000 in each of the first 10 years after the date of
36 enactment of the "Highlands Water Protection and Planning Act,"
37 P.L.2004, c.120 (C.13:20-1 et al.) and to \$5,000,000 in each year
38 thereafter, paid during the State fiscal year to the State Treasurer
39 from the payment of fees collected by the county recording officer
40 other than the additional fee of \$0.75 for each \$500.00 of
41 consideration or fractional part thereof recited in the deed in excess
42 of \$150,000.00 shall be credited to the "Highlands Protection Fund"
43 created pursuant to section 21 of P.L.2004, c.120 (C.13:20-19), in
44 the manner established under that section. No monies shall be
45 credited to the "Highlands Protection Fund" pursuant to this
46 paragraph until and unless the full amount of \$25,000,000 has first
47 been credited to the "Shore Protection Fund" pursuant to paragraph
48 (1) of this subsection.

1 (3) In addition to the amounts credited to the "Shore Protection
2 Fund" pursuant to paragraph (1) of this subsection, amounts equal
3 to \$20,000,000 annually paid during the State fiscal year to the
4 State Treasurer from the payment of fees collected by the county
5 recording officer, other than the additional fee of \$0.75 for each
6 \$500.00 of consideration or fractional part thereof recited in the
7 deed in excess of \$150,000.00, shall be credited to the "Housing
8 Rehabilitation Assistance Fund" established pursuant to section 13
9 of P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
10 bill), in the manner established under that section. No monies shall
11 be credited to the "Housing Rehabilitation Assistance Fund"
12 pursuant to this paragraph until and unless the full amount of
13 \$25,000,000 has first been credited to the "Shore Protection Fund"
14 pursuant to paragraph (1) of this subsection.

15 d. All amounts paid to the State Treasurer by separate
16 transmittal from the payment of the additional fee shall be credited
17 to the **【Neighborhood Preservation Nonlapsing Revolving Fund】**
18 New Jersey Affordable Housing Trust Fund established pursuant to
19 P.L.1985, c.222 (C.52:27D-301 et al.), in the manner established
20 under section 20 thereof (C.52:27D-320).
21 (cf: P.L.2004, c.120, s.61)

22
23 16. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to
24 read as follows:

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

38 (1) Rezoning for densities necessary to assure the economic
39 viability of any inclusionary developments, either through
40 mandatory set-asides or density bonuses, as may be necessary to
41 meet all or part of the municipality's fair share in accordance with
42 the regulations of the council and the provision of subsection h. of
43 this section;

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

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

- 1 affordable to low and moderate and middle income households for
2 an appropriate period of not less than six years;
- 3 (4) A plan for infrastructure expansion and rehabilitation if
4 necessary to assure the achievement of the municipality's fair share
5 of low and moderate income housing;
- 6 (5) Donation or use of municipally owned land or land
7 condemned by the municipality for purposes of providing low and
8 moderate income housing;
- 9 (6) Tax abatements for purposes of providing low and moderate
10 income housing;
- 11 (7) Utilization of funds obtained from any State or federal
12 subsidy toward the construction of low and moderate income
13 housing;
- 14 (8) Utilization of municipally generated funds toward the
15 construction of low and moderate and middle income housing; and
- 16 (9) The purchase of privately owned real property used for
17 residential purposes at the value of all liens secured by the property;
18 excluding any tax liens, notwithstanding that the total amount of
19 debt secured by liens exceeds the appraised value of the property,
20 pursuant to regulations promulgated by the Commissioner of
21 Community Affairs pursuant to subsection b. of section 41 of
22 P.L.2001, c.126 (C.52:27D-311.2).
- 23 b. The municipality may provide for a phasing schedule for the
24 achievement of its fair share of low and moderate and middle
25 income housing.
- 26 c. **【**The municipality may propose that a portion of its fair
27 share be met through a regional contribution agreement. The
28 housing element shall demonstrate, however, the manner in which
29 that portion will be provided within the municipality if the regional
30 contribution agreement is not entered into. The municipality shall
31 provide a statement of its reasons for the proposal. **】** (Deleted by
32 amendment, P.L. _____, c. ____.) (pending before the Legislature as
33 this bill)
- 34 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall
35 require a municipality to raise or expend municipal revenues in
36 order to provide low and moderate or middle income housing.
- 37 e. When a municipality's housing element includes the
38 provision of rental housing units in a community residence for the
39 developmentally disabled, as defined in section 2 of P.L.1977,
40 c.448 (C.30:11B-2), which will be affordable to persons of low and
41 moderate income, and for which adequate measures to retain such
42 affordability pursuant to paragraph (3) of subsection a. of this
43 section are included in the housing element, those housing units
44 shall be fully credited as permitted under the rules of the council
45 towards the fulfillment of the municipality's fair share of low and
46 moderate income housing.
- 47 f. It having been determined by the Legislature that the
48 provision of housing under **【**this act**】** P.L.1985, c.222 (C.52:27D-

1 301 et al.) is a public purpose, a municipality or municipalities may
2 utilize public monies to make donations, grants or loans of public
3 funds for the rehabilitation of deficient housing units and the
4 provision of new or substantially rehabilitated housing for low and
5 moderate or middle income persons, providing that any private
6 advantage is incidental.

7 g. A municipality which has received substantive certification
8 from the council, and which has actually effected the construction
9 of the affordable housing units it is obligated to provide, may
10 amend its affordable housing element or zoning ordinances without
11 the approval of the council.

12 h. Whenever affordable housing units are proposed to be
13 provided through an inclusionary development, a municipality shall
14 provide, through its zoning powers, incentives to the developer,
15 which may include increased densities and reduced costs, in
16 accordance with the regulations of the council and this subsection.

17 (cf: P.L.2001, c.441, s.1)

18

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

21 12. a. **[A]** Except as prohibited under P.L. _____, c. _____ (C. _____)
22 (pending before the Legislature as this bill), a municipality may
23 propose the transfer of up to 50% of its fair share to another
24 municipality within its housing region by means of a contractual
25 agreement into which two municipalities voluntarily enter. A
26 municipality may also propose a transfer by contracting with the
27 agency or another governmental entity designated by the council if
28 the council determines that the municipality has exhausted all
29 possibilities within its housing region. A municipality proposing to
30 transfer to another municipality, whether directly or by means of a
31 contract with the agency or another governmental entity designated
32 by the council, shall provide the council with the housing element
33 and statement required under subsection c. of section 11 of
34 P.L.1985, c.222 (C.52:27D-311), and shall request the council to
35 determine a match with a municipality filing a statement of intent
36 pursuant to subsection e. of this section. Except as provided in
37 subsection b. of this section, the agreement may be entered into
38 upon obtaining substantive certification under section 14 of
39 P.L.1985, c.222 (C.52:27D-314), or anytime thereafter. The
40 regional contribution agreement entered into shall specify how the
41 housing shall be provided by the second municipality, hereinafter
42 the receiving municipality, and the amount of contributions to be
43 made by the first municipality, hereinafter the sending municipality.

44 b. A municipality which is a defendant in an exclusionary
45 zoning suit and which has not obtained substantive certification
46 pursuant to P.L.1985, c.222 may request the court to be permitted to
47 fulfill a portion of its fair share by entering into a regional
48 contribution agreement. If the court believes the request to be

1 reasonable, the court shall request the council to review the
2 proposed agreement and to determine a match with a receiving
3 municipality or municipalities pursuant to this section. The court
4 may establish time limitations for the council's review, and shall
5 retain jurisdiction over the matter during the period of council
6 review. If the court determines that the agreement provides a
7 realistic opportunity for the provision of low and moderate income
8 housing within the housing region, it shall provide the sending
9 municipality a credit against its fair share for housing to be
10 provided through the agreement in the manner provided in this
11 section. The agreement shall be entered into prior to the entry of a
12 final judgment in the litigation. In cases in which a final judgment
13 was entered prior to the date P.L.1985, c.222 takes effect and in
14 which an appeal is pending, a municipality may request
15 consideration of a regional contribution agreement; provided that it
16 is entered into within 120 days after P.L.1985, c.222 takes effect.
17 In a case in which a final judgment has been entered, the court shall
18 consider whether or not the agreement constitutes an expeditious
19 means of providing part of the fair share. Notwithstanding this
20 subsection, no consideration shall be given to any regional
21 contribution agreement of which the council did not complete its
22 review and formally approve a recommendation to the court prior to
23 June 1, 2006.

24 c. **[Regional]** Except as prohibited under P.L. , c. (C.)
25 (pending before the Legislature as this bill), regional contribution
26 agreements shall be approved by the council, after review by the
27 county planning board or agency of the county in which the
28 receiving municipality is located. The council shall determine
29 whether or not the agreement provides a realistic opportunity for the
30 provision of low and moderate income housing within convenient
31 access to employment opportunities. The council shall refer the
32 agreement to the county planning board or agency which shall
33 review whether or not the transfer agreement is in accordance with
34 sound, comprehensive regional planning. In its review, the county
35 planning board or agency shall consider the master plan and zoning
36 ordinance of the sending and receiving municipalities, its own
37 county master plan, and the State development and redevelopment
38 plan. In the event that there is no county planning board or agency
39 in the county in which the receiving municipality is located, the
40 council shall also determine whether or not the agreement is in
41 accordance with sound, comprehensive regional planning. After it
42 has been determined that the agreement provides a realistic
43 opportunity for low and moderate income housing within
44 convenient access to employment opportunities, and that the
45 agreement is consistent with sound, comprehensive regional
46 planning, the council shall approve the regional contribution
47 agreement by resolution. All determinations of a county planning
48 board or agency shall be in writing and shall be made within such

1 time limits as the council may prescribe, beyond which the council
2 shall make those determinations and no fee shall be paid to the
3 county planning board or agency pursuant to this subsection.

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

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

34 f. The council shall establish guidelines for the duration and
35 amount of contributions in regional contribution agreements. In
36 doing so, the council shall give substantial consideration to the
37 average of: (1) the median amount required to rehabilitate a low and
38 moderate income unit up to code enforcement standards; (2) the
39 average internal subsidization required for a developer to provide a
40 low income housing unit in an inclusionary development; (3) the
41 average internal subsidization required for a developer to provide a
42 moderate income housing unit in an inclusionary development.
43 Contributions may be prorated in municipal appropriations
44 occurring over a period not to exceed ten years and may include an
45 amount agreed upon to compensate or partially compensate the
46 receiving municipality for infrastructure or other costs generated to
47 the receiving municipality by the development. Appropriations
48 shall be made and paid directly to the receiving municipality or

1 municipalities or to the agency or other governmental entity
2 designated by the council, as the case may be.

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

11 No regional contribution agreement entered into by a
12 municipality, or approved by the council or the court, subsequent to
13 June 1, 2006 shall generate credit against a municipality's fair share
14 obligation. On or after the effective date of P.L. , c. (C.)
15 (pending before the Legislature as this bill), no regional
16 contribution agreement shall be entered into by a municipality, or
17 approved by the council or the court.

18 (cf: P.L.2001, c.435, s.4)

19

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

22 20. **【The Neighborhood Preservation Program within the**
23 **Department of Community Affairs' Division of Housing and**
24 **Development, established pursuant to the Commissioner of**
25 **Community Affairs' authority under section 8 of P.L.1975, c.248**
26 **(C.52:27D-149), shall establish a separate Neighborhood**
27 **Preservation Nonlapsing Revolving Fund for monies appropriated**
28 **by section 33 of P.L.1985, c.222, or other monies as may be**
29 **appropriated by the Legislature for the purposes of the fund.】**

30 There is established in the Department of Community Affairs a
31 separate trust fund, to be used for the exclusive purposes as
32 provided in this section, and which shall be known as the "New
33 Jersey Affordable Housing Trust Fund." The fund shall be a non-
34 lapsing, revolving trust fund, and all monies deposited or received
35 for purposes of the fund shall be accounted for separately, by source
36 and amount, and remain in the fund until appropriated for such
37 purposes. The fund shall be the repository of all State funds
38 appropriated for affordable housing purposes, including the
39 proceeds from the receipts of the additional fee collected pursuant
40 to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49
41 (C.46:15-7), proceeds from available receipts of the Statewide non-
42 residential development fees collected pursuant to section 36 of
43 P.L. , c. (C.) (pending before the Legislature as this
44 bill), monies lapsing or reverting from municipal development trust
45 funds, or other monies as may be dedicated, earmarked, or
46 appropriated by the Legislature for the purposes of the fund. All
47 references in any law, order, rule, regulation, contract, loan,
48 document, or otherwise, to the "Neighborhood Preservation

1 Nonlapsing Revolving Fund” shall mean the “New Jersey
2 Affordable Housing Trust Fund.”

3 a. Except as permitted pursuant to subsection g. of this section,
4 the commissioner shall award grants or loans from this fund for
5 housing projects and programs in municipalities whose housing
6 elements have received substantive certification from the council, in
7 municipalities receiving State aid pursuant to P.L.1978, c.14
8 (C.52:27D-178 et seq.), in municipalities subject to builder's
9 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328)
10 or in receiving municipalities in cases where the council has
11 approved a regional contribution agreement and a project plan
12 developed by the receiving municipality. Programs and projects in
13 any municipality shall be funded only after receipt by the
14 commissioner of a written statement in support of the program or
15 project from the municipal governing body.

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

21 c. **【During the first 12 months from the effective date of**
22 **P.L.1985, c.222 (C.52:27D-301 et al.) and for】** For any
23 **【additional】** period which the council may approve, the
24 commissioner may assist affordable housing programs which are
25 not located in municipalities whose housing elements have been
26 granted substantive certification or which are not in furtherance of a
27 regional contribution agreement; provided that the affordable
28 housing program will meet all or part of a municipal low and
29 moderate income housing obligation.

30 d. Amounts deposited in the **【Neighborhood Preservation】**
31 New Jersey Affordable Housing Trust Fund shall be targeted to
32 regions based on the region's percentage of the State's low and
33 moderate income housing need as determined by the council.
34 Amounts in the fund shall be applied for the following purposes in
35 designated neighborhoods;

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

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

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

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

46 (5) Grants of assistance to eligible municipalities for costs of
47 necessary studies, surveys, plans and permits; engineering,
48 architectural and other technical services; costs of land acquisition

1 and any buildings thereon; and costs of site preparation, demolition
2 and infrastructure development for projects undertaken pursuant to
3 an approved regional contribution agreement;

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

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

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

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

45 g. In addition to other grants or loans awarded pursuant to this
46 section, and without regard to any limitations on such grants or
47 loans for any other purposes herein imposed, the commissioner
48 shall annually allocate such amounts as may be necessary in the

1 commissioner's discretion, and in accordance with section 3 of
2 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
3 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
4 287.1 et al.). Such rental assistance grants shall be deemed
5 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
6 301 et al.), in order to meet the housing needs of certain low income
7 households who may not be eligible to occupy other housing
8 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

9 h. The department and Treasurer shall submit the fund for an
10 audit annually by the State Auditor or State Comptroller, at the
11 discretion of the Treasurer. In addition, the department shall
12 prepare an annual report for each fiscal year, and submit it by
13 November 30th of each year to the Governor and the Legislature,
14 and the Joint Committee on Housing Affordability, or its successor,
15 and post the information to its web site, of all activity of the fund,
16 including details of the grants and loans by number of units, number
17 and income ranges of recipients of grants or loans, location of the
18 housing renovated or constructed using monies from the fund, the
19 number of units upon which affordability controls were placed, and
20 the length of those controls. The report shall also list the activity of
21 the funds set-aside for use for the State rental assistance program
22 from the fund, pursuant to P.L.2004, c.140 (C.52:27D-187.1 et al.)
23 and subsection g. of this section.

24 (cf: P.L.2004, c.140, s.4)

25
26 19. (New section) a. Notwithstanding any rules of the council
27 to the contrary, for developments consisting of newly-constructed
28 residential units located, or to be located, within the jurisdiction of
29 any regional planning entity required to adopt a master plan or
30 comprehensive management plan pursuant to statutory law,
31 including the New Jersey Meadowlands Commission pursuant to
32 subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6), the
33 Pinelands Commission pursuant to section 7 of the "Pinelands
34 Protection Act," P.L.1979, c.111 (C.13:18A-8), and the Highlands
35 Water Protection and Planning Council pursuant to section 11 of
36 P.L.2004, c.120 (C.13:20-11), other than joint planning boards
37 formed pursuant to section 64 of P.L.1965, c.291 (C.40:55D-77),
38 there shall be required to be reserved for occupancy by low or
39 moderate or middle income households at least 20 percent of the
40 residential units constructed.

41 b. A developer of a project consisting of newly constructed
42 residential units being financed in whole or in part with State funds,
43 including but not limited to, transit villages, units constructed on
44 State-owned property, and urban transit hub centers as defined
45 pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208), shall be
46 required to reserve at least 20 percent of the residential units
47 constructed for occupancy by low, moderate, or middle income
48 households, as those terms are defined in section 4 of P.L.1985,

1 c.222 (C.52:27D-304) with affordability controls as required under
2 the rules of the council, unless the municipality in which the
3 property is located has received substantive certification from the
4 council and such a reservation is not required under the approved
5 affordable housing plan, or the municipality has been given a
6 judgment of repose or a judgment of compliance by the court, and
7 such a reservation is not required under the approved affordable
8 housing plan.

9
10 20. (New section) Notwithstanding any rules of the New Jersey
11 Housing and Mortgage Finance Agency to the contrary, the
12 allocation of low income tax credits shall be made by the agency to
13 the full extent such credits are permitted to be allocated under
14 federal law, including allocations allowable for partial credits. The
15 affordable portion of any mixed income or mixed use development
16 that is part of a fair share housing plan approved by the council, or a
17 court-approved judgment of repose or compliance, including, but
18 not limited to, a development that has received a density bonus,
19 shall be permitted to receive allocations of low income tax credits,
20 provided that the applicant can conclusively demonstrate that the
21 market rate residential or commercial units are unable to internally
22 subsidize the affordable units, and the affordable units are
23 developed contemporaneously with the commercial or market rate
24 residential units.

25
26 21. (New section) The New Jersey Housing and Mortgage
27 Finance Agency shall maintain on its website and publish annually
28 a report concerning its activities during the year in promotion of
29 affordable housing, including any activity pursuant to section 21 of
30 P.L.1985, c.222 (C.52:27D-321). The report shall detail the number
31 and amounts of grants, loans, the average loan amount made, the
32 amounts of low income tax credits allocated by the agency, by
33 location, and the number of proposed units, and any additional
34 information which the agency deems informative to the public.

35
36 22. (New section) Sections 22 through 31 of P.L. , c.
37 (C.) (pending before the Legislature as this bill) shall be known
38 and may be cited as the “Strategic Housing Plan Act.”

39
40 23. (New section) The Legislature finds that:

41 a. High housing prices, escalating property taxes, increasing
42 municipal fees, rising energy costs, and the costs to implement
43 various State rules and regulations have put housing out of the
44 reach of many citizens;

45 b. The State of New Jersey suffers from a serious lack of
46 housing affordable to its low and moderate income and middle
47 income households, reflected in the large number of households

1 living in overcrowded and substandard housing conditions, or
2 burdened by unreasonable and excessive housing costs;

3 c. As housing costs have increased in many parts of the State,
4 and the process of urban revitalization has taken hold in many of
5 the State's cities, these problems have become more severe and
6 have come to affect a wide range of households at many income
7 levels;

8 d. While new housing affordable to households at all income
9 levels is urgently needed, the need to preserve existing housing
10 owned or rented by low and moderate income and middle income
11 households, much of which is at risk of loss, is also urgent;

12 e. The production of new housing and the preservation of the
13 existing housing stock, including but not limited to subsidized
14 affordable housing, has a significant positive impact on the health
15 and well-being of the State as a whole, in particular its older cities
16 and their neighborhoods, and should be encouraged as a matter of
17 public policy by the State government;

18 f. Although the State has devoted substantial public resources
19 for many years towards alleviating the housing needs of lower
20 income households, the effective use of those resources and their
21 impact on urban revitalization has been limited by inadequate
22 strategic planning in the allocation of public resources, as well as
23 inadequate coordination with and leveraging of private resources;

24 g. The development of a strategic housing plan that will
25 establish priorities to effectively targeted State resources should
26 significantly enhance the impact of those resources in meeting the
27 State's housing needs and fostering urban revitalization;

28 h. A strategic housing plan should provide for a means of
29 coordinating the activities of the many State departments and
30 agencies whose activities affect the ability of the State to meet its
31 housing needs;

32 i. The active involvement of individuals outside State
33 government with knowledge and experience in all phases of housing
34 preservation, development, and management, as well as planning
35 and urban revitalization, in the preparation and adoption of the plan,
36 and the monitoring of State activities pursuant to the plan, should
37 significantly enhance the value and effectiveness of the plan in
38 increasing the State's ability to meet its housing needs and foster
39 urban revitalization.

40

41 24. (New section) As used in sections 22 through 31 of
42 P.L. , c. (C.) (pending before the Legislature as this
43 bill):

44 "Agency" means the New Jersey Housing and Mortgage Finance
45 Agency.

46 "Commission" means the State Housing Commission established
47 pursuant to section 25 of P.L. , c. (C.) (pending before
48 the Legislature as this bill).

1 “Council” means the New Jersey Council on Affordable
2 Housing.

3 “Department” means the Department of Community Affairs.

4 “Plan” means the Annual Strategic Housing Plan prepared
5 pursuant to section 28 of P.L. , c. (C.) (pending before
6 the Legislature as this bill).

7 “Report” means the Annual Housing Performance Report
8 required to be prepared pursuant to section 30 of P.L. , c.
9 (C.) (pending before the Legislature as this bill).

10 “Senior Deputy Commissioner for Housing” means the position
11 established within the department which is charged with overseeing
12 all housing programs.

13 “Working group” means the interdepartmental working group
14 created pursuant to section 27 of P.L. , c. (C.) (pending
15 before the Legislature as this bill).

16

17 25. (New section) a. The State Housing Commission is created
18 and established in the Executive Branch of the State Government.
19 For the purposes of complying with the provisions of Article V,
20 Section IV, paragraph 1 of the New Jersey Constitution, the
21 commission is allocated within the Department of Community
22 Affairs, but notwithstanding this allocation, the commission shall be
23 independent of any supervision or control by the department except
24 as expressly authorized under P.L. , c. (C.) (pending
25 before the Legislature as this bill). The commission shall consist of
26 13 public members and shall also include the Commissioner of
27 Community Affairs, the Commissioner of Environmental
28 Protection, the Commissioner of Human Services, the
29 Commissioner of Transportation, the Commissioner of Education,
30 the Chairman of the State Planning Commission, and the State
31 Treasurer, who shall be nonvoting, ex-officio members of the
32 commission. The non-public members may each designate a
33 qualified employee to serve in their stead.

34 Eleven of the public members shall be appointed by the
35 Governor with the advice and consent of the Senate as follows:
36 four members shall be individuals qualified by expertise in housing
37 preservation, development, and management and who do not hold
38 public office or public employment, and one of the four shall have
39 particular experience in addressing the needs of the homeless; two
40 members shall be individuals qualified by expertise in urban
41 revitalization and redevelopment and who do not hold public office;
42 two members shall be elected local officials at the time of initial
43 appointment, one of whom shall be an elected official in a
44 municipality having a population greater than 50,000; two members
45 shall be individuals who do not hold public office and are qualified
46 by their position and experience to represent the interests of low
47 and moderate income and middle income families and individuals;
48 and one member shall be an individual who does not hold public

1 office and who is qualified by expertise in planning and land use.
2 Two additional public members who do not hold public office or
3 public employment shall be appointed as follows: one member by
4 the Speaker of the General Assembly and one member by the
5 President of the Senate. The public members of the commission
6 shall reflect the diversity of housing sector professionals.

7 b. The Governor shall nominate the 11 public members of the
8 commission, within 90 days following the effective date of P.L. ,
9 c. (C.) (pending before the Legislature as this bill), and shall
10 designate a public member to preside over the commission until a
11 chair and vice-chair are elected by the members of the commission.
12 The Speaker of the General Assembly and the President of the
13 Senate shall each appoint a member, respectively, within 90 days
14 following the effective date of P.L. , c. (C.) (pending
15 before the Legislature as this bill).

16 c. Each public member of the commission shall serve for a term
17 of three years, except that of the initial members so appointed:
18 three members appointed by the Governor shall serve for terms of
19 one year; one member appointed by the President of the Senate, one
20 member appointed by the Speaker of the General Assembly and five
21 members appointed by the Governor shall serve for terms of two
22 years; and the remaining appointees shall serve for terms of three
23 years. Public members shall be eligible for reappointment. They
24 shall serve until their successors are appointed and qualified, and
25 the term of the successor of any incumbent shall be calculated from
26 the expiration of the term of that incumbent. A vacancy occurring
27 other than by expiration of term shall be filled in the same manner
28 as the original appointment, but for the unexpired term only.

29 The members of the commission shall serve without
30 compensation, but shall be entitled to reimbursement for all
31 necessary expenses incurred in the performance of their duties.
32 Each member of the commission may be removed from office by
33 the Governor, for cause, upon notice and opportunity to be heard.

34 d. The commission shall elect annually a chair and vice-chair
35 from among the public members of the commission, who shall serve
36 for one year and until a successor is elected.

37 e. The executive secretary of the commission shall be the Senior
38 Deputy Commissioner for Housing. In the event the commissioner
39 designates the Senior Deputy Commissioner for Housing to serve in
40 his or her stead as a member of the commission, the Senior Deputy
41 Commissioner for Housing shall designate a qualified employee of
42 the department to serve as executive secretary of the commission.
43 Seven members of the commission shall constitute a quorum and a
44 vote of the majority of the members present shall be necessary for
45 any action taken by the commission.

46 f. The duties of the commission shall be as follows:

- 1 (1) To provide guidance and direction with respect to the
2 policies and strategies to be pursued by State agencies with respect
3 to housing which are incorporated into the plan.
- 4 (2) To prepare and adopt the Annual Strategic Housing Plan as
5 set forth in section 29 of P.L. , c. (C.) (pending before
6 the Legislature as this bill).
- 7 (3) To hold such public hearings and other activities as may be
8 desirable to ensure adequate public input into the preparation of the
9 plan and increase public awareness of the strategies and activities
10 contained in the plan.
- 11 (4) To gather and disseminate such information on housing
12 needs and strategies as may be useful for the work of the
13 commission and informative to the public.
- 14
- 15 26. (New section) The department shall provide such staff
16 services as may be needed for the commission to carry out its
17 responsibilities, including assembly of necessary information and
18 statistics, preparation of draft reports and analyses, and preparation
19 of the draft plan for review by the members of the commission,
20 acting under the supervision of the Senior Deputy Commissioner
21 for Housing.
- 22
- 23 27. (New section) a. An interdepartmental working group is
24 established for the purpose of supporting the activities of the
25 commission and its preparation of the draft plan.
- 26 b. The membership of the working group shall consist of the
27 commissioners or executive directors of the following departments
28 or agencies of State government: the Department of Community
29 Affairs, the Council on Affordable Housing, the New Jersey
30 Housing and Mortgage Finance Agency, the Department of Human
31 Services, the Department of Children and Families, the Department
32 of Health and Senior Services, the Public Advocate, the Department
33 of Education, the Department of Environmental Protection, the
34 Department of Transportation, the Office of Smart Growth, the
35 Department of the Treasury, the Highlands Council, the Pinelands
36 Commission, and the New Jersey Meadowlands Commission.
- 37 c. The Commissioner of Community Affairs may appoint the
38 Senior Deputy Commissioner for Housing as his or her
39 representative to serve on the working group.
- 40 d. Each other commissioner or executive director may appoint a
41 representative to serve on the working group, who shall be a senior
42 employee of the department or agency with substantial background,
43 experience, or training relevant to the mission of the working group.
- 44 e. The working group shall be chaired by the Commissioner of
45 Community Affairs or by the Senior Deputy Commissioner for
46 Housing as the commissioner's designee, if so appointed.

1 f. Meetings of the working group shall be called by the chair as
2 needed during the course of preparation of the plan or the annual
3 performance report.

4 g. Each department or agency constituting the working group
5 shall make available such personnel and information as may be
6 necessary to enable the working group to perform its
7 responsibilities.

8

9 28. (New section) a. It shall be the duty of the commission
10 annually to prepare and adopt an Annual Strategic Housing Plan as
11 set forth in this section.

12 The objectives of the plan shall be as follows:

13 (1) To ensure that quality housing for people of all income levels
14 is made available throughout the State of New Jersey.

15 (2) To overcome the shortage of housing affordable to low,
16 moderate, and middle income households, in order to ensure the
17 viability of New Jersey's communities and maintain the State's
18 economic strength.

19 (3) To meet the need for safe and accessible affordable housing
20 and supportive services for people with disabilities.

21 (4) To foster a full range of quality housing choices for people
22 of diverse incomes through mixed income development in urban
23 areas and in locations appropriate for growth, including transit hubs
24 and corridors, and areas of job concentration.

25 (5) To address the needs of communities that have been
26 historically underserved and segregated due to barriers and trends in
27 the housing market, and frame strategies to address the needs of
28 those communities.

29 (6) To facilitate the preservation of existing affordable rental
30 housing, including both subsidized and private market rental
31 housing.

32 (7) To further the preservation of low and moderate income and
33 middle income homeownership, including strategies to protect
34 lower income homeowners from the loss of their homes through
35 foreclosure.

36 b. In addressing these objectives, the plan shall explicitly take
37 into consideration the needs of the following distinct populations:

38 (1) Households earning below 50% of the area median income,
39 with particular emphasis on households earning less than 30% of
40 the area median income;

41 (2) Low income senior citizens of 62 years of age or older;

42 (3) Low income persons with disabilities, including but not
43 limited to physical disability, developmental disability, mental
44 illness, co-occurring mental illness and substance abuse disorder,
45 and HIV/AIDS;

46 (4) Homeless persons and families, and persons deemed at high
47 risk of homelessness;

- 1 (5) Low and moderate income and middle income households
2 unable to find housing near work or transportation;
 - 3 (6) Low and moderate income and middle income persons and
4 families in existing affordable housing that is at risk of becoming
5 unaffordable or being lost for any reason;
 - 6 (7) Any other part of the population that the commission finds to
7 have significant housing needs, either Statewide or in particular
8 areas of the State.
- 9 c. The plan shall include, but not be limited to, the following:
- 10 (1) The identification of all funds which any agency or
11 department of the State controls and uses for housing construction,
12 rehabilitation, preservation, operating or rental subsidies and
13 supportive services, including bond proceeds, the allocation of
14 federal Low Income Housing Tax Credits, and the use of
15 administrative funds by the agency or the department;
 - 16 (2) Goals for the number and type of housing units to be
17 constructed, rehabilitated, or preserved each year for the
18 underserved populations identified in subsection b. of this section,
19 taking into account realistic assessments of financial resources and
20 delivery capacity;
 - 21 (3) Specific recommendations for the manner in which all funds
22 identified in paragraph (1) of this subsection should be prioritized
23 and used, either through new construction, rehabilitation,
24 preservation, rental subsidies, or other activities, to address the
25 needs of the underserved populations set forth in subsection b. of
26 this section;
 - 27 (4) Specific actions needed to ensure the integrated use of State
28 government resources that can be used to create or preserve
29 affordable housing, provide supportive services, facilitate the use of
30 housing for urban revitalization, and prevent homelessness,
31 including an identification of the specific agencies and programs
32 responsible for each action;
 - 33 (5) An assessment of the State's performance during the
34 preceding year;
 - 35 (6) Recommendations for changes to any program or use of
36 funds which the State controls available for land use planning,
37 housing construction, rehabilitation, preservation, operating or
38 rental subsidies and supportive services, including both procedural
39 and substantive changes, and the specific agencies responsible for
40 each change;
 - 41 (7) Recommendations for State and local actions to promote the
42 creation and preservation of subsidized affordable and market-rate
43 housing by private sector, non-profit, and government agencies,
44 with particular reference to changes to programs, regulations, and
45 other activities that impede such activities;
 - 46 (8) Recommendations for State and local actions for programs
47 and strategies through which the provision of affordable and mixed-

1 income housing can better further citywide and neighborhood
2 revitalization in the State's urban areas; and

3 (9) Identification of strategies that local government can take to
4 create or preserve affordable housing, including specific
5 recommendations for the use of monies collected through developer
6 fees in local housing development trust funds.

7 d. The plan shall provide for both annual and long-term targets
8 and priorities.

9
10 29. (New section) a. The commission shall complete a draft
11 plan on or before October 1 of each year. The commission shall
12 adopt the plan by a vote of a majority of its members and transmit
13 the plan to the Governor and the Joint Committee on Housing
14 Affordability, or its successor, on or before the next January 1. The
15 plan shall cover the fiscal year from July 1 to June 30th, beginning
16 with July 1 of the preceding year, except that the first annual plan
17 shall be transmitted on the first January 1 that falls after the annual
18 anniversary of the effective date of P.L. , c. (C.)
19 (pending before the Legislature as this bill).

20 b. With respect to the plans for the second through fourth years
21 following the initial plan, the commission may adopt and submit
22 either a plan de novo or an update to, or revision of, the initial
23 year's plan, based on its judgment as to the extent of housing needs,
24 funding resources, or other conditions that have or have not
25 changed since the initial plan was prepared. In the fifth year
26 following the initial plan, and every five years thereafter, the
27 commission shall adopt and submit a complete plan de novo.

28 c. The plan and all supporting documentation thereof shall be
29 made available both in printed form by the department and in
30 downloadable form on the department's web site.

31
32 30. (New section) a. On or before January 1 of each year,
33 beginning with the first January 1 that falls after the annual
34 anniversary of the effective date of P.L. , c. (C.)
35 (pending before the Legislature as this bill), the department, in
36 consultation with the commission and the working group, shall
37 prepare and submit to the Governor and the Joint Committee on
38 Housing Affordability, or its successor, an Annual Housing
39 Performance Report. Within 30 days following receipt of the
40 Annual Housing Performance Report, a hearing shall be held by the
41 Joint Committee on Housing Affordability, or its successor, to
42 provide an opportunity for public comment and discussion.

43 b. The report shall include, but shall not be limited to, the
44 following information:

45 (1) All housing units constructed, rehabilitated, or preserved in
46 which funds controlled by any agency of the State were utilized,
47 including the number of units by:

48 (a) Location;

1 (b) Affordability and income ranges of occupants;

2 (c) Target population; i.e., small family, large family, senior
3 citizens, people with disabilities;

4 (d) Type of housing, including ownership, rental, and other
5 forms of tenure; physical type such as single family or multifamily;
6 and whether the unit was newly constructed, rehabilitated, or
7 preserved; and

8 (e) The amount and source of all State-controlled funds used.

9 (2) All bond issuance activity by the agency, including interest
10 rates and the use of bond proceeds.

11 (3) All other activities, including financial support, technical
12 assistance, or other support conducted by the State to further
13 affordable housing.

14 (4) Municipal performance pursuant to the "Fair Housing Act,"
15 P.L.1985, c.222 (C.52:27D-301 et al.), including the number of
16 units listed for the distinct populations as enumerated in subsection
17 b. of section 28 of P.L. , c. (C.) (pending before the
18 Legislature as this bill), and the monies collected and the use of all
19 developer fee proceeds deposited into municipal housing trust
20 funds.

21 (5) For every report issued subsequent to the end of the first
22 year for which a plan has been prepared pursuant to sections 28 and
23 29 of P.L. , c. (C.) (pending before the Legislature as
24 this bill) :

25 (a) A comparison between the goals, strategies, and priorities set
26 forth in the plan and the outcomes of programs and strategies
27 carried out by the State during the year, and a statement of the
28 reasons for any differences between the plan and the State's
29 programs and strategies; and

30 (b) A description of the manner in which the State has addressed
31 the recommendations, if any, for procedural or substantive changes
32 to any State program or activity set forth in the plan.

33 (6) Statistical appendices providing information on individual
34 projects and funding allocations.

35 c. The report, appendices, and all supporting documentation
36 thereof shall be made available both in printed form from the
37 department and in downloadable form on the department's web site.

38

39 31. (New section) a. The position of Senior Deputy
40 Commissioner for Housing is established within the department,
41 which position shall be filled by an individual with recognized and
42 extensive experience in housing policy, planning, and development
43 with particular emphasis on the planning and development of
44 housing affordable to low, moderate, and middle income
45 households.

46 b. The Senior Deputy Commissioner for Housing shall exercise
47 oversight over the housing programs of the department, including,
48 but not limited to, programs of the agency and the council.

1 c. The commissioner may appoint the Senior Deputy
2 Commissioner for Housing as his or her designee to chair the
3 agency, the commission, or the council, in which capacity or
4 capacities the Senior Deputy Commissioner for Housing will have
5 all of the powers vested in those positions by law.

6
7 32. (New section) a. In proposing a rule for adoption, the
8 agency involved shall issue a housing affordability impact analysis
9 regarding the rule, which shall be included in the notice of a
10 proposed rule as required by subsection (a) of section 4 of
11 P.L.1968, c.410 (C.52:14B-4). Each housing affordability impact
12 analysis shall contain:

13 (1) A description of the types and an estimate of the number of
14 housing units to which the proposed rule will apply; and

15 (2) A description of the estimated increase or decrease in the
16 average cost of housing which will be affected by the regulation.

17 This subsection shall not apply to any proposed rule which the
18 agency finds would impose an insignificant impact, either because
19 the scope of the regulation is minimal, or there is an extreme
20 unlikelihood that the regulation would evoke a change in the
21 average costs associated with housing. The agency's finding and an
22 indication of the basis for its finding shall be included in the notice
23 of a proposed rule as required by subsection (a) of section 4 of P.L.
24 1968, c.410 (C.52:14B-4).

25 b. In proposing a rule for adoption, the agency involved shall
26 issue a smart growth development impact analysis regarding the
27 rule, which shall be included in the notice of a proposed rule as
28 required by subsection (a) of section 4 of P.L.1968, c.410
29 (C.52:14B-4). Each smart growth development impact analysis
30 shall contain:

31 (1) A description of the types and an estimate of the number of
32 housing units to which the proposed rule will apply;

33 (2) A description of the estimated increase or decrease in the
34 availability of affordable housing which will be affected by the
35 regulation; and

36 (3) A description as to whether the proposed rule will affect in
37 any manner new construction within Planning areas 1 or 2, or
38 within designated centers, under the State Development and
39 Redevelopment Plan.

40 This subsection shall not apply to any proposed rule which the
41 agency finds would impose an insignificant impact, either because
42 the scope of the regulation is minimal, or there is an extreme
43 unlikelihood that the regulation would evoke a change in the
44 housing production within Planning areas 1 or 2, or within
45 designated centers, under the State Development and
46 Redevelopment Plan. The agency's finding and an indication of the
47 basis for its finding shall be included in the notice of a proposed

1 rule as required by subsection (a) of section 4 of P.L.1968, c.410
2 (C.52:14B-4).

3 For the purposes of complying with this subsection, and in order
4 to avoid duplicative action, an agency may consider a series of
5 closely related rules as one rule.

6 c. For the purposes of this section, "types" means housing
7 groups distinguished by the following categories: housing reserved
8 for occupancy by very low, low and moderate and middle income
9 households, respectively; single family, two-family, and multi-
10 family housing; rental housing and for-sale housing.

11
12 33. (New section) Sections 33 through 39 of P.L. , c.
13 (C.) (pending before the Legislature as this bill) shall be
14 known and may be cited as the "Statewide Non-residential
15 Development Fee Act."

16
17 34. (New section) The Legislature finds and declares:
18 a. The collection of development fees from builders of
19 residential and non-residential properties has been authorized by the
20 court through the powers delegated to the Council on Affordable
21 Housing established pursuant to the "Fair Housing Act," P.L.1985,
22 c.222 (C.52:27D-301 et al.).

23 b. New Jersey's land resources are becoming more scarce, while
24 its redevelopment needs are increasing. In order to balance the
25 needs of developing and redeveloping communities, a reasonable
26 method of providing for the housing needs of low and moderate
27 income and middle income households, without mandating the
28 inclusion of housing in every non-residential project, must be
29 established.

30 c. A Statewide non-residential development fee program which
31 permits municipalities under the council's jurisdiction to retain
32 these fees for use in the municipality will provide a fair and
33 balanced funding method to address the State's affordable housing
34 needs, while providing an incentive to all municipalities to seek
35 substantive certification from the council's.

36
37 35. (New section) As used in (section 33 through 39 of P.L. , c.
38 (C.) (pending before the legislature as this bill).

39 "Construction" means new construction and additions, but does
40 not include alterations, reconstruction, renovations, and repairs as
41 those terms are defined under the State Uniform Construction Code
42 promulgated pursuant to the "State Uniform Construction Code
43 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

44 "Commissioner" means the Commissioner of Community
45 Affairs.

46 "Council" means the Council on Affordable Housing,
47 established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

1 “Developer” means the legal or beneficial owner or owners of a
2 lot or of any land proposed to be included in a proposed
3 development, including the holder of an option or contract to
4 purchase, or other person having an enforceable proprietary interest
5 in such land.

6 “Equalized assessed value” means the assessed value of a
7 property divided by the current average ratio of assessed to true
8 value for the municipality in which the property is situated, as
9 determined in accordance with sections 1, 5, and 6 of P.L.1973,
10 c.123 (C.54:1-35a through C.54:1-35c).

11 “Mixed Use Development” means any development which
12 includes both a non-residential development component and a
13 residential development component, and shall include developments
14 for which (1) there is a common developer for both the residential
15 development component and the non-residential development
16 component, provided that for purposes of this definition, multiple
17 persons and entities may be considered a common developer if there
18 is a contractual relationship among them obligating each entity to
19 develop at least a portion of the residential or non-residential
20 development, or both, or otherwise to contribute resources to the
21 development; and (2) the residential and non-residential
22 developments are located on the same lot or adjoining lots,
23 including but not limited to lots separated by a street, a river, or
24 another geographical feature.

25 “Non-residential development” means: (1) any building or
26 structure, or portion thereof, including but not limited to any
27 appurtenant improvements, which is designated to a use group other
28 than a residential use group according to the State Uniform
29 Construction Code promulgated to effectuate the “State Uniform
30 Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.),
31 including any subsequent amendments or revisions thereto; and (2)
32 hotels, motels, vacation timeshares, and child-care facilities.

33 “Non-residential development fee” means the fee authorized to
34 be imposed pursuant to sections 33 through 39 of P.L. , c.
35 (C.) (pending before the Legislature as this bill).

36 “Relating to the provision of housing” shall be liberally
37 construed to include the construction, maintenance, or operations of
38 housing, including but not limited to the provision of services to
39 such housing and the funding of any of the above.

40 “Spending plan” means a method of allocating funds collected
41 and to be collected pursuant to an approved municipal development
42 fee ordinance, or pursuant to P.L. , c. (C) (pending
43 before the Legislature as this bill) for the purpose of meeting the
44 housing needs of low, moderate, and middle income individuals.

45 “Treasurer” means the Treasurer of the State of New Jersey.

46

47 36. (New section) a. Beginning on the effective date of

1 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
2 bill), a fee is imposed on all applications for development for non-
3 residential development, and for construction permits affecting non-
4 residential property, as follows:

5 (1) A fee equal to two and one-half percent of the equalized
6 assessed value of the land and improvements, for all new non-
7 residential construction on an unimproved lot or lots; or

8 (2) A fee equal to two and one-half percent of the increase in
9 equalized assessed value, of the reconstruction of or additions to
10 existing structures to be used for non-residential purposes.

11 b. All non-residential construction of buildings or structures on
12 property used by churches, synagogues, mosques, and other houses
13 of worship, and property used for educational purposes, which is
14 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the
15 imposition of a non-residential development fee pursuant to this
16 section, provided that the property continues to maintain its tax
17 exempt status under that statute for a period of at least three years
18 from the date of issuance of the certificate of occupancy. In
19 addition, the following shall be exempt from the imposition of a
20 non-residential development fee: parking lots and parking
21 structures, regardless of whether the parking lot or parking structure
22 is constructed in conjunction with a non-residential development,
23 such as an office building, or whether the parking lot is developed
24 as an independent non-residential development; and any non-
25 residential development which is an amenity to be made available to
26 the public, including, but not limited to, recreational facilities,
27 community centers, and senior centers, which are developed in
28 conjunction with or funded by a non-residential developer. A
29 developer of a non-residential development exempted from the non-
30 residential development fee pursuant to this section shall be subject
31 to it at such time the basis for the exemption set forth in this
32 subsection no longer applies, and shall make the payment of the
33 non-residential development fee, in that event, within three years
34 after that event or after the issuance of the final certificate of
35 occupancy of the non-residential development whichever is later..

36 For purposes of this subsection, “recreational facilities and
37 community center” means any indoor or outdoor buildings, spaces,
38 structures, or improvements intended for active or passive
39 recreation, including but not limited to ball fields, meeting halls,
40 and classrooms, accommodating either organized or informal
41 activity; and “senior center” means any recreational facility or
42 community center with activities and services oriented towards
43 serving senior citizens.

44 If a property which was exempted from the collection of a non-
45 residential development fee thereafter ceases to be exempt from
46 property taxation, the owner of the property shall remit the fees
47 required pursuant to this section within 45 days of the termination
48 of the property tax exemption. Unpaid non-residential development

1 fees under these circumstances may be enforceable by the
2 municipality as a lien against the real property of the owner.

3 c. (1) Developers shall pay non-residential development fees
4 imposed pursuant to P.L. , c. (C.) (pending before the
5 Legislature as this bill) to the Commissioner of Community Affairs
6 to be held for deposit into the New Jersey Affordable Housing Trust
7 Fund established pursuant to section 20 of P.L. 1985, c.222
8 (C.52:27D-320), in a manner and on such forms as required by the
9 commissioner, provided that a certified proof concerning the
10 payment shall be furnished by the commissioner to the
11 municipality.

12 (2) The commissioner shall forward to a municipality, within 15
13 days of the collection thereof, the non-residential development fees
14 collected pursuant to P.L. , c. (C.) (pending before the
15 Legislature as this bill) if that municipality has a confirmed status
16 of compliance with the "Fair Housing Act," P.L.1985, c.222
17 (C.52:27D-301 et al.), which compliance shall include a spending
18 plan authorized by the council for all other development fees
19 collected.

20 d. The payment of non-residential development fees required
21 pursuant to sections 33 through 39 of P.L. , c. (C.)
22 (pending before the Legislature as this bill) shall be made prior to
23 the issuance of a certificate of occupancy.

24 e. The construction official responsible for the issuance of a
25 building permit shall notify the local tax assessor of the issuance of
26 the first building permit for a development which may be subject to
27 a non-residential development fee. Within 90 days of receipt of that
28 notice, the municipal tax assessor, based on the plans filed, shall
29 provide an estimate of the equalized assessed value of the non-
30 residential development. The construction official responsible for
31 the issuance of a final certificate of occupancy shall notify the local
32 assessor of any and all requests for the scheduling of a final
33 inspection on property which may be subject to a non-residential
34 development fee. Within 10 business days of a request for the
35 scheduling of a final inspection, the municipal assessor shall
36 confirm or modify the previously estimated equalized assessed
37 value of the improvements of the non-residential development in
38 accordance with the regulations adopted by the Treasurer pursuant
39 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential
40 development fee pursuant to sections 33 through 39 of P.L. , c.
41 (C.) (pending before the Legislature as this bill); and
42 thereafter notify the developer of the amount of the non-residential
43 development fee. Should the municipality fail to determine or
44 notify the developer of the amount of the non-residential
45 development fee within 10 business days of the request for final
46 inspection, the developer may estimate the amount due and pay that
47 estimated amount consistent with the dispute process set forth in
48 subsection b. of section 38 of P.L. , c. (C.) (pending

1 before the Legislature as this bill). Upon tender of the estimated
2 non-residential development fee, provided the developer is in full
3 compliance with all other applicable laws, the municipality shall
4 issue a final certificate of occupancy for the subject property.
5 Failure of the municipality to comply with the timeframes or
6 procedures set forth in this subsection may subject it to penalties to
7 be imposed by the commissioner; any penalties so imposed shall be
8 deposited into the New Jersey Affordable Housing Trust Fund
9 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
10 320).

11 f. Any municipality that is not in compliance with the
12 requirements established pursuant to sections 33 through 39 of
13 P.L. , c. (C.) (pending before the Legislature as this
14 bill), or regulations of the council adopted thereto, may be subject
15 to forfeiture of any or all funds remaining within its municipal
16 development trust fund. Any funds so forfeited shall be deposited
17 into the New Jersey Affordable Housing Trust Fund established
18 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

19 g. Notwithstanding any provision of P.L. , c. (C.)
20 (pending before the Legislature as this bill), or rules of the council
21 to the contrary, a municipality that qualifies for State aid pursuant
22 to P.L.1978, c.14 (C.52:27D-178 et seq.) may impose, collect, or
23 spend development and non-residential development fees by filing a
24 development fee ordinance and spending plan, and requesting
25 approval by the council. Such municipalities shall be permitted to
26 develop separate spending plans, which plans may provide for
27 housing rehabilitation, new construction of housing or schools,
28 repair or enhancement of infrastructure, grants to redevelopment
29 projects, job training, construction of day care centers, or any
30 activity which the governing body of the municipality believes will
31 provide economic stability and sustainable neighborhoods.

32

33 37. (New section) a. The commissioner, in consultation with
34 the council, shall promulgate, in accordance with the provisions of
35 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
36 seq.), such regulations as are necessary for the prompt and effective
37 implementation of the provisions and purposes of P.L. , c. (C.)
38 (pending before the Legislature as this bill).

39 b. Notwithstanding the authority granted to the commissioner
40 herein, the council shall adopt and promulgate, in accordance with
41 the provisions of the "Administrative Procedure Act," P.L.1968,
42 c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the
43 effectuation of P.L. , c. (C.) (pending before the
44 Legislature as this bill), including but not limited to, regulations
45 necessary for the establishment, implementation, review,
46 monitoring, and enforcement of a municipal affordable housing
47 trust fund and spending plan.

1 38. (New section) a. The provisions of sections 33 through 39
2 of P.L. , c. (C.) (pending before the Legislature as this
3 bill) shall not apply to:

4 (1) A development application which has been deemed complete
5 pursuant to section 5 of P.L.1984, c.20 (C.40:55D-10.3) prior to the
6 effective date of P.L. , c. (C.) (pending before the
7 Legislature as this bill); or

8 (2) Non-residential property for which a construction permit has
9 been issued prior to the effective date of P.L. , c. (C.)
10 (pending before the Legislature as this bill).

11 b. A developer may challenge non-residential development fees
12 imposed pursuant to P.L. , c. (C.) (pending before the
13 Legislature as this bill) by filing a challenge with the Commissioner
14 of Community Affairs. Pending a review and determination by the
15 commissioner, which shall be made within 45 days of receipt of the
16 challenge, collected fees shall be placed in an interest bearing
17 escrow account by the municipality or by the State, as the case may
18 be. Appeals from a determination of the commissioner may be
19 made to the Office of Administrative Law, within 45 days of the
20 commissioner's determination. Interest earned on amounts
21 escrowed shall be credited to the prevailing party.

22 c. Whenever non-residential development is situated on real
23 property that has been previously developed with a building,
24 structure, or other improvement, the non-residential development
25 fee shall be equal to two and a half (2.5) percent of the equalized
26 assessed value of the land and improvements on the property where
27 the non-residential development is situated at the time the final
28 certificate of occupancy is issued less, the equalized assessed value
29 of the land and improvements on the property where the non-
30 residential development is situated, as determined by the tax
31 assessor of the municipality at the time the developer or owner first
32 sought approval for a construction permit pursuant to the State
33 Uniform Construction Code, or approval under the "Municipal Land
34 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). If the calculation
35 required under this section results in a negative number, the non-
36 residential development fee shall be zero.

37 Whenever a developer of non-residential development has made
38 or committed itself to make a financial or other contribution relating
39 to the provision of housing affordable to low and moderate income
40 and middle income households prior to the enactment of P.L. , c.
41 (C.) (pending before the Legislature as this bill), the non-
42 residential development fee shall be reduced by the amount of the
43 financial contribution and the fair market value of any other
44 contribution made by or committed to be made by the developer.
45 For purposes of this section, a developer is considered to have made
46 or committed itself to make a financial or other contribution, if and
47 only if: (1) the contribution has been transferred, including but not
48 limited to when the funds have already been received by the

1 municipality; (2) the developer has obligated itself to make a
2 contribution as set forth in a written agreement with the
3 municipality, such as a developer's agreement; or (3) the
4 developer's obligation to make a contribution is set forth as a
5 condition in a land use approval issued by a municipal land use
6 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
7 (C. 40:55D-1 et seq.)

8 d. Unless otherwise provided for by law, no municipality shall
9 be required to return a financial or any other contribution made by
10 or committed to be made by a developer of a non-residential
11 development prior to the enactment of P.L. , c. (C.)
12 (pending before the Legislature as this bill) relating to the provision
13 of housing affordable to low and moderate income and middle
14 income households, provided that the developer does not obtain an
15 amended, modified, or new municipal land use approval with a
16 substantial change in the non-residential development. If the
17 developer obtains an amended, modified, or new land use approval
18 for non-residential development, the municipality, person, or entity
19 shall be required to return to the developer any funds or other
20 contribution provided by the developer for the provision of housing
21 affordable to low and moderate income and middle income
22 households and the developer shall not be entitled to a reduction in
23 the affordable housing development fee based upon that
24 contribution.

25 e. The provisions of sections 33 through 39 of P.L. , c.
26 (C.) (pending before the Legislature as this bill) shall not be
27 construed in any manner as affecting the method or timing of
28 assessing real property for property taxation purposes. The
29 payment of a non-residential development fee shall not increase the
30 equalized assessed value of any property.

31

32 39. (New section) Except as expressly provided in P.L. , c.
33 (C.) (pending before the Legislature as this bill), any provision
34 of a local ordinance which imposes a fee for the development of
35 affordable housing upon a developer of non-residential property,
36 including any and all development fee ordinances adopted in
37 accordance with N.J.A.C.5:93-8.1 et seq., or N.J.A.C.5:94-6.1 et
38 seq., or any provision of an ordinance which imposes an obligation
39 relating to the provision of housing affordable to low and moderate
40 income households, or payment in-lieu of building as a condition of
41 non-residential development, shall be void and of no effect. A
42 provision of an ordinance which imposes a development fee which
43 is not prohibited by any provision of P.L. , c. (C.)
44 (pending before the Legislature as this bill) shall not be invalidated
45 by this section.

1 be incongruous to the *Mount Laurel* doctrine. A transfer of a
2 number of required affordable units out of a municipality, while at
3 the same time permitting construction of market-rate housing, is de
4 facto exclusionary zoning, an act prohibited under the *Mount Laurel*
5 doctrine.

6 The bill also establishes minimum numbers of housing units
7 required to be set-aside for very low income persons under the
8 FHA. In addition, a requirement for redevelopment projects is
9 established so that low and moderate income housing units which
10 are eliminated as a result of such activities are replaced with
11 comparable housing, on a one-for-one basis.

12 The bill creates a new qualifying threshold for “middle income
13 households” with a gross household income equal to or more than
14 80%, but less than 110%, of the median gross household income for
15 households of the same size within the housing region in which the
16 household is located. These households represent “workforce”
17 households which have been squeezed out of affordable housing
18 because of income guidelines and costs assessed to build market-
19 rate housing, but are households which very much need affordable
20 housing in order to keep New Jersey’s neighborhoods sustainable
21 and its economy vital. The bill provides a five-year phase-in of
22 housing reserved for such households.

23 The bill renames the “Neighborhood Preservation Nonlapsing
24 Revolving Fund” as the “New Jersey Affordable Housing Trust
25 Fund” and requires very specific accounting and reporting by the
26 Department of Community Affairs on the fund’s activities.

27 The bill creates a “Housing Rehabilitation and Assistance
28 Program” which will be funded separately from the “New Jersey
29 Affordable Housing Trust Fund” by a \$20 million annual
30 appropriation from the State portion of the realty transfer fee
31 collections. The program will assist urban aid municipalities in the
32 rehabilitation of existing housing stock.

33 The bill requires State agencies, when promulgating rules, to
34 include a housing affordability impact statement and a smart growth
35 development impact statement with the rule publication. These
36 statements will describe how the proposed rule will affect the
37 availability and price of housing, and impact on new construction in
38 planning areas 1 and 2 and designated centers.

39 The bill establishes a State Housing Commission that is directed
40 to develop a strategic housing plan for New Jersey, as well as
41 prepare an annual housing performance report to the Governor and
42 the Joint Committee on Housing Affordability. The commission
43 will be comprised of 13 public members, of which 11 will be
44 appointed by the Governor and two by the Legislature. In addition,
45 the commission will include several State department heads as non-
46 voting members. The bill creates an interdepartmental working
47 group of select department heads to guide the commission in its
48 duties. The commission is to review sources of funding and

1 programs in the State to produce affordable housing, and develop a
2 strategic plan which will coordinate State efforts and consolidate
3 and leverage all available resources for these activities. The bill
4 creates a new position in the Department of Community Affairs,
5 known as the Senior Deputy Commissioner for Housing, who will
6 chair the commission and the interdepartmental working group.

7 Finally, the bill repeals P.L.1949, c.303, an inactive law that had
8 created a State Housing Council with similar duties to the
9 commission created under the bill.

ASSEMBLY HOUSING AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 500

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 22, 2008

The Assembly Housing and Local Government Committee reports favorably Assembly Bill No. 500 with committee amendments.

This bill, as amended by the committee, reforms many of the laws applicable to affordable housing. In general, the bill requires much more accountability of funds being collected for affordable housing purposes and provides guidelines in the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), hereinafter the "FHA," for the Council on Affordable Housing (COAH) to follow in adopting its rules. For example, the power to authorize municipalities to collect development fees and payments-in-lieu-of-building from developers of residential housing is included for the first time in the enabling act. The bill also amends the FHA to provide guidelines for COAH in setting minimum developer incentives required in connection with charging those fees, in accordance with New Jersey court decisions. The bill further provides guidance on the manner in which municipal trust funds are to be maintained, and the purposes for which such funds are to be spent. The bill codifies current COAH rules on this issue, with some exceptions. The bill requires that payments-in-lieu be maintained separately from other development fees collected. The bill requires development fees to be charged Statewide on non-residential construction or improvements, by all municipalities, at a rate of two and one-half percent. No payments-in-lieu may be charged by a municipality in connection with non-residential construction, and no housing units may be required to be built as a result of any non-residential construction or redevelopment. Those municipalities that have COAH's authorization to collect residential development fees will be permitted to retain the non-residential development fees. Developers of non-residential properties in a municipality that does not have either COAH's or the court's authorization to charge development fees will be required to send the non-residential development fees to the State Treasurer, to be used for affordable housing purposes under the "Fair Housing Act" and a program created under the bill to assist urban aid municipalities in creating units of

affordable housing, in light of the bill's elimination of the regional contribution agreement from the Fair Housing Act.

The bill, as amended, eliminates the regional contribution agreement as a method to address affordable housing needs under the FHA, but permits those agreements already entered into prior to the effective date of the act to be carried out. The bill also establishes minimum numbers of housing units required to be set-aside Statewide for very low income persons under the FHA. The bill, as amended, requires redevelopers of redevelopment projects to replace low and moderate income housing units which are subject to affordability controls which are eliminated as a result of such activities with comparable housing, on a one-for-one basis.

The bill renames the "Neighborhood Preservation Nonlapsing Revolving Fund" as the "New Jersey Affordable Housing Trust Fund" and requires very specific accounting and reporting by the Department of Community Affairs on the fund's activities.

The bill, as amended, creates the "Urban Housing Assistance Fund," which will be funded by an annual \$20 million appropriation from the State portion of the receipts of the Statewide non-residential development fees which are received directly by the State Treasurer. The program will assist urban aid municipalities in the rehabilitation and production of housing.

The bill requires State agencies, when promulgating rules, to include a housing affordability impact statement and a smart growth development impact statement with the rule publication. These statements will describe how the proposed rule will affect the availability and price of housing, and impact on new construction in planning areas 1 and 2 and designated centers.

The bill establishes a State Housing Commission that is directed to develop a strategic housing plan for New Jersey, as well as prepare an annual housing performance report to the Governor and the Joint Committee on Housing Affordability. The commission will be comprised of 15 public members, of which 13 will be appointed by the Governor and two by the Legislature. In addition, the commission will include several State department heads as non-voting members. The bill creates an interdepartmental working group of select department heads to guide the commission in its duties. The commission is to review sources of funding and programs in the State to produce affordable housing, including rental housing, and develop a strategic plan which will coordinate State efforts and consolidate and leverage all available resources for these activities. The bill creates a new position in the Department of Community Affairs, known as the Senior Deputy Commissioner for Housing, who will chair the commission and the interdepartmental working group.

Committee amendments

The committee amended the bill to allow the program created under the bill to assist certain urban municipalities in rehabilitating housing to include new housing production. The amendments also increase the number of members appointed to the State Housing Commission to include a real estate professional and an executive director of a Public Housing Authority. The amendments also specify that a nonprofit and for-profit builder shall be appointed.

The amendments remove references to middle income housing as a new category of affordable housing under the Fair Housing Act.

The amendments eliminate the requirement that in lieu of building payments collected by a municipality be spent solely on new construction or substantial rehabilitation of affordable housing.

The amendments clarify the process of the collection of the non-residential development fee established under the bill, and provide directions for the collection of such fees whenever mixed-use projects are developed.

The amendments delete a provision that would have required an annual appropriation from the receipts of the realty transfer fees, and instead require an appropriation of \$20 million annually from the State portion of the non-residential development fees, authorized under the bill.

The amendments rename the “Housing Rehabilitation Assistance Fund” created under the bill to the “Urban Housing Assistance Fund” and expand the use of the fund to include construction of affordable housing units. The definition of affordable housing for the purpose of this fund is broadened under the amendments bill to include households earning 120% of average median income levels in the housing region. The committee deleted a provision of the bill which would have allowed urban aid municipalities collecting the Statewide non-residential development fees to use those fees to address impacts such as schools or infrastructure. Instead, all municipalities authorized to collect such fees by COAH will be required to spend those fees in accordance with a spending plan authorized by COAH.

The committee amended the bill to remove the retroactive application of the ban on regional contribution agreements.

The amendments change the requirement of a municipality to spend its development fee trust fund money within four years to a requirement that a municipality commit to spending the amounts in its trust fund within four years from the date of collection.

The amendments clarify that the New Jersey Housing and Mortgage Finance Agency is to allocate federal low income tax credits in a manner allowing 4 percent or 9 percent low income tax credits to builders to the full extent such credits are permitted to be allocated under federal law, even for mixed income or mixed use developments.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 500

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 2008

The Assembly Appropriations Committee reports favorably Assembly Bill No. 500 (1R), with committee amendments.

Assembly Bill No. 500 (1R), as amended, reforms the laws concerning affordable housing.

The bill requires accountability of funds being collected for affordable housing purposes and provides guidelines in the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) (the "FHA") for the Council on Affordable Housing ("COAH") to follow in adopting its rules.

The bill amends the FHA to provide guidelines for COAH in setting minimum developer incentives required in connection with charging those fees, in accordance with New Jersey court decisions. The bill provides guidance on the manner in which municipal trust funds are to be maintained, and the purposes for which such funds are to be spent. The bill requires that payments-in-lieu of constructing affordable housing be maintained separately from other municipal development fees authorized to be collected.

The bill establishes a new State-wide non-residential development fee to be charged by all municipalities upon non-residential construction or improvements, at a rate of two and one-half percent of the equalized assessed value or land and improvements for all new non-residential construction on unimproved lots and at a rate of two and one-half percent of the increase in equalized assessed value for additions to existing structures to be used for non-residential purposes.

The bill forbids a municipality from charging, in connection with non-residential construction, any other fee, notwithstanding the rules of COAH. Those municipalities that have COAH's authorization to collect *residential* development fees will be permitted to retain the non-residential development fees. Developers of non-residential properties in a municipality that does not have either COAH's or the court's authorization to charge development fees will be required to remit the non-residential development fees to the State Treasurer, to be used for affordable housing purposes under the "Fair Housing Act" and a program created under the bill to assist urban aid municipalities

in creating units of affordable housing, in light of the bill's elimination of the regional contribution agreement from the Fair Housing Act.

The bill eliminates the regional contribution agreement as a method to address affordable housing needs under the FHA, but permits those agreements entered into prior to the effective date of the act to be carried out. The bill also establishes minimum numbers of housing units required to be set aside Statewide for very low income persons under the FHA. The bill requires redevelopers of redevelopment projects to replace low and moderate income housing units which are subject to affordability controls which are eliminated as a result of such activities with comparable housing, on a one-for-one basis.

The bill renames the "Neighborhood Preservation Nonlapsing Revolving Fund" as the "New Jersey Affordable Housing Trust Fund" and requires very specific accounting and reporting by the Department of Community Affairs on the fund's activities.

The bill creates the "Urban Housing Assistance Fund," which will be funded by an annual \$20 million appropriation from the State portion of the receipts of the Statewide non-residential development fees which are received directly by the State Treasurer. The program will assist urban aid municipalities in the rehabilitation and production of housing.

The bill requires State agencies, when promulgating rules, to include a housing affordability impact statement and a smart growth development impact statement with the rule publication. These statements will describe how the proposed rule will affect the availability and price of housing, and impact on new construction in planning areas 1 and 2 and designated centers.

The bill establishes a State Housing Commission that is directed to develop a strategic housing plan for New Jersey, as well as prepare an annual housing performance report to the Governor and the Joint Committee on Housing Affordability. The commission will be comprised of 15 public members, of which 13 will be appointed by the Governor and two by the Legislature. In addition, the commission will include several State department heads as non-voting members. The bill creates an interdepartmental working group of select department heads to guide the commission in its duties. The commission is to review sources of funding and programs in the State to produce affordable housing, including rental housing, and develop a strategic plan which will coordinate State efforts and consolidate and leverage all available resources for these activities. The bill creates a new position in the Department of Community Affairs, known as the Senior Deputy Commissioner for Housing, who will chair the commission and the interdepartmental working group.

FISCAL IMPACT:

The Office of Legislative Services (OLS) cannot determine the fiscal impact of this bill because it does not have complete information regarding the equalized assessed value of the land and improvements for all new non-residential construction and the increase of the equalized assessed value of additions to existing structures to be used for non-residential purposes. These two values form the basis of the 2.5% fee that would be deposited into the New Jersey Affordable Housing Trust Fund established by the bill.

The OLS notes that 274 municipalities currently have affordable housing trust funds into which residential and non-residential development fees are deposited. Municipalities that are currently authorized to collect residential development fees will be permitted to collect and retain the non-residential development fee established by this bill. Developers of non-residential properties in a municipality that is not authorized to collect development fees are required to send the non-residential portion of the fee to the State Treasurer. A portion of these fees will be used to assist municipalities that are eligible to receive Urban Aid in creating units of affordable housing through the creation of an Urban Housing Assistance Fund. The bill requires an annual appropriation of \$20 million from the State's portion of the Statewide non-residential development fee established by the bill.

This bill also establishes a 15-member State Housing Commission. The OLS estimates the costs associated with this new entity to be minimal as its members are not salaried and its members are entitled only to reimbursement for all necessary expenses incurred in the performance of their duties.

COMMITTEE AMENDMENTS:

The amendments clarify the methodology to be used in calculating the fair share housing obligation under the "Fair Housing Act," when replacing a unit of housing to forbid the replacement unit to be credited against the prospective fair share of a municipality.

The amendments provide a new State target for very low income housing of 13 percent.

The amendments provide that a municipality need not spend its development fees within four years, but rather must commit to spend them within four years.

The amendments change the name of the "Housing Rehabilitation Assistance Fund" to be the "Urban Housing Assistance Fund," and clarify that it may be used for new construction as well as rehabilitation of affordable housing. The amendments permit COAH to review, upon the application of a municipality and a developer, and approve reduced affordable housing set-asides or increased densities to ensure the economic feasibility of an inclusionary development.

The amendments clarify that no consideration will be given to any regional contribution agreement of which COAH did not complete its review, and approve, prior to the effective date of the bill.

The amendments authorize the Department of Community Affairs to offset its administrative costs to administer the programs under the "Fair Housing Act," from the fund created by the bill, up to a maximum of 7.5 percent annually.

The amendments create a new methodology for planning to meet fair share obligations for municipalities under the jurisdiction of specified regional planning entities or districts, and allow such regional entities to allocate affordable housing units based on regional considerations.

The amendments specify that the entirety of all continuing care facilities within a continuing care retirement community which is subject to the "Continuing Care Retirement Community Regulation and Financial Disclosure Act," P.L.1986, c.103 (C.52:27D-330 et seq.) are to be treated as non-residential construction for the purposes of the Statewide non-residential development fee. The amendments also exempt non-residential construction from a relocation of, or an on-site improvement to, a nonprofit hospital or a nursing home.

The amendments also make several technical corrections to language in the bill.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 500**

STATE OF NEW JERSEY

DATED: JUNE 12, 2008

The Assembly State Government Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 500 .

This committee substitute requires accountability of funds being collected for affordable housing purposes and provides guidelines in the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) (the "FHA") for the Council on Affordable Housing ("COAH") to follow in adopting its rules.

The substitute amends the FHA to provide guidelines for COAH in setting minimum developer incentives required in connection with charging those fees, in accordance with New Jersey court decisions. The substitute provides guidance on the manner in which municipal trust funds are to be maintained, and the purposes for which such funds are to be spent. The substitute requires that payments-in-lieu of constructing affordable housing be maintained separately from other municipal development fees authorized to be collected.

The substitute establishes a new Statewide non-residential development fee to be charged by all municipalities upon non-residential construction or improvements, at a rate of two and one-half percent of the equalized assessed value or land and improvements for all new non-residential construction on unimproved lots and at a rate of two and one-half percent of the increase in equalized assessed value for additions to existing structures to be used for non-residential purposes.

The substitute forbids a municipality from charging, in connection with non-residential construction, any other fee, notwithstanding the rules of COAH. Those municipalities that have COAH's authorization to collect *residential* development fees will be permitted to retain the non-residential development fees. Developers of non-residential properties in a municipality that does not have either COAH's or the court's authorization to charge development fees will be required to remit the non-residential development fees to the State Treasurer, to be used for affordable housing purposes under the "Fair Housing Act" and a program created under the substitute to assist urban aid municipalities in creating units of affordable housing, in light of the

bill's elimination of the regional contribution agreement from the Fair Housing Act.

The substitute eliminates the regional contribution agreement as a method to address affordable housing needs under the FHA, but permits those agreements entered into prior to the effective date of the act to be carried out. The substitute also establishes minimum numbers of housing units required to be set aside Statewide for very low income persons under the FHA. The substitute requires redevelopers of redevelopment projects to replace low and moderate income housing units which are subject to affordability controls which are eliminated as a result of such activities with comparable housing, on a one-for-one basis.

The substitute amends the "Fair Housing Act" to expand the types of properties that may be excluded from being designated as vacant land, including covenant-restricted agricultural lands, lands which are restricted from development pursuant to environmental laws, reserved recreational sites and historic sites.

The substitute renames the "Neighborhood Preservation Nonlapsing Revolving Fund" as the "New Jersey Affordable Housing Trust Fund" and requires very specific accounting and reporting by the Department of Community Affairs on the fund's activities.

The substitute creates the "Urban Housing Assistance Fund," which will be funded by an annual \$20 million appropriation from the State portion of the receipts of the Statewide non-residential development fees which are received directly by the State Treasurer. The program will assist urban aid municipalities in the rehabilitation and production of housing.

The substitute requires State agencies, when promulgating rules, to include a housing affordability impact statement and a smart growth development impact statement with the rule publication. These statements will describe how the proposed rule will affect the availability and price of housing, and impact on new construction in planning areas 1 and 2 and designated centers.

The substitute establishes a State Housing Commission that is directed to develop a strategic housing plan for New Jersey, as well as prepare an annual housing performance report to the Governor and the Joint Committee on Housing Affordability. The commission will be comprised of 15 public members, of which 13 will be appointed by the Governor and two by the Legislature. In addition, the commission will include several State department heads as non-voting members. The substitute creates an interdepartmental working group of select department heads to guide the commission in its duties. The commission is to review sources of funding and programs in the State to produce affordable housing, including rental housing, and develop a strategic plan which will coordinate State efforts and consolidate and leverage all available resources for these activities. The substitute creates a new position in the Department of Community Affairs,

known as the Senior Deputy Commissioner for Housing, who will chair the commission and the interdepartmental working group.

The substitute fosters the ability of certain regional planning entities to assist in the implementation of affordable housing plans for the municipalities within their respective jurisdictions. These entities include the New Jersey Meadowlands Commission, the Pinelands Commission, the Fort Monmouth Economic Revitalization Planning Authority, and the Highlands Water Protection and Planning Council.

It is the understanding of the committee that to implement this provision: (1) COAH will promulgate regulations requiring participating municipalities to approve resolutions of participation; (2) regional planning entities will provide recommendations to COAH as to whether the criteria outlined in the substitute bill were met; and (3) COAH will approve the resolutions of participation by municipalities.

It is also the understanding of the committee that, because of the removal of the retroactive limitations on the approvals of regional contribution agreements, the Council on Affordable Housing is now free to review and approve those pending regional contribution agreements before it before the effective date of the bill.

As reported, this committee substitute is identical to the Senate Committee Substitute for Senate Bill No. 1783 (1R) of 2008.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 500
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JUNE 20, 2008

SUMMARY

Synopsis: Revises laws concerning the provision of affordable housing.

Type of Impact: Indeterminate local revenue loss. Indeterminate increase in State revenue. Establishes new Urban Housing Assistance Fund

Agencies Affected: Department of Community Affairs, Council on Affordable Housing, and municipalities

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate increase in State revenue – See comments below		
Local Revenue	Indeterminate impact on local revenue – See comments below		

- The Office of Legislative Services (OLS) estimates an indeterminate increase in State revenue as a result of this new Statewide fee on non-residential construction, and further estimates an indeterminate effect on local revenue. No specific estimate is feasible due to the unpredictable nature of the basis for the fee, i.e., the extent and location of new construction subject to the fee.
- The principal fiscal impact of this substitute bill is the imposition of a Statewide fee on all new non-residential construction to raise revenue for the construction and rehabilitation of affordable housing. The fee is imposed at a rate of 2.5 percent of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot or lots, and 2.5 percent of the increase in the equalized assessed value of the additions to existing structures to be used for non-residential purposes.
- With respect to municipal revenue, the OLS notes that the substitute bill’s pre-emption of local ordinances imposing fees on non-residential construction at higher rates than 2.5 percent could, for some municipalities, result in less revenue than they would otherwise collect if this bill were not enacted. The OLS notes that 274 municipalities are certified to collect development fees for deposit in affordable housing trust funds.

- The OLS notes that the substitute allows the Department of Community Affairs (DCA) to utilize annually up to 7.5 percent of the monies in the New Jersey Affordable Housing Trust Fund for the payment of administrative costs related to the administration of the Fair Housing Act, the State Housing Commission, or any costs related to the administration of this substitute.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill No. 500 of 2008 reforms many of the laws applicable to affordable housing. Most notably, it requires development fees to be charged Statewide on non-residential construction or improvements. For new construction the fee will be an amount equal to two and one-half percent of the equalized assessed value of the land and improvements. With regard to improvements, the fee will be an amount equal to two and one-half percent of the increase in the equalized assessed value of the additions made to the existing structure. Those municipalities that are currently certified by the Council on Affordable Housing (COAH) to collect residential development fees will be permitted to collect and retain the non-residential development fees. Developers of non-residential property in a municipality that are not authorized to charge development fees will be required to send the non-residential development fees to the State Treasurer, to be used for affordable housing purposes under the “Fair Housing Act.” This substitute also creates a program to assist municipalities eligible to receive urban aid with the creation of affordable housing units in light of the substitute’s elimination of the regional contribution agreement from the Fair Housing Act. Finally, this substitute creates a 15-member State Housing Commission that is directed to develop a strategic housing plan for New Jersey and prepare an annual housing performance report to the Governor and the Joint Committee on Housing Affordability.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates an indeterminate increase in State revenue as a result of this new Statewide fee on non-residential construction, and further estimates an indeterminate effect on local revenue. No specific estimate is feasible due to the unpredictable nature of the basis for the fee, i.e., the extent and location of new construction subject to the fee. This will vary from year to year according to such factors as national and regional economic conditions, local planning and zoning decisions, and the impact of government development subsidies.

The principal fiscal impact of this substitute is the imposition of a Statewide fee on all new non-residential construction to raise revenue for the construction and rehabilitation of affordable housing. The fee is imposed at a rate of 2.5 percent of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot or lots, and 2.5 percent of the increase in the equalized assessed value of the additions to existing structures to be used for non-residential purposes. Certain exclusions from the fee are provided for houses of worship, non-profit hospitals, nursing homes, educational facilities, certain parking lots, recreational facilities, and projects within an urban transit hub or certain transit villages. These

fees would be paid to the State by developers of non-residential properties in municipalities that are not currently certified by the COAH to collect residential development fees; otherwise they would be paid directly to the municipality where the construction occurs.

Under the bill the first \$20 million in revenue from the State portion would be deposited into a newly-created Urban Housing Assistance Fund, for the purpose of assisting urban aid municipalities in the rehabilitation and production of housing. The remainder of State fee revenues would be deposited into the New Jersey Affordable Housing Trust Fund (currently known as the Neighborhood Preservation Nonlapsing Revolving Fund) to be used for affordable housing purposes under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). This substitute also allows the DCA to use annually up to 7.5 percent of the monies available in the fund for the payment of any necessary administrative costs related to the administration of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), the State Housing Commission or any administrative costs. A provision of the original bill allowing the Department of the Treasury to spend up to five percent annually for administrative costs was removed by the committee substitute.

The OLS has reviewed information obtained from the Divisions of Codes and Standards and Local Government Services in the DCA to illustrate, but not to forecast, the amount of revenue that would be collected by the State if this substitute were to become law. Using information contained in county budgets submitted to the Division of Local Government Services as part of the budget review process, the OLS has determined that the equalized assessed value of all added assessments in New Jersey for 2007, generally equivalent to new residential and non-residential construction, was \$13,815,887,643.

To discern the percentage of this total which may have been non-residential in nature, the OLS consulted the December 2007 edition of *The New Jersey Construction Reporter* published by the Division of Codes and Standards. This report indicated that the Statewide dollar amount of non-residential construction authorized by building permits in 2007 was \$7,054,524,983, which represented about 47 percent of the Statewide total of the dollar amount of all construction authorized by building permits for all construction in 2007. To estimate the equalized assessed value of all new non-residential construction in 2007, \$13,815,887,643 was multiplied by 0.47. This calculation yielded a result of \$6,538,215,024. Two and one-half percent of this amount (the proposed fee) equals \$163,455,375. No information was reviewed by the OLS indicating the municipal location of any added assessments, so no attempt is made to illustrate how this hypothetical revenue yield would be divided between the State and municipalities.

With respect to municipal revenue, the OLS notes that the bill's pre-emption of local ordinances imposing fees on non-residential construction at higher rates than 2.5 percent could, for some municipalities, result in less revenue than would otherwise occur if this substitute bill were not enacted. The substitute provides that any municipal ordinances imposing non-residential development fees for affordable housing purposes under current COAH regulations, that are generally 3 percent of the equalized assessed value in municipalities under COAH jurisdiction that have not adopted a growth-share ordinance, become void and without effect. The substitute also discontinues payments-in-lieu-of construction developer fees in municipalities having adopted a growth share ordinance. These fees are typically based on a ratio of 1 affordable housing unit per 16 jobs deemed created by the non-residential development, and varies depending upon the housing region in which the development occurs and the number of jobs created per 1,000 square feet of development.

Finally, the OLS notes that this substitute eliminates the regional contribution agreement as a method to address housing needs under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). However, agreements that have been formally reviewed and recommended by COAH for approval by the courts prior to the enactment of this substitute will be allowed to go forward.

ACS for A500

4

Since 1985, 149 regional contribution agreements have resulted in the transfer of the obligation for building 10,400 units of affordable housing from one municipality to another. According to COAH, the total value of these agreements exceed \$216 million.

Section: Local Government

*Analyst: Scott A. Brodsky
Assistant Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).

SENATE, No. 1783

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 8, 2008

Sponsored by:
Senator RAYMOND J. LESNIAK
District 20 (Union)

SYNOPSIS

Imposes non-residential development fees.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning non-residential development fees and
2 supplementing chapter 55D of Title 40 of the Revised Statutes.

3

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

6

7 1. (New section) This bill shall be known and may be cited as
8 the "Statewide Non-residential Development Fee Act."

9

10 2. (New section) The Legislature finds and declares:

11 a. The collection of development fees from builders of
12 residential and non-residential properties has been authorized by the
13 court through the powers delegated to the Council on Affordable
14 Housing established pursuant to the "Fair Housing Act," P.L.1985,
15 c.222 (C.52:27D-301 et al.).

16 b. New Jersey's land resources are becoming more scarce, while
17 its redevelopment needs are increasing. In order to balance the
18 needs of developing and redeveloping communities, a reasonable
19 method of providing for the housing needs of low and moderate
20 income and middle income households, without mandating the
21 inclusion of housing in every non-residential project, must be
22 established.

23 c. A Statewide non-residential development fee program which
24 permits municipalities under the council's jurisdiction to retain
25 these fees for use in the municipality will provide a fair and
26 balanced funding method to address the State's affordable housing
27 needs, while providing an incentive to all municipalities to seek
28 substantive certification from the council.

29

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

31 "Construction" means new construction and additions, but does
32 not include alterations, reconstruction, renovations, and repairs as
33 those terms are defined under the State Uniform Construction Code
34 promulgated pursuant to the "State Uniform Construction Code
35 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

36 "Commissioner" means the Commissioner of Community
37 Affairs.

38 "Council" means the Council on Affordable Housing, established
39 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

40 "Developer" means the legal or beneficial owner or owners of a
41 lot or of any land proposed to be included in a proposed
42 development, including the holder of an option or contract to
43 purchase, or other person having an enforceable proprietary interest
44 in such land.

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 "Equalized assessed value" means the assessed value of a
2 property divided by the current average ratio of assessed to true
3 value for the municipality in which the property is situated, as
4 determined in accordance with sections 1, 5, and 6 of P.L.1973,
5 c.123 (C.54:1-35a through C.54:1-35c).

6 "Mixed Use Development" means any development which
7 includes both a non-residential development component and a
8 residential development component, and shall include developments
9 for which (1) there is a common developer for both the residential
10 development component and the non-residential development
11 component, provided that for purposes of this definition, multiple
12 persons and entities may be considered a common developer if there
13 is a contractual relationship among them obligating each entity to
14 develop at least a portion of the residential or non-residential
15 development, or both, or otherwise to contribute resources to the
16 development; and (2) the residential and non-residential
17 developments are located on the same lot or adjoining lots,
18 including, but not limited to, lots separated by a street, a river, or
19 another geographical feature.

20 "Non-residential development" means: (1) any building or
21 structure, or portion thereof, including, but not limited to, any
22 appurtenant improvements, which is designated to a use group other
23 than a residential use group according to the State Uniform
24 Construction Code promulgated to effectuate the "State Uniform
25 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),
26 including any subsequent amendments or revisions thereto; and (2)
27 hotels, motels, vacation timeshares, and child-care facilities.

28 "Non-residential development fee" means the fee authorized to
29 be imposed pursuant to section 4 of P.L. , c. (C.)
30 (pending before the Legislature as this bill).

31 "Relating to the provision of housing" shall be liberally
32 construed to include the construction, maintenance, or operations of
33 housing, including, but not limited to, the provision of services to
34 such housing and the funding of any of the above.

35 "Spending plan" means a method of allocating funds collected
36 and to be collected pursuant to an approved municipal development
37 fee ordinance, or pursuant to P.L. , c. (C.) (pending
38 before the Legislature as this bill) for the purpose of meeting the
39 housing needs of low, moderate, and middle income individuals.

40 "Treasurer" means the Treasurer of the State of New Jersey.

41

42 4. (New section) a. Beginning on the effective date of
43 P.L. , c. (C.) (pending before the Legislature as this
44 bill), a fee is imposed on all applications for development for non-
45 residential development, and for construction permits affecting non-
46 residential property, as follows:

47 (1) A fee equal to two and one-half percent (2.5%) of the
48 equalized assessed value of the land and proposed improvements,

1 for all new non-residential construction on an unimproved lot or
2 lots; or

3 (2) A fee equal to two and one-half percent (2.5%) of the
4 increase in equalized assessed value, of the reconstruction of or
5 additions to existing structures to be used for non-residential
6 purposes.

7 b. All non-residential construction of buildings or structures on
8 property used by churches, synagogues, mosques, and other houses
9 of worship, and property used for educational purposes, which is
10 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the
11 imposition of a non-residential development fee pursuant to this
12 section, provided that the property continues to maintain its tax
13 exempt status under that statute for a period of at least three years
14 from the date of issuance of the certificate of occupancy. In
15 addition, the following shall be exempt from the imposition of a
16 non-residential development fee: parking lots and parking
17 structures, regardless of whether the parking lot or parking structure
18 is constructed in conjunction with a non-residential development,
19 such as an office building, or whether the parking lot is developed
20 as an independent non-residential development; and any non-
21 residential development which is an amenity to be made available to
22 the public, including, but not limited to, recreational facilities,
23 community centers, and senior centers, which are developed in
24 conjunction with or funded by a non-residential developer. A
25 developer of a non-residential development exempted from the non-
26 residential development fee pursuant to this section shall be subject
27 to it at such time the basis for the exemption set forth in this
28 subsection no longer applies, and shall make the payment of the
29 non-residential development fee, in that event, within three years
30 after that event or after the issuance of the final certificate of
31 occupancy of the non-residential development, whichever is later.

32 For purposes of this subsection, "recreational facilities and
33 community center" means any indoor or outdoor buildings, spaces,
34 structures, or improvements intended for active or passive
35 recreation, including, but not limited to, ball fields, meeting halls,
36 and classrooms, accommodating either organized or informal
37 activity; and "senior center" means any recreational facility or
38 community center with activities and services oriented towards
39 serving senior citizens.

40 If a property which was exempted from the collection of a non-
41 residential development fee thereafter ceases to be exempt from
42 property taxation, the owner of the property shall remit the fees
43 required pursuant to this section within 45 days of the termination
44 of the property tax exemption. Unpaid non-residential development
45 fees under these circumstances may be enforceable by the
46 municipality as a lien against the real property of the owner.

47 c. (1) Developers shall pay non-residential development fees
48 imposed pursuant to P.L. , c. (C.) (pending before the

1 Legislature as this bill) to the Commissioner of Community Affairs
2 to be held for deposit into the New Jersey Affordable Housing Trust
3 Fund established pursuant to section 20 of P.L. 1985, c.222
4 (C.52:27D-320), in a manner and on such forms as required by the
5 commissioner, provided that a certified proof concerning the
6 payment shall be furnished by the commissioner to the
7 municipality.

8 (2) The commissioner shall forward to a municipality, within 15
9 days of the collection thereof, the non-residential development fees
10 collected pursuant to P.L. , c. (C.) (pending before the
11 Legislature as this bill) if that municipality has a confirmed status
12 of compliance with the "Fair Housing Act," P.L.1985, c.222
13 (C.52:27D-301 et al.), which compliance shall include a spending
14 plan authorized by the council for all other development fees
15 collected.

16 d. The payment of non-residential development fees required
17 pursuant to this section shall be made prior to the issuance of a
18 certificate of occupancy.

19 e. The construction official responsible for the issuance of a
20 building permit shall notify the local tax assessor of the issuance of
21 the first building permit for a development which may be subject to
22 a non-residential development fee. Within 90 days of receipt of that
23 notice, the municipal tax assessor, based on the plans filed, shall
24 provide an estimate of the equalized assessed value of the non-
25 residential development. The construction official responsible for
26 the issuance of a final certificate of occupancy shall notify the local
27 assessor of any and all requests for the scheduling of a final
28 inspection on property which may be subject to a non-residential
29 development fee. Within 10 business days of a request for the
30 scheduling of a final inspection, the municipal assessor shall
31 confirm or modify the previously estimated equalized assessed
32 value of the improvements of the non-residential development in
33 accordance with the regulations adopted by the Director of the
34 Division of Taxation in the Department of the Treasury pursuant to
35 P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential
36 development fee; and thereafter notify the developer of the amount
37 of the non-residential development fee. Should the municipality
38 fail to determine or notify the developer of the amount of the non-
39 residential development fee within 10 business days of the request
40 for final inspection, the developer may estimate the amount due and
41 pay that estimated amount consistent with the dispute process set
42 forth in subsection b. of section 6 of P.L. , c. (C.)
43 (pending before the Legislature as this bill). Upon tender of the
44 estimated non-residential development fee, provided the developer
45 is in full compliance with all other applicable laws, the municipality
46 shall issue a final certificate of occupancy for the subject property.
47 Failure of the municipality to comply with the timeframes or
48 procedures set forth in this subsection may subject it to penalties to

1 be imposed by the commissioner; any penalties so imposed shall be
2 deposited into the New Jersey Affordable Housing Trust Fund
3 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
4 320).

5 f. Any municipality that is not in compliance with the
6 requirements established pursuant to P.L. , c. (C.)
7 (pending before the Legislature as this bill), or regulations of the
8 council adopted thereto, may be subject to forfeiture of any or all
9 funds remaining within its municipal development trust fund. Any
10 funds so forfeited shall be deposited into the New Jersey Affordable
11 Housing Trust Fund established pursuant to section 20 of P.L.1985,
12 c.222 (C.52:27D-320).

13 g. Notwithstanding any provision of P.L. , c. (C.)
14 (pending before the Legislature as this bill), or rules of the council
15 to the contrary, a municipality that qualifies for State aid pursuant
16 to P.L.1978, c.14 (C.52:27D-178 et seq.) may impose, collect, or
17 spend development and non-residential development fees by filing a
18 development fee ordinance and spending plan, and requesting
19 approval by the council. Such municipalities shall be permitted to
20 develop separate spending plans, which plans may provide for
21 housing rehabilitation, new construction of housing or schools,
22 repair or enhancement of infrastructure, grants to redevelopment
23 projects, job training, construction of day care centers, or any
24 activity which the governing body of the municipality believes will
25 provide economic stability and sustainable neighborhoods.

26

27 5. (New section) a. The commissioner, in consultation with the
28 council, shall promulgate, in accordance with the provisions of the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.), such regulations as are necessary for the prompt and effective
31 implementation of the provisions and purposes of P.L. , c. (C.)
32 (pending before the Legislature as this bill).

33 b. Notwithstanding the authority granted to the commissioner
34 herein, the council shall adopt and promulgate, in accordance with
35 the provisions of the "Administrative Procedure Act," P.L.1968,
36 c.410 (C.52:14B-1 et seq.), such regulations as are necessary to
37 effectuate the provisions of P.L. , c. (C.) (pending
38 before the Legislature as this bill), including, but not limited to,
39 regulations necessary for the establishment, implementation,
40 review, monitoring, and enforcement of a municipal affordable
41 housing trust fund and spending plan.

42

43 6. (New section) a. The provisions of P.L. , c. (C.)
44 (pending before the Legislature as this bill) shall not apply to:

45 (1) A development application which has been deemed complete
46 pursuant to section 5 of P.L.1984, c.20 (C.40:55D-10.3) prior to the
47 effective date of P.L. , c. (C.) (pending before the
48 Legislature as this bill); or

1 (2) Non-residential property for which a construction permit has
2 been issued prior to the effective date of P.L. , c. (C.)
3 (pending before the Legislature as this bill).

4 b. A developer may challenge non-residential development fees
5 imposed pursuant to P.L. , c. (C.) (pending before the
6 Legislature as this bill) by filing a challenge with the Commissioner
7 of Community Affairs. Pending a review and determination by the
8 commissioner, which shall be made within 45 days of receipt of the
9 challenge, collected fees shall be placed in an interest bearing
10 escrow account by the municipality or by the State, as the case may
11 be. Appeals from a determination of the commissioner may be
12 made to the Office of Administrative Law, within 45 days of the
13 commissioner's determination. Interest earned on amounts
14 escrowed shall be credited to the prevailing party.

15 c. Whenever non-residential development is situated on real
16 property that has been previously developed with a building,
17 structure, or other improvement, the non-residential development
18 fee shall be equal to two and one-half percent (2.5%) of the
19 equalized assessed value of the land and improvements on the
20 property where the non-residential development is situated at the
21 time the final certificate of occupancy is issued, less the equalized
22 assessed value of the land and improvements on the property where
23 the non-residential development is situated, as determined by the
24 tax assessor of the municipality at the time the developer or owner
25 first sought approval for a construction permit pursuant to the State
26 Uniform Construction Code, or approval under the "Municipal Land
27 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). If the calculation
28 required under this section results in a negative number, the non-
29 residential development fee shall be zero.

30 Whenever a developer of non-residential development has made
31 or committed itself to make a financial or other contribution relating
32 to the provision of housing affordable to low and moderate income
33 and middle income households prior to the enactment of P.L. , c.
34 (C.) (pending before the Legislature as this bill), the non-
35 residential development fee shall be reduced by the amount of the
36 financial contribution and the fair market value of any other
37 contribution made by or committed to be made by the developer.
38 For purposes of this section, a developer is considered to have made
39 or committed itself to make a financial or other contribution, if and
40 only if: (1) the contribution has been transferred, including, but not
41 limited to, when the funds have already been received by the
42 municipality; (2) the developer has obligated itself to make a
43 contribution as set forth in a written agreement with the
44 municipality, such as a developer's agreement; or (3) the
45 developer's obligation to make a contribution is set forth as a
46 condition in a land use approval issued by a municipal land use
47 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
48 (C.40:55D-1 et seq.)

1 d. Unless otherwise provided for by law, no municipality shall
2 be required to return a financial or any other contribution made by
3 or committed to be made by a developer of a non-residential
4 development prior to the enactment of P.L. , c. (C.)
5 (pending before the Legislature as this bill) relating to the provision
6 of housing affordable to low and moderate income and middle
7 income households, provided that the developer does not obtain an
8 amended, modified, or new municipal land use approval with a
9 substantial change in the non-residential development. If the
10 developer obtains an amended, modified, or new land use approval
11 for non-residential development, the municipality, person, or entity
12 shall be required to return to the developer any funds or other
13 contribution provided by the developer for the provision of housing
14 affordable to low and moderate income and middle income
15 households and the developer shall not be entitled to a reduction in
16 the affordable housing development fee based upon that
17 contribution.

18 e. The provisions of P.L. , c. (C.) (pending before
19 the Legislature as this bill) shall not be construed in any manner as
20 affecting the method or timing of assessing real property for
21 property taxation purposes. The payment of a non-residential
22 development fee shall not increase the equalized assessed value of
23 any property.
24

25 7. (New section) Except as expressly provided in P.L. , c.
26 (C.) (pending before the Legislature as this bill), any provision
27 of a local ordinance which imposes a fee for the development of
28 affordable housing upon a developer of non-residential property,
29 including any and all development fee ordinances adopted in
30 accordance with N.J.A.C.5:93-8.1 et seq., or N.J.A.C.5:94-6.1 et
31 seq., or any provision of an ordinance which imposes an obligation
32 relating to the provision of housing affordable to low and moderate
33 income households, or payment in-lieu of building as a condition of
34 non-residential development, shall be void and of no effect. A
35 provision of an ordinance which imposes a development fee which
36 is not prohibited by any provision of P.L. , c. (C.)
37 (pending before the Legislature as this bill) shall not be invalidated
38 by this section.
39

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

42 20. **【**The Neighborhood Preservation Program within the
43 Department of Community Affairs' Division of Housing and
44 Development, established pursuant to the Commissioner of
45 Community Affairs' authority under section 8 of P.L.1975, c.248
46 (C.52:27D-149), shall establish a separate Neighborhood
47 Preservation Nonlapsing Revolving Fund for monies appropriated

1 by section 33 of P.L.1985, c.222, or other monies as may be
2 appropriated by the Legislature for the purposes of the fund.】

3 There is established in the Department of Community Affairs a
4 separate trust fund, to be used for the exclusive purposes as
5 provided in this section, and which shall be known as the “New
6 Jersey Affordable Housing Trust Fund.” The fund shall be a non-
7 lapsing, revolving trust fund, and all monies deposited or received
8 for purposes of the fund shall be accounted for separately, by source
9 and amount, and remain in the fund until appropriated for such
10 purposes. The fund shall be the repository of all State funds
11 appropriated for affordable housing purposes, including the
12 proceeds from the receipts of the additional fee collected pursuant
13 to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49
14 (C.46:15-7), proceeds from available receipts of the Statewide non-
15 residential development fees collected pursuant to section 36 of
16 P.L. _____, c. _____ (C. _____) (pending before the Legislature as this
17 bill), monies lapsing or reverting from municipal development trust
18 funds, or other monies as may be dedicated, earmarked, or
19 appropriated by the Legislature for the purposes of the fund. All
20 references in any law, order, rule, regulation, contract, loan,
21 document, or otherwise, to the “Neighborhood Preservation
22 Nonlapsing Revolving Fund” shall mean the “New Jersey
23 Affordable Housing Trust Fund.”

24 a. Except as permitted pursuant to subsection g. of this section,
25 the commissioner shall award grants or loans from this fund for
26 housing projects and programs in municipalities whose housing
27 elements have received substantive certification from the council, in
28 municipalities receiving State aid pursuant to P.L.1978, c.14
29 (C.52:27D-178 et seq.), in municipalities subject to builder's
30 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328)
31 or in receiving municipalities in cases where the council has
32 approved a regional contribution agreement and a project plan
33 developed by the receiving municipality. Programs and projects in
34 any municipality shall be funded only after receipt by the
35 commissioner of a written statement in support of the program or
36 project from the municipal governing body.

37 b. The commissioner shall establish rules and regulations
38 governing the qualifications of applicants, the application
39 procedures, and the criteria for awarding grants and loans and the
40 standards for establishing the amount, terms and conditions of each
41 grant or loan.

42 c. 【During the first 12 months from the effective date of
43 P.L.1985, c.222 (C.52:27D-301 et al.) and for】 For any
44 【additional】 period which the council may approve, the
45 commissioner may assist affordable housing programs which are
46 not located in municipalities whose housing elements have been
47 granted substantive certification or which are not in furtherance of a
48 regional contribution agreement; provided that the affordable

1 housing program will meet all or part of a municipal low and
2 moderate income housing obligation.

3 d. Amounts deposited in the **【Neighborhood Preservation】** New
4 Jersey Affordable Housing Trust Fund shall be targeted to regions
5 based on the region's percentage of the State's low and moderate
6 income housing need as determined by the council. Amounts in the
7 fund shall be applied for the following purposes in designated
8 neighborhoods;

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

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

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

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

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

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

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

42 e. Any grant or loan agreement entered into pursuant to this
43 section shall incorporate contractual guarantees and procedures by
44 which the division will ensure that any unit of housing provided for
45 low and moderate income households shall continue to be occupied
46 by low and moderate income households for at least 20 years
47 following the award of the loan or grant, except that the division

1 may approve a guarantee for a period of less than 20 years where
2 necessary to ensure project feasibility.

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

19 g. In addition to other grants or loans awarded pursuant to this
20 section, and without regard to any limitations on such grants or
21 loans for any other purposes herein imposed, the commissioner
22 shall annually allocate such amounts as may be necessary in the
23 commissioner's discretion, and in accordance with section 3 of
24 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
25 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
26 287.1 et al.). Such rental assistance grants shall be deemed
27 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
28 301 et al.), in order to meet the housing needs of certain low income
29 households who may not be eligible to occupy other housing
30 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

31 h. The department and Treasurer shall submit the fund for an
32 audit annually by the State Auditor or State Comptroller, at the
33 discretion of the Treasurer. In addition, the department shall
34 prepare an annual report for each fiscal year, and submit it by
35 November 30th of each year to the Governor and the Legislature,
36 and the Joint Committee on Housing Affordability, or its successor,
37 and post the information to its web site, of all activity of the fund,
38 including details of the grants and loans by number of units, number
39 and income ranges of recipients of grants or loans, location of the
40 housing renovated or constructed using monies from the fund, the
41 number of units upon which affordability controls were placed, and
42 the length of those controls. The report shall also list the activity of
43 the funds set-aside for use for the State rental assistance program
44 from the fund, pursuant to P.L.2004, c.140 (C.52:27D-187.1 et al.)
45 and subsection g. of this section.

46 (cf: P.L.2004, c.140, s.4)

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48 9. This act shall take effect immediately.

STATEMENT

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This bill requires development fees to be charged on non-residential construction or improvements, by all municipalities, to fund affordable housing.

The bill requires the imposition of a fee on all applications for non-residential development, and for construction permits affecting non-residential property, in the amount of 2.5% of the equalized assessed value of the land and proposed improvements, for all new non-residential construction on an unimproved lot or lots; or in the amount of 2.5% of the increase in equalized assessed value of the reconstruction of or additions to existing structures to be used for non-residential purposes. The bill requires that the non-residential development fee must be paid prior to the issuance of a certificate of occupancy for the property. The bill prohibits a municipality from charging a payment in lieu of tax in connection with non-residential construction, and also prohibits the required construction of housing units as a result of any non-residential construction or redevelopment.

Under the provisions of the bill, municipalities having COAH's authorization to collect residential development fees will be permitted to retain the non-residential development fees collected pursuant to the bill. Those municipalities that do not have either COAH's or the court's authorization to charge development fees will be required to send the non-residential development fees collected pursuant to the provisions of the bill to the State Treasurer, to be used for affordable housing purposes under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

The bill exempts the following types of non-residential development from the payment of non-residential development fees: non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship; property used for educational purposes; parking lots and parking structures; and any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 1783

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 19, 2008

The Senate Economic Growth Committee reports favorably Senate Bill, No. 1783 with committee amendments.

This bill, as amended by the committee, requires development fees to be charged on non-residential construction or improvements, by all municipalities, to fund affordable housing.

Under regulations proposed by the Council on Affordable Housing ("COAH") pursuant to court order, municipalities can charge a payment in-lieu of providing housing which can amount to an eight to ten percent fee to be imposed on such non-residential construction or improvements. This bill cuts that fee substantially. The revenues from the fees will be dedicated to affordable housing, and will help to implement the State goals to encourage smart growth and economic development. The committee is significantly concerned about the devastating impact the eight to ten percent fee will have on job creation in New Jersey.

The amended bill requires the imposition of a fee on all applications for non-residential development, and for construction permits affecting non-residential property, in the amount of 2.5% of the equalized assessed value of the land and proposed improvements, for all new non-residential construction on an unimproved lot or lots; or in the amount of 2.5% of the increase in equalized assessed value of the additions to existing structures to be used for non-residential purposes. The bill requires that the non-residential development fee must be paid prior to the issuance of a certificate of occupancy for the property. The bill prohibits a municipality from charging a payment in lieu of tax in connection with non-residential construction, and also prohibits the required construction of housing units as a result of any non-residential construction or redevelopment.

Under the provisions of the bill, municipalities having the COAH's authorization to collect residential development fees will be permitted to retain the non-residential development fees collected pursuant to the bill. Those municipalities that do not have either the COAH's or the court's authorization to charge development fees will be required to send the non-residential development fees collected pursuant to the provisions of the bill to the State Treasurer, to be used for affordable

housing purposes under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

The amended bill exempts the following types of non-residential development from the payment of non-residential development fees: non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship; property used for educational purposes; parking lots and parking structures; and any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer.

The committee amended the bill to: 1) clarify that the fee is to be imposed on the construction for non-residential development; 2) clarify that the calculation of the fee does not apply to the reconstruction of existing structures; 3) provide that, if a non-residential developer, files a challenge to the imposition of the fee with the Commissioner of the Department of Community Affairs ("DCA") and the commissioner's determination is appealed, the municipality is to issue the certificate of occupancy provided that the non-residential development is constructed in compliance with the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.); 4) clarify that, in the case of non-residential improvements made to an existing building, the initial construction permit applications that shall be used to date the pre-improvement value of properties for fee calculation purposes may include applications by previous owners; 5) provide that provide that all municipalities collecting the fees, not solely urban aid municipalities, be required to maintain a COAH-approved affordable housing trust fund and spending plan; 6) explicitly state that the fee be collected at the time a certificate of occupancy is issued but that the certificate not be issued until proof of payment is provided; 7) provide that if the municipality certifies that it is in compliance with the "Fair Housing Act," including a COAH-approved spending plan, the DCA is to forward the fees to the municipality; 8) exempt from the payment of the fee only developments that have received preliminary or final site plan approval; 9) provide that the developer of mixed use development shall be required to pay the fee relating to the non-residential development component of the mixed use development subject to the provisions of the bill; 10) provide that no municipality shall impose upon a developer of a mixed use development any greater obligation related to the residential portion of the mixed use development than would have been imposed if the residential portion of the mixed use development had been developed independent of the non-residential portion of the mixed use development; 11) provide that the submission of the annual report for the New Jersey Affordable Housing Trust Fund to the Legislature shall be in accordance with section 2 of

P.L.1991, c.164 (C.52:14-19.1); and 12) correct the title of the bill and make grammatical corrections.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1783**

STATE OF NEW JERSEY

DATED: JUNE 9, 2008

The Senate Budget and Appropriations Committee reports favorably the Senate Committee Substitute for Senate Bill No. 1783.

The substitute requires accountability of funds being collected for affordable housing purposes and provides guidelines in the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) (the "FHA") for the Council on Affordable Housing ("COAH") to follow in adopting its rules.

The substitute amends the FHA to provide guidelines for COAH in setting minimum developer incentives required in connection with charging those fees, in accordance with New Jersey court decisions. The substitute provides guidance on the manner in which municipal trust funds are to be maintained, and the purposes for which such funds are to be spent. The substitute requires that payments-in-lieu of constructing affordable housing be maintained separately from other municipal development fees authorized to be collected.

The substitute bill establishes a new Statewide non-residential development fee to be charged by all municipalities upon non-residential construction or improvements, at a rate of two and one-half percent of the equalized assessed value or land and improvements for all new non-residential construction on unimproved lots and at a rate of two and one-half percent of the increase in equalized assessed value for additions to existing structures to be used for non-residential purposes.

The substitute bill forbids a municipality from charging, in connection with non-residential construction, any other fee, notwithstanding the rules of COAH. Those municipalities that have COAH's authorization to collect *residential* development fees will be permitted to retain the non-residential development fees. Developers of non-residential properties in a municipality that does not have either COAH's or the court's authorization to charge development fees will be required to remit the non-residential development fees to the State Treasurer, to be used for affordable housing purposes under the "Fair Housing Act" and a program created under the substitute to assist urban aid municipalities in creating units of affordable housing, in

light of the bill's elimination of the regional contribution agreement from the Fair Housing Act.

The substitute eliminates the regional contribution agreement as a method to address affordable housing needs under the FHA, but permits those agreements entered into prior to the effective date of the act to be carried out. The substitute also establishes minimum numbers of housing units required to be set aside Statewide for very low income persons under the FHA. The substitute requires redevelopers of redevelopment projects to replace low and moderate income housing units which are subject to affordability controls which are eliminated as a result of such activities with comparable housing, on a one-for-one basis.

The substitute renames the "Neighborhood Preservation Nonlapsing Revolving Fund" as the "New Jersey Affordable Housing Trust Fund" and requires very specific accounting and reporting by the Department of Community Affairs on the fund's activities. The substitute amends the "Fair Housing Act" to expand the types of properties that may be excluded from being designated as vacant land, including covenant-restricted agricultural lands, lands restricted from development pursuant to environmental laws, reserved recreational sites and historic sites.

The substitute creates the "Urban Housing Assistance Fund," which will be funded by an annual \$20 million appropriation from the State portion of the receipts of the Statewide non-residential development fees which are received directly by the State Treasurer. The program will assist urban aid municipalities in the rehabilitation and production of housing.

The substitute requires State agencies, when promulgating rules, to include a housing affordability impact statement and a smart growth development impact statement with the rule publication. These statements will describe how the proposed rule will affect the availability and price of housing, and impact on new construction in planning areas 1 and 2 and designated centers.

The substitute establishes a State Housing Commission that is directed to develop a strategic housing plan for New Jersey, as well as prepare an annual housing performance report to the Governor and the Joint Committee on Housing Affordability. The commission will be comprised of 15 public members, of which 13 will be appointed by the Governor and two by the Legislature. In addition, the commission will include several State department heads as non-voting members. The substitute creates an interdepartmental working group of select department heads to guide the commission in its duties. The commission is to review sources of funding and programs in the State to produce affordable housing, including rental housing, and develop a strategic plan which will coordinate State efforts and consolidate and leverage all available resources for these activities. The substitute creates a new position in the Department of Community Affairs,

known as the Senior Deputy Commissioner for Housing, who will chair the commission and the interdepartmental working group.

The substitute bill fosters the ability of certain regional planning entities, to assist in the implementation of affordable housing plans for the municipalities within their respective jurisdictions. These entities include the New Jersey Meadowlands Commission, the Pinelands Commission, the Fort Monmouth Economic Revitalization Planning Authority, and the Highlands Water Protection and Planning Council. It is the understanding of the committee that to implement this provision: (1) COAH will promulgate regulations requiring participating municipalities to approve resolutions of participation; (2) regional planning entities will provide recommendations to COAH as to whether the criteria outlined in the substitute bill were met; and (3) COAH will approve the resolutions of participation by municipalities.

FISCAL IMPACT:

The principal fiscal impact of the substitute is the imposition of a Statewide fee on all new non-residential construction to raise revenue for the construction and rehabilitation of affordable housing. The fee is imposed at a rate of 2.5% of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot or lots, and 2.5% of the increase in the equalized assessed value of the additions to existing structures to be used for non-residential purposes. Certain exclusions from the fee are provided, such as houses of worship, non-profit hospitals, nursing homes, educational facilities, certain parking lots and recreational facilities, and projects within an urban transit hub or certain NJ transit villages. These fees would be paid to the State by developers of non-residential properties in municipalities that are not currently certified by the Council on Affordable Housing (COAH) to collect residential development fees; otherwise they would be paid directly to the municipality where the construction occurs.

This substitute bill provides that the first \$20 million from the State portion of the new fee revenue would be deposited into a newly-created Urban Housing Assistance Fund, for the purpose of assisting urban aid municipalities in the rehabilitation and production of housing. The remainder of State fee revenues would be deposited into the New Jersey Affordable Housing Trust Fund (currently known as the Neighborhood Preservation Nonlapsing Revolving Fund) to used for affordable housing purposes under the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.).

The substitute bill provides that any municipal ordinances imposing non-residential development fees for affordable housing purposes under current COAH regulations, generally 3% of the equalized assessed value in municipalities under COAH jurisdiction that have not adopted a growth-share ordinance, become void and without effect. The bill also discontinues payments-in-lieu-of

construction in connection with nonresidential development in municipalities that have adopted a growth share ordinance. These fees are typically based on a ratio of 1 affordable housing unit per 16 jobs deemed created by the non-residential development, and vary depending on the housing region in which the development occurs and the number of jobs created per 1,000 square feet of development.

The Office of Legislative Services (OLS) estimates an indeterminate increase in State revenue as a result of this new Statewide fee on non-residential construction, and further estimates an indeterminate effect on local revenue. No specific estimate is feasible due to the unpredictable nature of the basis for the fee, i.e., the extent and location of new construction subject to the fee. This will vary from year to year according to such factors as national and regional economic conditions, local planning and zoning decisions, and the impact of government development subsidies. The OLS notes that the substitute bill allows the Department of Community Affairs to utilize annually up to 7.5 percent of the monies in the New Jersey Affordable Housing Trust Fund for the payment of administrative costs related to the administration of the "Fair Housing Act," the State Housing Commission, or any costs related to the administration of the substitute file.

The OLS has reviewed information obtained from the Divisions of Codes and Standards and Local Government Services in the Department of Community Affairs (DCA) to illustrate, but not to forecast, the amount of revenue that would be collected by the State if this substitute bill were to become law. Using information contained in county budgets submitted to the Division of Local Government Services in the Department of Community Affairs (DCA) as part of the budget review process, the Office of Legislative Services has determined that the equalized assessed value of all added assessments in New Jersey for 2007, generally equivalent to new residential and non-residential construction, was \$13,815,887,643.

To discern the percentage of this total which may have been non-residential in nature, the OLS consulted the December 2007 edition of *The New Jersey Construction Reporter* published by the Division of Codes and Standards. This report indicated that the Statewide dollar amount of non-residential construction authorized by building permits in 2007 was \$7,054,524,983, which represented about 47% of the Statewide total of the dollar amount of all construction authorized by building permits for all construction in 2007. To estimate the equalized assessed value of all new non-residential construction in 2007, \$13,815,887,643 was multiplied by 0.47. This calculation yielded a result of \$6,538,215,025. Two and one-half percent of this amount (the proposed fee) equals \$163,455,376. No information was reviewed by the OLS that indicated the location of any of those added assessments by municipality, so no attempt is made to illustrate how

this hypothetical revenue yield would be divided between the State and municipalities under the provisions of the substitute bill.

With respect to municipal revenue, the OLS notes that the substitute bill's pre-emption of local ordinances imposing fees on non-residential construction at higher rates than 2.5% could, for some municipalities, result in less revenue than would otherwise be collected if this substitute bill were not enacted.

The OLS further notes a likely indeterminate increase in State expenditures from the following provisions of the bill: the establishment of a new State Housing Commission, whose members would serve without compensation, but be reimbursed for necessary expenses incurred in the performance of their duties; the creation of a new Senior Deputy Commissioner for Housing in DCA; and the expansion of the administrative duties of COAH.

As reported, this committee substitute is identical to the Assembly Committee Substitute for Assembly Bill No. 500 (2R).

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1783
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JUNE 20, 2008

SUMMARY

Synopsis: Revises laws concerning the provision of affordable housing.

Type of Impact: Indeterminate local revenue loss. Indeterminate increase in State revenue. Establishes new Urban Housing Assistance Fund.

Agencies Affected: Department of Community Affairs, Council on Affordable Housing municipalities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Revenue	Indeterminate increase in State revenue – See Comments Below		
Local Revenue	Indeterminate impact on local revenue – See Comments Below		

- The Office of Legislative Services (OLS) estimates an indeterminate increase in State revenue as a result of this new Statewide fee on non-residential construction, and further estimates an indeterminate effect on local revenue. No specific estimate is feasible due to the unpredictable nature of the basis for the fee, i.e., the extent and location of new construction subject to the fee.
- The principal fiscal impact of this substitute bill is the imposition of a Statewide fee on all new non-residential construction to raise revenue for the construction and rehabilitation of affordable housing. The fee is imposed at a rate of 2.5 percent of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot or lots, and 2.5 percent of the increase in the equalized assessed value of the additions to existing structures to be used for non-residential purposes.
- With respect to municipal revenue, the OLS notes that the substitute bill’s pre-emption of local ordinances imposing fees on non-residential construction at higher rates than 2.5 percent could, for some municipalities, result in less revenue than they would otherwise collect if this bill were not enacted. The OLS notes that 274 municipalities are certified to collect development fees for deposit in affordable housing trust funds.

- The OLS notes that the substitute allows the Department of Community Affairs (DCA) to utilize annually up to 7.5 percent of the monies in the New Jersey Affordable Housing Trust Fund for the payment of administrative costs related to the administration of the Fair Housing Act, the State Housing Commission, or any costs related to the administration of this substitute.

BILL DESCRIPTION

Senate Committee Substitute to Senate Bill No. 1783 of 2008 reforms many of the laws applicable to affordable housing. Most notably, it requires development fees to be charged Statewide on non-residential construction or improvements. For new construction the fee will be an amount equal to two and one-half percent of the equalized assessed value of the land and improvements. With regard to improvements, the fee will be an amount equal to two and one-half percent of the increase in the equalized assessed value of the additions made to the existing structure. Those municipalities that are currently certified by the Council on Affordable Housing (COAH) to collect residential development fees will be permitted to collect and retain the non-residential development fees. Developers of non-residential property in a municipality that are not authorized to charge development fees will be required to send the non-residential development fees to the State Treasurer, to be used for affordable housing purposes under the “Fair Housing Act.” This substitute also creates a program to assist municipalities eligible to receive urban aid with the creation of affordable housing units in light of the substitute’s elimination of the regional contribution agreement from the Fair Housing Act. Finally, this substitute creates a 15-member State Housing Commission that is directed to develop a strategic housing plan for New Jersey and prepare an annual housing performance report to the Governor and the Joint Committee on Housing Affordability.

The substitute exempts the following types of non-residential development from the payment of non-residential development fees: non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship; property used for educational purposes; parking lots and parking structures; and any non-residential development which is an amenity to be made available to the public, not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates an indeterminate increase in State revenue as a result of this new Statewide fee on non-residential construction, and further estimates an indeterminate effect on local revenue. No specific estimate is feasible due to the unpredictable nature of the basis for the fee, i.e., the extent and location of new construction subject to the fee. This will vary from year to year according to such factors as national and regional economic conditions, local planning and zoning decisions, and the impact of government development subsidies.

The principal fiscal impact of this substitute is the imposition of a Statewide fee on all new non-residential construction to raise revenue for the construction and rehabilitation of affordable housing. The fee is imposed at a rate of 2.5 percent of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot or lots, and 2.5 percent of the increase in the equalized assessed value of the additions to existing structures to be used for non-residential purposes. Certain exclusions from the fee are provided for houses of worship, non-profit hospitals, nursing homes, educational facilities, certain parking lots, recreational facilities, and projects within an urban transit hub or certain transit villages. These fees would be paid to the State by developers of non-residential properties in municipalities that are not currently certified by the COAH to collect residential development fees; otherwise they would be paid directly to the municipality where the construction occurs.

Under the bill the first \$20 million in revenue from the State portion would be deposited into a newly-created Urban Housing Assistance Fund, for the purpose of assisting urban aid municipalities in the rehabilitation and production of housing. The remainder of State fee revenues would be deposited into the New Jersey Affordable Housing Trust Fund (currently known as the Neighborhood Preservation Nonlapsing Revolving Fund) to be used for affordable housing purposes under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). This substitute also allows the DCA to use annually up to 7.5 percent of the monies available in the fund for the payment of any necessary administrative costs related to the administration of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), the State Housing Commission or any administrative costs. A provision of the original bill allowing the Department of the Treasury to spend up to five percent annually for administrative costs was removed by the committee substitute.

The OLS has reviewed information obtained from the Divisions of Codes and Standards and Local Government Services in the DCA to illustrate, but not to forecast, the amount of revenue that would be collected by the State if this substitute were to become law. Using information contained in county budgets submitted to the Division of Local Government Services as part of the budget review process, the OLS has determined that the equalized assessed value of all added assessments in New Jersey for 2007, generally equivalent to new residential and non-residential construction, was \$13,815,887,643.

To discern the percentage of this total which may have been non-residential in nature, the OLS consulted the December 2007 edition of *The New Jersey Construction Reporter* published by the Division of Codes and Standards. This report indicated that the Statewide dollar amount of non-residential construction authorized by building permits in 2007 was \$7,054,524,983, which represented about 47 percent of the Statewide total of the dollar amount of all construction authorized by building permits for all construction in 2007. To estimate the equalized assessed value of all new non-residential construction in 2007, \$13,815,887,643 was multiplied by 0.47. This calculation yielded a result of \$6,538,215,024. Two and one-half percent of this amount (the proposed fee) equals \$163,455,375. No information was reviewed by the OLS indicating the municipal location of any added assessments, so no attempt is made to illustrate how this hypothetical revenue yield would be divided between the State and municipalities.

With respect to municipal revenue, the OLS notes that the bill's pre-emption of local ordinances imposing fees on non-residential construction at higher rates than 2.5 percent could, for some municipalities, result in less revenue than would otherwise occur if this substitute bill were not enacted. The substitute provides that any municipal ordinances imposing non-residential development fees for affordable housing purposes under current COAH regulations, that are generally 3 percent of the equalized assessed value in municipalities under COAH jurisdiction that have not adopted a growth-share ordinance, become void and without effect. The substitute also discontinues payments-in-lieu-of construction developer fees in

municipalities having adopted a growth share ordinance. These fees are typically based on a ratio of 1 affordable housing unit per 16 jobs deemed created by the non-residential development, and varies depending upon the housing region in which the development occurs and the number of jobs created per 1,000 square feet of development.

Finally, the OLS notes that this substitute eliminates the regional contribution agreement as a method to address housing needs under the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.). However, agreements that have been formally reviewed and recommended by COAH for approval by the courts prior to the enactment of this substitute will be allowed to go forward. Since 1985, 149 regional contribution agreements have resulted in the transfer of the obligation for building 10,400 units of affordable housing from one municipality to another. According to COAH, the total value of these agreements exceed \$216 million.

Section: Local Government

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).



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JON S. CORZINE
Governor

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For Immediate Release:
Date: July 17, 2008

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Governor Signs Landmark Affordable Housing Reforms

Mount Laurel - Governor Jon S. Corzine today signed landmark legislation that will reform affordable housing laws in New Jersey and increase housing opportunities for low and middle income families throughout the state.

"Through these measures, we are ending decades of unfair, unbalanced, and insufficient provision of affordable housing in New Jersey," said Governor Corzine. "The fact is, this legislation holds much promise for the thousands of New Jerseyans who want to stay in their hometown—to work there and raise their families there—but simply can't afford to live there. This bill lays the groundwork for us to reach our ultimate goal of ensuring that housing is available to all New Jerseyans, which ultimately will enhance the quality of life for everyone in this state.

"I also want to recognize the courage and persistence of our legislative leaders, especially Assembly Speaker Joe Roberts, for being at the forefront of this issue and standing up for people who need affordable housing in New Jersey."

"New Jersey's affordable housing laws have failed to live up to the promise of providing homes for low- and moderate-income residents while having the insidious side-effect of concentrating poverty in our inner cities," said Speaker Joseph J. Roberts, Jr. (D-Camden). "New Jerseyans need homes they can afford and jobs they can reach. Today we are transforming the state's almost barren affordable housing landscape from one of lost opportunities to one of hope and promise for thousands of families."

The bill, A500/S1783, effectively ends the Regional Contribution Agreement (RCA) as means to address affordable housing requirements under the Fair Housing Act. It also creates a statewide non-residential development fee of 2.5 % that will be charged on non-residential construction or improvements to raise revenue for the construction and rehabilitation of affordable and workforce housing in New Jersey.

"This legislation will provide affordable housing for tens of thousands of New Jersey residents and promote smart growth and economic development. A win-win-win for New Jersey," said Senator Raymond J. Lesniak (D-Union).

"Governor Corzine has stressed the need to provide affordable housing for the hard working men and women of New Jersey and their families," said DCA Commissioner Joseph Doria. "This legislation will provide additional funding and means to accomplish this and I commend Speaker Roberts and Senator Lesniak for their action."

"Every family deserves to have a choice in where they live and access to a home that is within their means," said Majority Leader Bonnie Watson Coleman (D-Mercer). "New Jersey's housing policy must be something more than two options: either you can afford a roof over your head or you move to another state."

The bill also establishes an Urban Housing Assistance Fund to assist urban aid municipalities in the rehabilitation and production of housing. Funding will be supported through receipts from statewide non-residential development fees.

"Low-income New Jersey families are burdened by some of the highest rents and housing costs in the nation," said Assemblyman Jerry Green (D-Union), chairman of the housing panel. "We have a moral responsibility to countless New Jerseyans – disabled residents, families living on limited incomes, and senior citizens – to ensure access to housing is safe and affordable."

"State officials, local leaders, and developers need every tool possible to promote the construction of new affordable housing," said Assemblyman Thomas P. Giblin (D-Essex). "By working together, the public and private sector can make the dream of home ownership a reality for working families."

"New Jersey cannot continue as a state comprised of towns where a lack of affordable housing blocks police, firefighters, or teachers from living in the communities they serve," said Assemblyman Albert Coutinho (D-Essex). "This overhaul of the state's affordable housing laws is long overdue."

Through the legislation, minimum numbers of housing units required will be established statewide and set aside for very low income persons under the Fair Housing Act.

"Thousands of working New Jersey families spend upwards of one-third of their hard earned incomes just to keep a roof over their heads," said Assemblywoman Mila Jasey (D-Essex). "These reforms will bring real relief to the many New Jersey families who are struggling to keep up with the ever-increasing cost of housing."

"For too long we've allowed wealthy municipalities to buy their way out of their affordable housing obligations," said Senator Dana Redd, (D-Camden). "If New Jersey is to continue to grow and thrive, it is critical that we provide affordable housing opportunities in all of our community - urban, suburban, and rural - so that working families, young people and seniors can continue to call the Garden State home."

Primary sponsors of the legislation in the Assembly include Speaker Joseph J. Roberts, Jr., (D-Camden), Assembly Majority Leader Bonnie Watson Coleman (D-Mercer), Assemblymen Jerry Green (D-Union), Thomas P. Giblin (D-Essex), Albert Coutinho (D-Essex) and Assemblywoman Mila M. Jasey (D-Essex). Primary sponsors in the Senate were Senators Raymond J. Lesniak (D-Union) and Dana L. Redd (D-Camden).

Bill Highlights:

- Establishes a statewide non-residential development fee of 2.5 % to be charged upon non-residential construction or improvements to raise revenue for the construction and rehabilitation of affordable and workforce housing. Certain exclusions apply. Developers of non-residential properties without COAH's or the court's authorization to charge development fees, will be required to remit the non-residential development fees to the State Treasurer. The fees will be used for affordable housing purposes under the "Fair Housing Act."
- Eliminates the Regional Contribution Agreement (RCA) as a method to address affordable housing needs under the FHA.
- Renames the "Neighborhood Preservation Nonlapsing Revolving Fund" to the "New Jersey Affordable Housing Trust Fund." This transformation will require very specific accounting and reporting by the Department of Community Affairs on the fund's activities.
- Amends the "Fair Housing Act" to expand the types of properties that may be excluded from being designated as vacant land, including covenant-restricted agricultural lands, lands restricted from development pursuant to environmental laws, reserved recreational sites and historic sites.
- Creates the "Urban Housing Assistance Fund," to be funded by an annual \$20 million appropriation from the State portion of the receipts of the statewide non-residential development fees which are received directly by the State Treasurer. The program will assist urban aid municipalities in the rehabilitation and production of housing. Funds can be used for households earning up to 120% of area medium income.
- Establishes minimum numbers of housing units required to be set aside statewide for very low income persons under the FHA (for those earning 30% of median household income).
- Also requires redevelopers of redevelopment projects to replace low and moderate income housing units which are subject to affordability controls and are eliminated as a result of such activities with comparable housing, on a one-for-one basis.
- Establishes a State Housing Commission to develop a strategic housing plan for New Jersey, as well as prepare an annual housing performance report to the Governor and the Joint Committee on Housing Affordability.

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Photos from Governor Corzine's public events are available in the [Governor's Newsroom section](#) on the State of New Jersey web page.

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