

SENATE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1

STATE OF NEW JERSEY
214th LEGISLATURE

ADOPTED JUNE 3, 2010

Sponsored by:

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District 20 (Union)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Senator JEFF VAN DREW

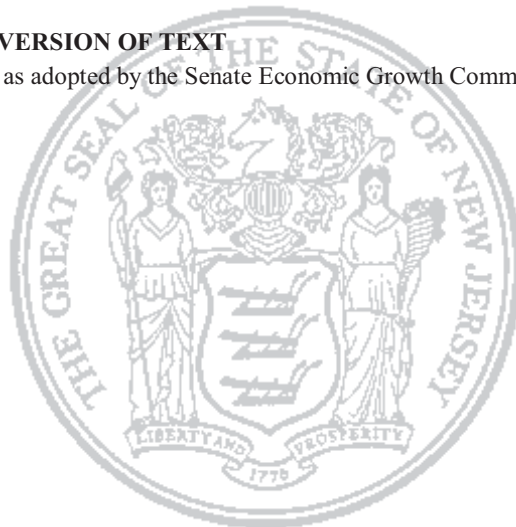
District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

Reforms procedures concerning provision of affordable housing; abolishes Council on Affordable Housing.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Economic Growth Committee.



1 AN ACT concerning affordable housing and amending,
2 supplementing and repealing 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. (New section) The Legislature finds and declares that:

8 a. In 1975, the New Jersey Supreme Court determined that
9 municipalities may not validly employ their zoning powers to
10 prevent the creation of a variety and choice of housing
11 opportunities. In response, the Legislature established the "Fair
12 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), which has
13 resulted in a complex system of administration that micromanages
14 all types of development, including market rate- and low- and
15 moderate-income residential development, as well as commercial,
16 retail, and industrial growth through a determination of each region
17 and municipality's housing needs based on difficult to predict and
18 fallible population and job growth projections.

19 b. The Legislature further finds that this approach has not
20 resulted in the creation of housing opportunities for all categories of
21 the State's citizens. During first 35 years of the "Fair Housing
22 Act's" existence, this complex system of regulation has resulted in
23 scores of lawsuits and court decisions, and the unnecessary
24 expenditure of millions of dollars by municipalities, developers, and
25 the State. In 2010, the system remains tied up with multiple legal
26 challenges, preventing the creation of housing opportunities within
27 the State.

28 c. It is incumbent on the State's elected officials to develop a
29 new approach that will result in the creation of a realistic
30 opportunity for a variety and choice of housing for low- and
31 moderate-income families in each municipality of the State, without
32 wasting the limited resources needed to fulfill government's many
33 functions, including public safety, health care, education and
34 environmental protection, ensuring the affordability of mass transit,
35 protection of civil rights, promotion of economic growth, and job
36 creation.

37 d. A simple, rather than complex, system that maximizes the
38 ability of the free market to produce a variety and choice of housing
39 will most effectively provide housing opportunities for the low- and
40 moderate-income residents of New Jersey. To ensure that New
41 Jersey is an affordable, appealing home for all the State's residents,
42 municipalities must have clear and realistic standards to guide
43 municipal action.

44 e. Municipalities that already have a healthy mix of housing

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 should not be encumbered with State zoning mandates that are
2 needed to create an opportunity for an appropriate variety and
3 choice of housing in municipalities where a reasonable mix of
4 housing does not already exist.

5 f. By requiring those municipalities not already having a
6 reasonable mix of housing to comply with the zoning mandates
7 established hereunder, the State will maximize the opportunity for
8 variety and choice of housing in those municipalities without
9 wasting limited resources necessary to provide for the other
10 governmental functions stated herein, which only represent some,
11 but not all, of government's responsibility to provide for the general
12 welfare of its residents

13 g. It is the public policy of this State to encourage the well-
14 organized production of low- and moderate-income housing to
15 serve the general welfare of all the State's residents by
16 implementing a clear, intelligible regulatory system.

17

18 2. (New section) The Council on Affordable Housing
19 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
20 301 et al.) is abolished, and all of its powers, functions, and duties
21 that are not repealed herein are continued in the Department of
22 Community Affairs established pursuant to section 1 of P.L.1966,
23 c.293 (C.52:27D-1), except as herein otherwise provided.
24 Whenever, in any law rule, regulation, order, contract, document,
25 judicial or administrative proceeding, or otherwise, reference is
26 made to the Council on Affordable Housing, the same shall mean
27 and refer to the Department of Community Affairs. All
28 appropriations and other moneys available, and to become
29 available, to the Council on Affordable Housing are hereby
30 continued in the Department of Community Affairs, and shall be
31 available for the objects and purposes for which such moneys are
32 appropriated, subject to any terms, restriction, limitations, or other
33 requirements imposed by State or federal law.

34 This transfer shall be subject to the provisions of the "State
35 Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

36

37 3. Section 47 of P.L.1975, c.291 (C.40:55D-60) is amended to
38 read as follows:

39 47. Whenever the proposed development requires approval
40 pursuant to this act of a subdivision, site plan or conditional use,
41 but not a variance pursuant to subsection d. of section 57 of this act
42 (C. 40:55D-70), the planning board shall have the power to grant to
43 the same extent and subject to the same restrictions as the board of
44 adjustment:

45 a. Variances pursuant to subsection 57 c. of **[this act]**
46 P.L.1975, c.291 (C.40:55D-70);

1 b. Direction pursuant to section 25 of ~~【this act】~~ P.L.1975,
2 c.291(C.40:55D-34) for issuance of a permit for a building or
3 structure in the bed of a mapped street or public drainage way,
4 flood control basin or public area reserved pursuant to section 23 of
5 ~~【this act】~~ P.L.1975, c.291 (C.40:55D-32); ~~【and】~~

6 c. Direction pursuant to section 27 of ~~【this act】~~ P.L.1975,
7 c.291 (C.40:55D-36) for issuance of a permit for a building or
8 structure not related to a street; ~~and~~

9 d. Variances pursuant to subsection d. of section 57 of
10 P.L.1975, c.291 (C.40:55D-70), requested pursuant to section 24 of
11 P.L. , c. (C.) (pending before the Legislature as this bill) for
12 a proposed development in which at least 10 percent of the units are
13 reserved for low- and moderate-income households, in a
14 municipality that has not been determined to be inclusionary.

15 Whenever relief is requested pursuant to this section, notice of
16 the hearing on the application for development shall include
17 reference to the request for a variance or direction for issuance of a
18 permit, as the case may be.

19 The developer may elect to submit a separate application
20 requesting approval of the variance or direction of the issuance of a
21 permit and a subsequent application for any required approval of a
22 subdivision, site plan or conditional use. The separate approval of
23 the variance or direction of the issuance of a permit shall be
24 conditioned upon grant of all required subsequent approvals by the
25 planning board. No such subsequent approval shall be granted
26 unless the approval can be granted without substantial detriment to
27 the public good and without substantial impairment of the intent
28 and purpose of the zone plan and zoning ordinance.

29 (cf: P.L.1984, c.20, s.10)

30

31 4. Section 57 of P.L.1975, c.291 (C.40:55D-70) is amended to
32 read as follows:

33 57. Powers. The board of adjustment shall have the power to:

34 a. Hear and decide appeals where it is alleged by the appellant
35 that there is error in any order, requirement, decision or refusal
36 made by an administrative officer based on or made in the
37 enforcement of the zoning ordinance;

38 b. Hear and decide requests for interpretation of the zoning
39 map or ordinance or for decisions upon other special questions upon
40 which such board is authorized to pass by any zoning or official
41 map ordinance, in accordance with this act;

42 c. (1) Where: (a) by reason of exceptional narrowness,
43 shallowness or shape of a specific piece of property, or (b) by
44 reason of exceptional topographic conditions or physical features
45 uniquely affecting a specific piece of property, or (c) by reason of
46 an extraordinary and exceptional situation uniquely affecting a
47 specific piece of property or the structures lawfully existing

1 thereon, the strict application of any regulation pursuant to article 8
2 of **[this act]** P.L.1975, c.291 would result in peculiar and
3 exceptional practical difficulties to, or exceptional and undue
4 hardship upon, the developer of such property, grant, upon an
5 application or an appeal relating to such property, a variance from
6 such strict application of such regulation so as to relieve such
7 difficulties or hardship; (2) where in an application or appeal
8 relating to a specific piece of property the purposes of this act or the
9 purposes of the "Educational Facilities Construction and Financing
10 Act," P.L.2000, c.72 (C.18A:7G-1 et al.), would be advanced by a
11 deviation from the zoning ordinance requirements and the benefits
12 of the deviation would substantially outweigh any detriment, grant a
13 variance to allow departure from regulations pursuant to article 8 of
14 **[this act]** P.L.1975, c.291; provided, however, that the fact that a
15 proposed use is an inherently beneficial use shall not be dispositive
16 of a decision on a variance under this subsection and provided that
17 no variance from those departures enumerated in subsection d. of
18 this section shall be granted under this subsection; and provided
19 further that the proposed development does not require approval by
20 the planning board of a subdivision, site plan or conditional use, in
21 conjunction with which the planning board has power to review a
22 request for a variance pursuant to subsection a. of section 47 of
23 **[this act]** P.L.1975, c.291; and

24 d. In particular cases for special reasons, grant a variance to
25 allow departure from regulations pursuant to article 8 of **[this act]**
26 P.L.1975, c.291 to permit:

27 (1) a use or principal structure in a district restricted against
28 such use or principal structure^[,];

29 (2) an expansion of a nonconforming use^[,];

30 (3) deviation from a specification or standard pursuant to
31 section 54 of P.L.1975, c.291 (C.40:55D-67) pertaining solely to a
32 conditional use^[,];

33 (4) an increase in the permitted floor area ratio as defined in
34 section 3.1 of P.L.1975, c.291 (C.40:55D-4) ^[,];

35 (5) an increase in the permitted density as defined in section 3.1
36 of P.L.1975, c.291 (C.40:55D-4), except as applied to the required
37 lot area for a lot or lots for detached one or two dwelling unit
38 buildings, which lot or lots are either an isolated undersized lot or
39 lots resulting from a minor subdivision; or

40 (6) a height of a principal structure which exceeds by 10 feet or
41 10% the maximum height permitted in the district for a principal
42 structure. A variance under this subsection shall be granted only by
43 affirmative vote of at least five members, in the case of a municipal
44 board, or two-thirds of the full authorized membership, in the case
45 of a regional board, pursuant to article 10 of **[this act]** P.L.1975,
46 c.291.

1 If an application development requests one or more variances but
2 not a variance for a purpose enumerated in subsection d. of this
3 section, the decision on the requested variance or variances shall be
4 rendered under subsection c. of this section.

5 No variance or other relief may be granted under the terms of
6 this section, including a variance or other relief involving an
7 inherently beneficial use, without a showing that such variance or
8 other relief can be granted without substantial detriment to the
9 public good and will not substantially impair the intent and the
10 purpose of the zone plan and zoning ordinance.

11 In a municipality that has been deemed inclusionary pursuant to
12 section 20 of P.L. , c. (C.) (pending before the Legislature
13 as this bill), the board shall not be required to review variances
14 requested pursuant to this subsection for the development of
15 affordable housing under inherently beneficial use standards, and a
16 denial of a variance under such circumstances shall be
17 presumptively valid.

18 e. In respect to any airport safety zones delineated under the
19 "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et
20 seq.), no variance or other relief may be granted under the terms of
21 this section, permitting the creation or establishment of a
22 nonconforming use which would be prohibited under standards
23 promulgated pursuant to that act, except upon issuance of a permit
24 by the Commissioner of Transportation. An application under this
25 section may be referred to any appropriate person or agency for its
26 report; provided that such reference shall not extend the period of
27 time within which the zoning board of adjustment shall act.

28 f. Upon application, hear and determine which, where, and to
29 what extent an alternative method described in section 22 of P.L. ,
30 c. (C.) (pending before the Legislature as this bill) of
31 satisfying the set-aside requirements of section 21 of P.L. ,
32 c. (C.) (pending before the Legislature as this bill) may be
33 employed.

34 (cf: P.L.2007, c.137, s.60)

35
36 5. Section 9 of P.L.1966, c.293 (C.52:27D-9) is amended to
37 read as follows:

38 9. The department shall, in addition to other powers and duties
39 invested in it by this act, or by any other law:

40 (a) Assist in the coordination of State and Federal activities
41 relating to local government;

42 (b) Advise and inform the Governor on the affairs and problems
43 of local government and make recommendations to the Governor
44 for proposed legislation pertaining thereto;

45 (c) Encourage cooperative action by local governments,
46 including joint service agreements, regional compacts and other
47 forms of regional cooperation;

- 1 (d) Assist local government in the solution of its problems, to
2 strengthen local self-government;
- 3 (e) Study the entire field of local government in New Jersey;
- 4 (f) Collect, collate, publish and disseminate information
5 necessary for the effective operation of the department and useful
6 to local government;
- 7 (g) Maintain an inventory of data and information and act as a
8 clearing house and referral agency for information on State and
9 Federal services and programs;
- 10 (h) Stimulate local programs through publicity, education,
11 guidance and technical assistance concerning Federal and State
12 programs;
- 13 (i) Convene meetings of municipal, county or other local
14 officials to discuss ways of cooperating to provide service more
15 efficiently and economically; **[and]**
- 16 (j) Maintain and make available on request a list of persons
17 qualified to mediate or arbitrate disputes between local units of
18 government arising from joint service projects or other cooperative
19 activities, and further to prescribe rates of compensation for all such
20 mediation, factfinding or arbitration services; and
- 21 (k) Assume the duties of the Council on Affordable Housing
22 that are not repealed by P.L. , c. (pending before the Legislature
23 as this bill) and are transferred to the department pursuant to section
24 2 of P.L. , c. (C.) and section 18 of P.L. , c. (C.)
25 (pending before the Legislature as this bill).
26 (cf: P.L.1973, c.208, s.10)

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

- 30 2. The Legislature finds that:
- 31 a. The New Jersey Supreme Court, through its rulings in South
32 Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975)
33 and South Burlington County NAACP v. Mount Laurel, 92 N.J.158
34 (1983), has determined that every municipality in a growth area has
35 a constitutional obligation to provide through its land use
36 regulations a realistic opportunity for a fair share of its region's
37 present and prospective needs for housing for low and moderate
38 income families.
- 39 b. In the second Mount Laurel ruling, the Supreme Court stated
40 that the determination of the methods for satisfying this
41 constitutional obligation "is better left to the Legislature," that the
42 court has "always preferred legislative to judicial action in their
43 field," and that the judicial role in upholding the Mount Laurel
44 doctrine "could decrease as a result of legislative and executive
45 action." As administered by the Council on Affordable Housing, the
46 "Fair Housing Act." increased, rather than decreased, the judicial

1 role and added the expense of bureaucratic paper and process at
2 both the State and local level.

3 c. **【**The interest of all citizens, including low and moderate
4 income families in need of affordable housing, and the needs of the
5 workforce, would be best served by a comprehensive planning and
6 implementation response to this constitutional obligation.**】** (Deleted
7 by amendment, P.L. ., c.) (pending before the Legislature as this
8 bill)

9 d. **【**There are a number of essential ingredients to a
10 comprehensive planning and implementation response, including
11 the establishment of reasonable fair share housing guidelines and
12 standards, the initial determination of fair share by officials at the
13 municipal level and the preparation of a municipal housing element,
14 State review of the local fair share study and housing element, and
15 continuous State funding for low and moderate income housing to
16 replace the federal housing subsidy programs which have been
17 almost completely eliminated.**】** (Deleted by amendment, P.L. .,
18 c.) (pending before the Legislature as this bill)

19 e. **【**The State can maximize the number of low and moderate
20 income units provided in New Jersey by allowing its municipalities
21 to adopt appropriate phasing schedules for meeting their fair share,
22 so long as the municipalities permit a timely achievement of an
23 appropriate fair share of the regional need for low and moderate
24 income housing as required by the Mt. Laurel I and II opinions and
25 other relevant court decisions.**】** (Deleted by amendment, P.L. .,
26 c.) (pending before the Legislature as this bill)

27 f. The State can **【also】** maximize the number of low and
28 moderate income units by creating new affordable housing and by
29 rehabilitating existing, but substandard, housing in the State.
30 Because the Legislature has determined, pursuant to P.L.2008, c.46
31 (C.52:27D-329.1 et al.), that it is no longer appropriate or in
32 harmony with the Mount Laurel doctrine to permit the transfer of
33 the fair share obligations among municipalities within a housing
34 region, it is necessary and appropriate to create a new program to
35 create new affordable housing and to foster the rehabilitation of
36 existing, but substandard, housing.

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

42 h. The Supreme Court of New Jersey in its Mount Laurel
43 decisions demands that municipal land use regulations affirmatively
44 afford a reasonable opportunity for a variety and choice of housing
45 including low and moderate cost housing, to meet the needs of
46 people desiring to live there. While provision for the actual
47 construction of that housing by municipalities is not required, they

1 are encouraged but not mandated to expend their own resources to
2 help provide low and moderate income housing.

3 i. [Certain amendments to the enabling act of the Council on
4 Affordable Housing are necessary to provide guidance to the
5 council to ensure consistency with the legislative intent, while at the
6 same time clarifying the limitations of the council in its rulemaking.
7 Although the court has remarked in several decisions that the
8 Legislature has granted the council considerable deference in its
9 rulemaking, the Legislature retains its power and obligation to
10 clarify and amend the enabling act from which the council derives
11 its rulemaking power, from time to time, in order to better guide the
12 council.] (Deleted by amendment, P.L. , c.) (pending before the
13 Legislature as this bill)

14 j. The Legislature finds that the use of regional contribution
15 agreements, which permits municipalities to transfer a certain
16 portion of their fair share housing obligation outside of the
17 municipal borders, should no longer be utilized as a mechanism for
18 the creation of affordable housing [by the council].
19 (cf: P.L.2008, c.46, s.4)
20

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

23 4. As used in this act:

24 a. "Council" means the Council on Affordable Housing
25 established [in this act] by section 5 of P.L.1985, c.222 (C.52:27D-
26 305), [which shall have primary jurisdiction for the administration
27 of housing obligations in accordance with sound regional planning
28 considerations in this State] and, pursuant to section 2 of P.L. ,
29 c. (C.) (pending before the Legislature as this bill) and
30 subsequent to the effective date of P.L. , c. (C.) (pending
31 before the Legislature as this bill), the Department of Community
32 Affairs.

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

40 c. "Low income housing" means housing affordable according
41 to federal Department of Housing and Urban Development or other
42 recognized standards for home ownership and rental costs and
43 occupied or reserved for occupancy by households with a gross
44 household income equal to 50% or less of the median gross
45 household income for households of the same size within the
46 housing region in which the housing is located.

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

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

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

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

16 n. "Price restricted unit" means a residential dwelling unit that
17 is price restricted, including: units that are deed restricted for
18 occupancy by residents of low or moderate income; price restricted
19 pursuant to covenants established for units financed by federal Low
20 Income Housing Tax Credits; price restricted pursuant to covenants
21 established for units developed pursuant to the "Neighborhood
22 Revitalization State Tax Credit Act," P.L.2001, c.415 (C.52:27D-
23 490 et seq.); units rehabilitated as either a sending or receiving
24 municipality under a regional contribution agreement, and subject
25 to price controls; units built or rehabilitated as part of a Community
26 Development Block Grant, and subject to price controls; housing
27 units operated by a Public Housing Authority; units constructed,
28 rehabilitated, or receiving project-based assistance under the
29 program authorized pursuant to section 8 of the United States
30 Housing Act of 1937.

31 o. "Developable land" means undeveloped property having
32 reasonable access to sewer service, having a slope of less than 15
33 percent, that is not property owned by a municipality or county and
34 designated by resolution or ordinance as open space, and located
35 where development is not prohibited pursuant to the "Freshwater
36 Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the
37 "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.),
38 the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1
39 et seq.), the "Highlands Water Protection and Planning Act,"
40 P.L.2004, c.120 (C.13:20-1 et al.), or the Federal Clean Water Act,
41 33 U.S.C. ss.1251 through 1376, "Hackensack Meadowlands
42 Reclamation and Development Act" P.L.1968, c.404 (C.13:17-1 et
43 seq.).

44 p. "Special needs housing" means housing, or the residential
45 portion of a development that is permanent supportive housing, as
46 defined in section 2 of P.L.2004, c.70 (C.34:1B-21.24), or a
47 community residence that is primarily for occupancy by individuals

1 with special needs who shall occupy such housing as their usual and
2 permanent residence.

3 q. "Special needs unit" means a single unit of special needs
4 housing for one or more occupants that contains, at a minimum, a
5 bedroom and a bathroom.

6 r. "Inclusionary municipality" means a municipality deemed,
7 pursuant to section 20 of P.L. , c. (C.) (pending before the
8 Legislature as this bill), to have provided a variety and choice of
9 housing as evidenced by the quantity of price-restricted units or
10 amount of other units, the characteristics of which demonstrate an
11 opportunity for low-income or moderate-income housing.

12 s. "Workforce housing" means housing affordable to,
13 according to federal Department of Housing and Urban
14 Development or other recognized standards for home ownership
15 and rental costs, and occupied by, or reserved for occupancy by,
16 households with a gross household income equal to or less than 120
17 of the median gross household income for households of the same
18 size within the housing region in which the housing is located.

19 t. "Residential development project" means new construction
20 resulting in the production of five or more residential dwelling
21 units, whether attached or detached.

22 u. "Small residential development project" means new
23 construction resulting in the production of fewer than five
24 residential dwelling units, whether attached or detached , and shall
25 not mean any construction or reconstruction of a single-family
26 dwelling that is occupied by, or intended to be occupied by, the
27 owner.

28 (cf: P.L.2008, c.46, s.5)

29
30 8. Section 1 of P.L.1991, c.479 (C.52:27D-307.1) is amended
31 to read as follows:

32 1. As used in **[this act]** P.L.1991, c.479 (C.52:27D-307.1 et
33 al.):

34 "Agency" means the Housing and Mortgage Finance Agency
35 established pursuant to section 4 of the "New Jersey Housing and
36 Mortgage Finance Agency Law of 1983," P.L.1983, c.530
37 (C.55:14K-4).

38 "Commissioner" means the Commissioner of Community
39 Affairs.

40 "Council" means the Council on Affordable Housing created by
41 the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and,
42 pursuant to section 2 of P.L. , c. (C.) (pending before the
43 Legislature as this bill) and subsequent to the effective date of
44 P.L. , c. (C.) (pending before the Legislature as this bill), the
45 Department of Community Affairs.

46 "Department" means the Department of Community Affairs.

1 "Housing region" means a housing region as determined by the
2 【Council on Affordable Housing】 Department of Community
3 Affairs pursuant to section 【7 of P.L.1985, c.222 (C.52:27D-307)】
4 18 of P.L. , c. (C.) (pending before the Legislature as this
5 bill).

6 "Project" or "housing project" means any specific work or
7 undertaking for the purpose of providing housing accommodations,
8 whether by new construction or by rehabilitation or adaptation of
9 existing structures, that shall be affordable to persons and families
10 of low or moderate income within the meaning of the "Fair Housing
11 Act," P.L.1985, c.222 (C.52:27D-301 et al.). Such work or
12 undertaking may include the acquisition, construction or
13 rehabilitation of lands, buildings and improvements, and such
14 stores, offices, and social, recreational, communal or other facilities
15 as may be incidental or appurtenant to the housing accommodations
16 that are to be provided.

17 "Register" means the Register of Housing Projects directed by
18 section 2 of 【this act】 P.L.1991, c.479 (C.52:27D-307.2) to be
19 established and maintained by the commissioner.
20 (cf: P.L.1991, c.479, s.1)

21

22 9. Section 3 of P.L.1991, c.479 (C.52:27D-307.3) is amended
23 to read as follows:

24 3. a. The commissioner shall cause to be developed a system
25 for assigning and designating priority ratings to each project
26 included in the register. Priority ratings shall be based upon the
27 following factors, giving to each factor such weight as the
28 commissioner shall judge to be appropriate:

29 (1) Feasibility. Each project shall be evaluated for its physical
30 and financial feasibility, giving consideration to the capabilities of
31 the proposed sponsor or developer, market conditions and
32 regulatory requirements in the locality for which it is proposed, and
33 the availability of financing in sufficient amount and at reasonable
34 cost.

35 (2) Desirability. Each project shall be evaluated with relation to
36 its probable effect in meeting the affordable housing needs of the
37 housing region in which it is to be located, in accordance with the
38 standards and criteria of the 【council】 Department of Community
39 Affairs. Consideration shall be given to (a) the number of
40 affordable dwelling units that the project would provide, (b) the
41 proportion of affordable units to the total number of units envisaged
42 in the project plan, (c) the distribution of those affordable units as
43 between those affordable to persons and families of low income and
44 those of moderate income, considered in relation to the needs of the
45 housing region, (d) appropriateness of the proposed tenure of the
46 affordable units, whether to be rental or owner-occupied, in relation
47 to the needs of the housing region, and (e) appropriateness of the

1 proposed distribution of units as to family size, in relation to the
2 needs of the housing region.

3 (3) Efficiency. Each project shall be evaluated on the basis of
4 the cost to the State, in terms of financial assistance granted or
5 revenue forgone in order to further the project, for each affordable
6 dwelling unit judged by the commissioner to be feasible and
7 desirable according to the terms of the proposal or application made
8 for such assistance.

9 b. In developing the system of assigning and designating
10 priorities, and in evaluating individual projects for such assignment
11 and designation in the register, the commissioner shall consult with
12 the executive director of the agency and the [executive director of
13 the council] Commissioner of Community Affairs. The [council]
14 person having control over the project and the agency shall
15 promptly and fully supply the commissioner with all relevant
16 information necessary for the commissioner's timely and complete
17 fulfillment of the requirements of this act.

18 (cf: P.L.1991, c.479, s.3)

19

20 10. Section 4 of P.L.1991, c.479 (C.52:27D-307.4) is amended
21 to read as follows:

22 4. a. Any officer or employee of the department, including any
23 member, officer or employee of the agency [or the council], who
24 receives from any person any solicitation, application, proposal or
25 communication of any kind, whether oral or in writing, aimed at
26 furthering the assistance of any project shall promptly report the
27 same to the commissioner. The report shall identify the person or
28 persons making such communication. If any such person is not
29 identified in the register in accordance with the requirements of
30 subsection b. of section 2 of this act, the report shall state the
31 person's relationship to the sponsor or developer of the project and
32 the capacity in which the person represents himself or herself to be
33 acting on behalf of the sponsor or developer; or if the person fails or
34 refuses to supply that information, the report shall so state.

35 b. The commissioner shall develop a procedure or procedures
36 by which reports required under subsection a. of this section shall
37 be made either to the commissioner directly or through such
38 administrative channels as the commissioner shall devise and direct.
39 Notwithstanding the provisions of subsection i. of section 4 of
40 P.L.1983, c.530 (C.55:14K-4) [and subsection a. of section 5 of
41 P.L.1985, c.222 (C.52:27D-305)], the regulations adopted by the
42 commissioner in fulfillment of this subsection shall be of full force
43 and application on and within the agency [and the council]; and all
44 members, officers and employees of the agency [and council] shall
45 give full compliance with and obedience to the rules and orders of
46 the commissioner made in pursuance of his duties and
47 responsibilities under this act.

1 c. Reports made to the commissioner shall be promptly
2 forwarded by him, not later than 10 days after their receipt, to the
3 Governor and to the presiding officers of the Houses of the
4 Legislature, who shall cause all members of their respective Houses
5 to be notified of the receipt of those reports and shall make
6 adequate provision for the inspection of the commissioner's reports
7 by members and committees of either House, and for the
8 dissemination of those reports to the public. The reports forwarded
9 by the commissioner shall in each instance indicate the priority
10 rating that has been assigned in the register to the project to which
11 the report relates.
12 (cf. P.L.1991, c.479, s.4)

13

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

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

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

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

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

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

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

- 1 (6) Tax abatements for purposes of providing low and moderate
2 income housing;
- 3 (7) Utilization of funds obtained from any State or federal
4 subsidy toward the construction of low and moderate income
5 housing;
- 6 (8) Utilization of municipally generated funds toward the
7 construction of low and moderate income housing; and
- 8 (9) The purchase of privately owned real property used for
9 residential purposes at the value of all liens secured by the property;
10 excluding any tax liens, notwithstanding that the total amount of
11 debt secured by liens exceeds the appraised value of the property,
12 pursuant to regulations promulgated by the Commissioner of
13 Community Affairs pursuant to subsection b. of section 41 of
14 P.L.2000, c.126 (C.52:27D-311.2).] (Deleted by amendment,
15 P.L. , c.) (pending before the Legislature as this bill)
- 16 b. **[**The municipality may provide for a phasing schedule for
17 the achievement of its fair share of low and moderate income
18 housing.**]** (Deleted by amendment, P.L. , c.) (pending before the
19 Legislature as this bill)
- 20 c. (Deleted by amendment, P.L.2008, c.46)
- 21 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) or in
22 P.L. , c. (C.) (pending before the Legislature as this bill) shall
23 require a municipality to raise or expend municipal revenues in
24 order to provide low and moderate income housing.
- 25 e. **[**When a municipality's housing element includes the
26 provision of rental housing units 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), which will be affordable to persons of low and
29 moderate income, and for which adequate measures to retain such
30 affordability pursuant to paragraph (3) of subsection a. of this
31 section are included in the housing element, those housing units
32 shall be fully credited as permitted under the rules of the council
33 towards the fulfillment of the municipality's fair share of low and
34 moderate income housing.**]** (Deleted by amendment, P.L. , c.)
35 (pending before the Legislature as this bill)
- 36 f. **[**It having been determined by the Legislature that the
37 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is
38 a public purpose, a municipality or municipalities may utilize public
39 monies to make donations, grants or loans of public funds for the
40 rehabilitation of deficient housing units and the provision of new or
41 substantially rehabilitated housing for low and moderate persons,
42 providing that any private advantage is incidental.**]** (Deleted by
43 amendment, P.L. , c.) (pending before the Legislature as this
44 bill)
- 45 g. **[**A municipality which has received substantive certification
46 from the council, and which has actually effected the construction
47 of the affordable housing units it is obligated to provide, may

1 amend its affordable housing element or zoning ordinances without
2 the approval of the council.】 (Deleted by amendment, P.L. , c.)
3 (pending before the Legislature as this bill)

4 h. 【Whenever affordable housing units are proposed to be
5 provided through an inclusionary development, a municipality shall
6 provide, through its zoning powers, incentives to the developer,
7 which shall include increased densities and reduced costs, in
8 accordance with the regulations of the council and this subsection.】
9 (Deleted by amendment, P.L. , c.) (pending before the
10 Legislature as this bill)

11 i. 【The council, upon the application of a municipality and a
12 developer, may approve reduced affordable housing set-asides or
13 increased densities to ensure the economic feasibility of an
14 inclusionary development.】 (Deleted by amendment, P.L. , c.)
15 (pending before the Legislature as this bill)

16 (cf: P.L.2008, c.46, s.15)

17

18 12. Section 1 of P.L.2005, c.350 (C.52:27D-311a) is amended to
19 read as follows:

20 1. Beginning upon the effective date of P.L.2005, c.350
21 (C.52:27D-311a et al.), in order to be considered a price restricted
22 unit for purposes of a determination pursuant to subsection a. of
23 section 20 of P.L. , c. (C.), any new construction 【for which
24 credit is sought against a fair share obligation】 shall be adaptable in
25 accordance with the provisions of section 5 of P.L.2005, c.350
26 (C.52:27D-123.15). For the purposes of P.L.2005, c.350
27 (C.52:27D-311a et al.), "new construction" shall mean an entirely
28 new improvement not previously occupied or used for any purpose.
29 (cf: P.L.2005, c.350, s.1)

30

31 13. Section 6 of P.L. 2005, c.350 (C.52:27D-311b) is amended
32 to read as follows:

33 6. The 【council】 department may take such measures as are
34 necessary to assure compliance with the adaptability requirements
35 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),
36 including the inspection of those units which are newly constructed
37 and receive housing credit as provided under section 1 of P.L.2005,
38 c.350 (C.52:27D-311a) and section 20 of P.L. , c. (C.)
39 (pending before the Legislature as this bill) for adaptability, as part
40 of the monitoring which occurs pursuant to P.L.1985, c.222
41 (C.52:27D-301 et al.). 【If any units for which credit was granted in
42 accordance with the provisions of P.L.2005, c.350 (C.52:27D-311a
43 et al.) are found not to conform to the requirements of P.L.2005,
44 c.350 (C.52:27D-311a et al.), the council may require the
45 municipality to amend its fair share plan within 90 days of
46 receiving notice from the council, to address its fair share obligation
47 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that

1 the municipality fails to amend its fair share plan within 90 days of
2 receiving such notice, the council may revoke substantive
3 certification.】

4 (cf: P.L.2005, c.350, s.6)

5
6 14. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to
7 read as follows:

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

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

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

3 **【Of those monies deposited into the "New Jersey Affordable**
4 **Housing Trust Fund" that are derived from municipal development**
5 **fee trust funds, or from available collections of Statewide non-**
6 **residential development fees, a priority for funding shall be**
7 **established for projects in municipalities that have petitioned the**
8 **council for substantive certification】 The commissioner shall**
9 **prioritize funding for projects that include special needs units when**
10 **making grants and awards from the "New Jersey Affordable**
11 **Housing Trust Fund."**

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

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

20 c. For any period which the council may approve, the
21 commissioner may assist affordable housing programs which are
22 not located in municipalities whose housing elements have been
23 granted substantive certification or which are not in furtherance of a
24 regional contribution agreement; provided that the affordable
25 housing program will meet all or part of a municipal low and
26 moderate income housing obligation.

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

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

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

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

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

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

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

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

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

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

42 g. In addition to other grants or loans awarded pursuant to this
43 section, and without regard to any limitations on such grants or
44 loans for any other purposes herein imposed, the commissioner
45 shall annually allocate such amounts as may be necessary in the
46 commissioner's discretion, and in accordance with section 3 of
47 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants

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

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

23 i. The commissioner may award or grant the amount of any
24 appropriation deposited in the "New Jersey Affordable Housing
25 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
26 320.1) to municipalities pursuant to the provisions of section 39 of
27 P.L.2009, c.90 (C.40:55D-8.8).
28 (cf: P.L.2009, c.90, s.38)
29

30 15. Section 41 of P.L.2009, c.90 (C.52:27D-320.1) is amended
31 to read as follows:

32 41. a. Notwithstanding any law to the contrary, there is
33 appropriated \$15 million to the "New Jersey Affordable Housing
34 Trust Fund," established pursuant to section 20 of P.L.1985, c.222
35 (C.52:27D-320) **],** to replace the suspended non-residential
36 development fee established under the provisions of the "Statewide
37 Non-Residential Development Fee Act," sections 32 through 38 of
38 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7)].

39 b. (1) Municipalities authorized by **]**the provisions of the
40 "Statewide Non-Residential Development Fee Act," sections 32
41 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-
42 8.7)] section 27 of P.L. , c. (C.) (pending before the
43 Legislature as this bill) to directly receive and use development fees
44 are permitted to petition the commissioner for the award of a grant
45 or loan of any portion of the appropriation described in subsection
46 a. of this section. The commissioner shall award grants or loans
47 from the fund to municipalities that **]**incorporated] approve

1 anticipated or existing housing projects and programs funded by a
2 municipal development trust fund **[**in a housing element submitted
3 to the council pursuant to section 7 of P.L.1985, c.222 (C.52:27D-
4 307)**]**.

5 (2) The commissioner shall target the award of any grant or loan
6 to municipalities based on the extent that their housing plan relied
7 on housing projects or programs funded in part or in whole by
8 municipal development trust fund revenues.

9 (cf: P.L.2009, c.90 s.41)

10

11 16. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended
12 to read as follows:

13 18. a. **[**Notwithstanding any rules of the council to the contrary,
14 for developments consisting of newly-constructed residential units
15 located, or to be located, within the jurisdiction of any regional
16 planning entity required to adopt a master plan or comprehensive
17 management plan pursuant to statutory law, including the New
18 Jersey Meadowlands Commission pursuant to subsection (i) of
19 section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission
20 pursuant to section 7 of the "Pinelands Protection Act," P.L.1979,
21 c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization
22 Planning Authority pursuant to section 5 of P.L.2006, c.16
23 (C.52:27I-5), or its successor, and the Highlands Water Protection
24 and Planning Council pursuant to section 11 of P.L.2004, c.120
25 (C.13:20-11), but excluding joint planning boards formed pursuant
26 to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be
27 required to be reserved for occupancy by low or moderate income
28 households at least 20 percent of the residential units constructed, to
29 the extent this is economically feasible.**]** (Deleted by amendment,
30 P.L. , c.) (pending before the Legislature as this bill)

31 b. A developer of a project consisting of newly-constructed
32 residential units being financed in whole or in part with State funds,
33 including, but not limited to, transit villages designated by the
34 Department of Transportation, units constructed on State-owned
35 property, and urban transit hubs as defined pursuant to section 2 of
36 P.L.2007, c.346 (C.34:1B-208), shall be required to reserve at least
37 **[20] 10** percent of the residential units constructed for occupancy
38 by low or moderate income households, as those terms are defined
39 in section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability
40 controls as required under the rules of the **[council] department,**
41 unless the municipality in which the property is located has
42 received **[**substantive certification from the council and such a
43 reservation is not required under the approved affordable housing
44 plan, or the municipality has been given**]** a judgment of repose or a
45 judgment of compliance by the court, and such a reservation is not
46 required under the approved affordable housing plan or the
47 municipality has received substantive certification from the council

1 or has petitioned for substantive certification prior to the effective
2 date of P.L. , c. (C.) (pending before the Legislature as this
3 bill) and such petition has not been dismissed or otherwise
4 determined to be invalid. A municipality may satisfy the set-aside
5 requirements imposed by this subsection through any combination
6 of the alternate means provided for in section 22 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill).

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

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

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

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

1 under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the
2 jurisdiction of any of the regional entities specified in subsection a.
3 of this section.】 (Deleted by amendment, P.L. , c.) (pending
4 before the Legislature as this bill)
5 (cf: P.L.2008, c.46, s.18)
6

7 17. Section 30 of P.L.2008, c.46 (C.52:27D-329.19) is amended
8 to read as follows:

9 30. a. The position of Senior Deputy Commissioner for Housing
10 is established within the department, which position shall be filled
11 by an individual with recognized and extensive experience in
12 housing policy, planning, and development with particular emphasis
13 on the planning and development of workforce housing and housing
14 affordable to low, moderate, and middle income households.

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

18 c. The commissioner may appoint the Senior Deputy
19 Commissioner for Housing as his or her designee to chair the
20 agency, the commission, or the council, in which capacity or
21 capacities the Senior Deputy Commissioner for Housing will have
22 all of the powers vested in those positions by law.

23 (cf: P.L.2008, c.46, s.30)
24

25 18. (New section) It shall be the duty of the Department of
26 Community Affairs to administer the "Fair Housing Act," P.L.1985,
27 c.222 (C.52:27D-301 et al.) and to assist municipalities that are
28 developing toward fulfilling their obligation to provide an
29 appropriate variety and choice of housing, including housing for
30 low- and moderate-income families. The department shall:

31 a. Determine the housing regions of the State, for the use and
32 information of municipalities;

33 b. Promulgate guidelines and criteria for housing elements
34 prepared pursuant to section 19 of the "Municipal Land Use Law,"
35 P.L.1975, c.291 (C.40:55D-28);

36 c. Pursuant to subsection a. of section 20 of P.L. ,
37 c. (C.), make a determination of whether a municipality is an
38 inclusionary municipality;

39 d. Establish guidelines or model language for covenants or
40 other devices to maintain the affordability of inclusionary units
41 developed pursuant to P.L. , c. (C.) (pending before the
42 Legislature as this bill);

43 e. Establish affirmative marketing requirements for those
44 inclusionary units developed pursuant to section 19 of P.L. ,
45 c. (C.) (pending before the Legislature as this bill); and

46 f. Review and grant approval or disapprove any petition for
47 substantive certification filed prior to the effective date of P.L. ,

1 c. (C.) (pending before the Legislature as this bill). The
2 department may apply the regulations of the Council on Affordable
3 Housing in effect at the time a petition for substantive certification
4 was filed, or may adopt new regulations, or revisions or
5 amendments to existing regulations, concerning petitions for
6 substantive certification. The department shall conduct an interim
7 review of the housing plan of any municipality granted substantive
8 certification.

9 g. The department shall promulgate guidelines for development
10 fees lieu of construction of fractional dwelling units.

11 Pursuant to the "Administrative Procedure Act," P.L.1968, c.410
12 (C.52:14B-1 et seq.), the Department of Community Affairs may
13 promulgate any rules and regulations necessary to effectuate the
14 purposes of this section.

15

16 19. (New section) a. Within 60 days following the effective date
17 of P.L. , c. (C.), a municipality shall apply to the department
18 for a determination of whether the municipality is an inclusionary
19 municipality that shall be deemed to have provided for its portion of
20 the region's opportunity for low- and moderate-income housing.

21 b. (1) A municipality that has not met the criteria in section 20
22 of P.L. , c. (C.) (pending before the Legislature as this bill)
23 may reapply to the department at any time during the six-year
24 planning cycle, based upon additional evidence that those criteria
25 have been satisfied.

26 (2) A municipality that does not meet the criteria in section 20
27 of P.L. , c. (C.) (pending before the Legislature as this bill)
28 may, nevertheless, be deemed to meet those criteria if it adopts an
29 ordinance providing that at least one fifth of its developable
30 property shall be reserved for use as workforce housing as defined
31 in subsection s. of section 4 of P.L.1985, c.222 (C.52:27D-304).

32

33 20. (New section) a. The department shall determine that a
34 municipality is an inclusionary municipality if:

35 (1) at least seven and one-half percent of its total present
36 housing stock is price restricted units; or

37 (2) at least 33 percent of the housing stock is: single-family
38 attached housing; or mobile homes located in a mobile home park
39 as defined in subsection d. of section 3 of P.L.1983, c.386
40 (C.40:55D-102); or multiple dwellings as defined pursuant to
41 subsection k. of section 3 of P.L.1967, c.76 (C.55:13A-3), provided
42 no less than one-half of the housing stock described in this
43 paragraph is rental housing; or

44 (3) it adopts zoning ordinances or incorporates into its Master
45 Plan prepared pursuant to section 19 of P.L.1975, c.291 (C.40:55D-
46 28) standards that contain:

47 (a) an analysis of the municipality's current housing stock;

1 (b) a plan pertaining to how the municipality will satisfy the
2 obligation pursuant to Section 21 of P.L. , c. (C.) (pending
3 before the Legislature as this bill), which may include, the provision
4 of funding sources and other incentives to encourage the
5 development of on-site and off-site low and moderate income
6 housing developments; construction by non-profit developers of
7 100 percent low and moderate income housing developments; the
8 construction of accessory apartments; programs to purchase and
9 mark down existing units; construction of supportive and special
10 needs housing; extension of existing affordability controls; and
11 other innovative means to provide for a variety and choice of
12 housing opportunities for low and moderate income citizens.

13 (c) a detailed analysis of the municipality's existing low and
14 moderate income housing stock; and

15 (d) a detailed plan providing for any municipal action, including
16 rehabilitation, necessary to address the needs of a municipality's
17 low- and moderate-income households residing in dilapidated or
18 unsuitable housing;

19 b. (1) In making a determination pursuant to subsection a.,
20 paragraph (1) or (2), the department shall give special needs
21 housing units newly constructed following the effective date of
22 P.L. , c. (C.) (pending before the Legislature as this bill)
23 twice as much weight as their actual proportion of a municipality's
24 housing stock when making a determination of whether a
25 municipality is an inclusionary municipality.

26 (2) In making a determination pursuant to paragraph (2) of
27 subsection a. of this section, the department may exclude buildings
28 determined to be luxury dwellings.

29 (3) Upon filing of ordinances or Master Plan elements with the
30 Department of Community Affairs pursuant to paragraph (3) of
31 subsection a. of this section, the filing shall be deemed to satisfy the
32 criteria in this section. In the event of a challenge to this filing, the
33 Commissioner of Community Affairs will undertake a limited
34 review of the municipality's filing, for the sole purpose of
35 determining whether the filing meets the criteria of paragraph (3) of
36 subsection a. of section 20.

37 c. For units constructed following the effective date of
38 P.L.2005, c.350 (C.52:27D-311a et al.), to be considered price
39 restricted for purposes of a determination pursuant to this section, a
40 unit shall be adaptable as described in section 5 of P.L.2005, c.350
41 (C.52:27D-123.15) and section 1 of P.L.2005, c.350 (C.52:27D-
42 311a).

43 d. A municipality that received substantive certification under
44 N.J.A.C.5:96 and N.J.A.C.5:97, the rules of the Council on
45 Affordable Housing for the period beginning June 2, 2008, shall be
46 considered an inclusionary municipality pursuant to this section
47 until the end of its approved certification period; provided that the

1 municipality continues to fully and faithfully implement the
2 provisions of its fair-share plan.

3 e. The department shall review any application for a
4 determination that a municipality is an inclusionary municipality
5 and render a determination within 90 days. A determination of
6 whether a municipality is inclusionary shall be based upon a
7 municipality's existing housing stock. Units transferred through a
8 regional contribution agreement shall be fully credited to the
9 sending municipality for purposes of determining whether a
10 municipality is an inclusionary municipality.

11 f. A determination by the Commissioner or department
12 pursuant to this section shall be deemed a final agency action
13 appealable to the Appellate Division of the Superior Court.

14 For purposes of this section, "single family attached housing"
15 means two or more dwelling units sharing a wall that extends from
16 ground to roof with an adjoining unit, with no other units above or
17 below, with separate major utility systems and metering.

18
19 21. (New section) a. (1) For any new residential development
20 project, as defined in subsection t. of section 4 of P.L.1985, c.222
21 (C.52:27D-304), and any redevelopment, rehabilitation, infill
22 development, or adaptive reuse of a residential development project
23 that would qualify as a residential development project if it was
24 new construction, a municipality shall require that one out of every
25 10 residential housing units proposed as part of that project be
26 reserved for occupancy as low income or moderate income housing.
27 For the purposes of this reservation, one special needs housing unit
28 shall count as two housing units.

29 (2) For any new small residential development project, as
30 defined in subsection u. of section 4 of P.L.1985, c.222 (C.52:27D-
31 304), and any redevelopment, rehabilitation, infill development, or
32 adaptive reuse of a residential or small residential development
33 project that would qualify as a small residential development
34 project if it was new construction, a municipality shall require that
35 one out of every 20 residential housing units proposed as part of
36 that project be reserved for occupancy as low-income or moderate-
37 income housing. For the purposes of this reservation, one special
38 needs housing unit shall count as two housing units. Nothing in this
39 paragraph shall be construed to require the developer of a small
40 residential development project to pay a development fee when the
41 developer is providing for the on-site construction of affordable
42 units.

43 b. Where land use or other local government approvals are
44 required, a municipality shall make a reasonable effort to facilitate
45 the economic viability of an inclusionary development developed
46 pursuant to the requirements of this section.

- 1 c. A municipality, in evaluating the economic viability of an
2 application for an inclusionary development, may be guided by the
3 applicable provisions of N.J.A.C.5:96 and N.J.A.C.5:97, the
4 regulations of the Council on Affordable Housing for the housing
5 round beginning June 2, 2008.
- 6 d. Residential development projects resulting in a fractional
7 unit reserved for occupancy by low-income or moderate-income
8 households, shall deposit a development fee collected into a
9 municipal trust fund established by a municipality pursuant to
10 section 27 of P.L. , c. (C.) (pending before the Legislature as
11 this bill) or into the "New Jersey Affordable Housing Trust Fund,"
12 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
13 320).
- 14 e. Nothing in this section shall preclude a municipality from
15 imposing additional inclusionary requirements upon redevelopment
16 or rehabilitation projects or any form of infill development or
17 adaptive reuse of a residential development project.
- 18 f. Half of the units reserved for low-income or moderate-
19 income housing pursuant to this section shall be reserved for low-
20 income housing and half the units shall be reserved for moderate-
21 income housing. If an odd number of affordable units is being
22 constructed, rehabilitated or developed pursuant to this section, the
23 higher number of units may be determined by the municipality.
- 24 g. At least 50 percent of the units reserved for low income or
25 moderate income housing pursuant to this section shall be self-
26 contained residential dwelling units with a kitchen, sanitary
27 facilities, sleeping quarters and a private entrance, and which are
28 available to the general public and not restricted to any specific
29 segment of the population.
- 30 h. A municipality that has petitioned for substantive certification
31 prior to the effective date of P.L. , c. (C.) (pending before the
32 Legislature as this bill), or that has received substantive
33 certification from the former Council on Affordable Housing or the
34 State Planning Commission, pursuant to section 18 of P.L. ,
35 c. (C.) (pending before the Legislature as this bill), shall be
36 exempt from the requirements of this section for the duration of the
37 housing round for which the municipality is certified. This
38 paragraph shall not be construed to apply to a municipality whose
39 petition for substantive certification is dismissed or otherwise
40 determined to be invalid.
- 41 i. A municipality may withdraw a petition for substantive
42 certification or act to withdraw its certification and elect to comply
43 with the requirement of P.L. , c. (C.) (pending before the
44 Legislature as this bill) by satisfying the requirements of this
45 section.

1 22. (New section) a. A municipality may authorize the
2 following alternate means to satisfy the set-aside requirements
3 imposed by section 21 of P.L. , c. (C.) (pending before the
4 Legislature as this bill):

5 (1) Permitting the required inclusionary units to be newly
6 constructed off-site;

7 (2) Permitting the required inclusionary units to be provided off-
8 site by rehabilitation of existing substandard units;

9 (3) Permitting a developer to pay a development fee in lieu of
10 constructing a portion of the inclusionary units into a municipal
11 trust fund for the construction of affordable housing pursuant to
12 section 27 of P.L. , c. (C.) (pending before the Legislature as
13 this bill);

14 (4) Assisting a municipally-sponsored 100 percent affordable
15 development;

16 (5) Permitting construction of Elder Cottage Housing
17 Opportunity units;

18 (6) Permitting the construction off-site of accessory apartment
19 units affordable to low- and moderate-income households;

20 (7) Permitting the purchase or subsidization of units that are
21 subsequently sold or rented to low- and moderate-income
22 households at affordable sale prices or rents ("buy down, write
23 down"); and

24 (8) Permitting the construction of an assisted living residence in
25 which all or a designated number of units are restricted to low- or
26 moderate-income households.

27 b. Any person engaging in a residential development project
28 shall file an application to the zoning board of adjustment for
29 approval of alternate means of satisfying the set-aside requirements
30 imposed by section 21 of P.L. , c. (C.) (pending before the
31 Legislature as this bill). In the case of an application, the board of
32 adjustment shall limit its determination to approving and
33 determining which, and to what extent alternate means may be
34 employed, and shall include the reasons for its determination in the
35 findings of its decision thereon.

36 For purposes of this section, "rehabilitation" means the repair,
37 renovation, alteration, reconstruction of a building or structure
38 containing a dwelling space, pursuant to the rehabilitation subcode
39 adopted by the Commissioner of Community Affairs pursuant to
40 section 5 of the "State Uniform Construction Code Act," P.L.1975,
41 c.217 (C.52:27D-123), that includes the rehabilitation of a major
42 system and a minimum average investment for hard costs of
43 \$10,000 per unit. The Department of Community Affairs shall
44 develop standards for minimum documentation for qualifying
45 rehabilitation.

1 23. (New section) A municipality may provide a preference for
2 occupancy of up to one-half of the units required to be provided
3 pursuant to section 21 of P.L. , c. (C.) (pending before the
4 Legislature as this bill), to those households that have at least one
5 member who works in the municipality and to those households that
6 have at least one member who resides in the municipality.
7

8 24. (New section) a. In any municipality not determined to be
9 an inclusionary municipality by the department as described in
10 section 20 of P.L. , c. (C.) (pending before the Legislature
11 as this bill), when a proposed residential development project in
12 which at least 10 percent of the dwelling units are set aside for low-
13 or moderate-income households requires approval pursuant to the
14 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
15 of a subdivision, site plan or conditional use, or a variance,
16 including a variance pursuant to subsection d. of section 57 of
17 P.L.1975, c.291 (C.40:55D-70), the planning board shall, pursuant
18 to section 47 of P.L.1975, c.291 (C.40:55D-60), review the request
19 for a subdivision, site plan or conditional use, or a variance, and the
20 development including an affordable housing unit shall be deemed
21 to be an inherently beneficial use, and the developer shall be
22 required to make only a showing that the variance or other relief
23 can be granted without substantial detriment to the public good.

24 b. The provisions of this section shall only apply to a
25 municipality's vacant, developable property.

26 c. The provisions of this section shall not apply to a
27 municipality that has adopted an ordinance that reserves, for use as
28 workforce housing as defined in subsection s. of section 4 of
29 P.L.1985, c.222 (C.52:27D-304), at least one-fifth of its vacant,
30 developable property having reasonable access to sewer service, for
31 residential use.
32

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

34 a. In July 2008, the New Jersey Legislature enacted a law
35 imposing a fee on non-residential development to encourage the
36 production of opportunities for affordable housing for low- and
37 moderate-income New Jersey residents.

38 b. Since the adoption of this policy, the State and our nation
39 have been engulfed in an economic recession that has resulted in
40 substantial increases in unemployment, including an unemployment
41 rate of more than nine percent, and substantial decreases in revenue
42 to the State treasury.

43 c. Revenues actually collected pursuant to the "Statewide Non-
44 Residential Development Fee Act," sections 32 through 38 of
45 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), fell far short
46 of the amounts anticipated before the "New Jersey Economic
47 Stimulus Act of 2009," P.L.2009, c.90 (C.52:27D-489a et al.)

1 suspended implementation of the Statewide non-residential
2 development fee.

3 d. It is undisputable that imposing fees at high levels dissuades
4 commerce from locating within a State, municipality or locality,
5 increases unemployment, and deters non-residential and residential
6 development, and these ill effects impede the implicit constitutional
7 requirement that government action provide for the general welfare
8 of the State's citizens.

9 e. Continued imposition of the development fee will hamper
10 the State's ability to recover from the economic recession, slowing
11 job creation and development that normally are a source of revenue,
12 increasing the revenue shortfall in the State's budget, further
13 hampering the State's ability to provide for the general welfare
14 needs of its residents, including, but not limited to, funding
15 programs for the developmentally disabled, health care services for
16 senior citizens and indigent families, financial support for special
17 education services within local school districts, funding for State
18 institutions for the mentally ill, and general financial support for
19 municipal governments and local school districts.

20 f. The negative impact of a State policy that relies on a
21 municipal fee structure and of State programs that require a
22 municipality to impose fees and charges on developers must be
23 balanced against any public good expected from such regulation.

24 g. It is essential to the public good to repeal the fee imposed
25 under the "Statewide Non-Residential Development Fee Act,"
26 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through
27 C.40:55D-8.7).

28

29 26. (New section) a. Notwithstanding any law, rule, or
30 regulation to the contrary, no municipality shall adopt an ordinance
31 imposing a fee upon the developer of non-residential property or
32 construction to provide for affordable housing.

33 b. Any provision of a local ordinance which imposes a fee for
34 the development of affordable housing upon a developer of non-
35 residential property, including any and all development fee
36 ordinances adopted in accordance with any regulations of the
37 Council on Affordable Housing, or any provision of an ordinance
38 which imposes an obligation relating to the provision of housing
39 affordable to low and moderate income households, or development
40 fee as a condition of non-residential development, shall be void and
41 of no effect.

42 c. The provisions of this section shall not apply to a financial
43 or other contribution that a developer made or committed itself to
44 make for a non-residential property that received preliminary site
45 plan approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-
46 46), or final approval, pursuant to section 38 of P.L.1975, c.291
47 (C.40:55D-50) prior to July 17, 2008, or for a non-residential

1 project that, prior to July 17, 2008, was referred to a planning board
2 by the State, a governing body, or other public agency for review
3 pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31).

4 d. The provisions of this section shall not apply to a financial
5 or other contribution, including the investment obligations made
6 pursuant to P.L.1977, c.110 (C.5:12-1 et seq.), that a developer of a
7 non-residential development regulated under P.L.1977, c.110
8 (C.5:12-1 et seq.) has made or committed itself to make relating to
9 the provision of housing affordable to low, moderate, or middle-
10 income households.

11
12 27. (New section) a. A municipality may impose development
13 fees of two and one-half percent of equalized assessed value for
14 residential development projects.

15 b. A municipality shall deposit all payments collected into a
16 trust fund dedicated to those purposes as required under this
17 section. Each amount collected shall be deposited and shall be
18 accounted for separately, by payer and date of deposit.

19 c. (1) A municipality may only spend development fees for an
20 activity to address the municipality's obligation to provide its
21 portion of the region's need for affordable housing.

22 (2) A municipality shall set aside a portion of its development
23 fee trust fund for the purpose of providing affordability assistance
24 to low and moderate income households in affordable units located
25 in the municipality.

26 (a) Affordability assistance programs may include, but are not
27 limited to, down payment assistance, security deposit assistance,
28 low interest loans, common maintenance expenses for units located
29 in condominiums, and rental assistance.

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 municipality to make them affordable to
33 households earning 30 percent or less of median income.

34 (3) A municipality may contract with a private or public entity
35 to administer any program facilitating housing affordable to low
36 and moderate income households including the requirement for
37 affordability assistance, or any program or activity for which the
38 municipality expends development fee proceeds.

39 (4) Not more than 7.5 percent of the revenues collected as
40 development fees shall be expended on administration, in
41 accordance with rules of the department.

42 d. Notwithstanding any provision of this section, or regulations
43 of the department, a municipality shall not collect a development
44 fee from a developer whenever that developer is providing for the
45 construction of all of the low- and moderate-income housing units
46 required by section 21 of P.L. , c. (C.) (pending before the
47 Legislature as this bill), either on-site or elsewhere within the

1 municipality. A development fee may only be collected for the
2 portion of the equalized assessed value attributable to the low- and
3 moderate-income housing units required by section 21 of P.L. ,
4 c. (C.) (pending before the Legislature as this bill) that are not
5 provided for by on-site construction or other alternate means
6 specified in section 22 of P.L. , c. (C.) (pending before the
7 Legislature as this bill).

8 e. All development fees collected and deposited in the trust
9 fund shall be committed for expenditure within four years from the
10 date of collection. A municipality that fails to commit to expend
11 the balance required in the development fee trust fund by the time
12 set forth in this subsection shall be required by the department to
13 transfer the remaining unspent balance at the end of the four-year
14 period to the "New Jersey Affordable Housing Trust Fund,"
15 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
16 320), to be used in the housing region of the transferring
17 municipality for the authorized purposes of that fund. A balance
18 transferred to the "New Jersey Affordable Housing Trust Fund"
19 from a municipality meeting the criteria described in subsection a.
20 of section 18 of P.L. , c. (C.) pending before the Legislature
21 as this bill) shall be expended for the authorized purposes in the
22 county in which the municipality where the funds were collected is
23 located. A balance transferred to the "New Jersey Affordable
24 Housing Trust Fund" from a municipality that does not meet the
25 criteria described in subsection a. of section 18 of P.L. ,
26 c. (C.) (pending before the Legislature as this bill) shall be
27 expended in the municipality where the funds were collected.

28
29 28. (New section) If any persons benefitting from a housing
30 program established pursuant to P.L. , c. (C.) (pending
31 before the Legislature as this bill) that assists persons who have
32 experienced, or may experience, the foreclosure and loss of their
33 personal residence, or addresses the needs of low- and moderate-
34 income households residing within the municipality, are otherwise
35 income qualified to occupy such housing under federal or State law,
36 then any affirmative marketing requirements contained in
37 regulations promulgated to effectuate the program shall be waived
38 to permit the persons to occupy, rent, or purchase new or
39 rehabilitated affordable housing units that they may have previously
40 occupied or owned.

41
42 29. (New section) a. A municipality shall not be liable for any
43 unmet housing obligation based on regulations promulgated by the
44 Council on Affordable Housing pursuant to the "Fair Housing Act,"
45 P.L.1985, c.222 (C.52:27D-301 et al.), or any law or fact in a time
46 period prior to the effective date of P.L. , c. (C.) (pending
47 before the Legislature as this bill).

1 b. Notwithstanding subsection a. of this section, a municipality
2 shall not alter the zoning classification of any inclusionary
3 development site that is by judgment of repose, court order, or
4 settlement in exclusionary zoning litigation, designated or reserved
5 for purposes of satisfying a municipality's fair share of the region's
6 housing opportunities.

7 c. Subsection b. of this section shall not apply to any property
8 that is the subject of pending exclusionary litigation that has not
9 reached final judgment through and including all appeals, including
10 an appeal to the New Jersey Supreme Court.

11
12 30. (New section) a. No exclusionary zoning action naming a
13 municipality as a defendant shall be filed for 365 days following the
14 effective date of this act.

15 b. Subsection a. of this section shall not apply to a municipality
16 subject to a court order to provide affordable housing prior to the
17 effective date of P.L. , c. (C.) (pending before the Legislature
18 as this bill).

19 c. For any litigation involving exclusionary zoning instituted
20 prior to the effective date of P.L. , c. (C.) (pending before
21 the Legislature as this bill), jurisdiction may remain with the court,
22 which shall take judicial notice of the statutory intent stated
23 hereunder.

24
25 31. (New section) The provisions of P.L. , c. (C.)
26 (pending before the Legislature as this bill) shall be severable, and
27 if any of its provisions shall be held to be unconstitutional, the
28 decision of the court shall not affect the validity of the remaining
29 provisions of P.L. , c. (C.) (pending before the Legislature as
30 this bill).

31
32 32. Section 7 of P.L.1985, c.222 (C.52:27D-307) is repealed.

33
34 33. The following sections are repealed:

35 Section 32 of P.L.2008, c.46 (C.40:55D-8.1);

36 Section 33 of P.L.2008, c.46 (C.40:55D-8.2);

37 Section 34 of P.L.2008, c.46 (C.40:55D-8.3);

38 Section 35 of P.L.2008, c.46 (C.40:55D-8.4);

39 Section 36 of P.L.2008, c.46 (C.40:55D-8.5);

40 Section 37 of P.L.2008, c.46 (C.40:55D-8.6);

41 Section 38 of P.L.2008, c.46 (C.40:55D-8.7);

42 Section 39 of P.L.2009, c.90 (C.40:55D-8.8);

43 Section 5 of P.L.1985 c.222 (C.52:27D-305);

44 Section 6 of P.L.1985, c.222 (C.52:27D-306);

45 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);

46 Section 8 of P.L.1985, c.222 (C.52:27D-308);

47 Section 9 of P.L.1985, c.222 (C.52:27D-309);

1 Section 10 of P.L.1985, c.222 (C.52:27D-310);
2 Section 1 of P.L.1995, c.231 (C.52:27D-310.1);
3 Section 2 of P.L.1995, c.231 (C.52:27D-310.2);
4 Section 40 of P.L.2009, c.90 (C. 52:27D-311.3);
5 Section 13 of P.L.1985 c.222 (C.52:27D-313);
6 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);
7 Section 14 of P.L.1985 c.222 (C.52:27D-314);
8 Section 15 of P.L.1985 c.222 (C.52:27D-315);
9 Section 16 of P.L.1985, c.222 (C.52:27D-316);
10 Section 17 of P.L.1985, c.222 (C.52:27D-317);
11 Section 18 of P.L.1985, c.222 (C.52:27D-318);
12 Section 19 of P.L.1985 c.222 (C.52:27D-319);
13 Section 7 of P.L.2008, c.46 (C.52:27D-329.1);
14 Section 8 of P.L.2008, c.46 (C.52:27D-329.2);
15 Section 9 of P.L.2008, c.46 (C.52:27D-329.3);
16 Section 10 of P.L.2008, c.46 (C.52:27D-329.4);
17 Section 12 of P.L.2008, c.46 (C.52:27D-329.6); and
18 Section 14 of P.L.2008, c.46 (C.52:27D-329.8).

19
20 34. This act shall take effect immediately, except that sections 2
21 and 32 shall be inoperative until the first day of the seventh month
22 following enactment.