

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1783

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED JUNE 9, 2008

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator DANA L. REDD

District 5 (Camden and Gloucester)

SYNOPSIS

Revises laws concerning the provision of affordable housing.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.



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

3

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

6

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

9 3. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 structural or housing conditions and arrest the deterioration of that
2 area.

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

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

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

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

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

24 (2) Proposed land uses and building requirements in the project
25 area.

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

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

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

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

46 (7) A plan for the provision, through new construction or
47 substantial rehabilitation of one comparable, affordable replacement

1 housing unit for each affordable housing unit that has been
2 occupied at any time within the last 18 months, that is subject to
3 affordability controls and that is identified as to be removed as a
4 result of implementation of the redevelopment plan. Displaced
5 residents of housing units provided under any State or federal
6 housing subsidy program, or pursuant to the "Fair Housing Act,"
7 P.L.1985, c.222 (C.52:27D-301 et al.), provided they are deemed to
8 be eligible, shall have first priority for those replacement units
9 provided under the plan; provided that any such replacement unit
10 shall not be credited against a prospective municipal obligation
11 under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et
12 al.), if the housing unit which is removed had previously been
13 credited toward satisfying the municipal fair share obligation. To
14 the extent reasonably feasible, replacement housing shall be
15 provided within or in close proximity to the redevelopment area. A
16 municipality shall report annually to the Department of Community
17 Affairs on its progress in implementing the plan for provision of
18 comparable, affordable replacement housing required pursuant to
19 this section.

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

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

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

1 e. Prior to the adoption of a redevelopment plan, or revision or
2 amendment thereto, the planning board shall transmit to the
3 governing body, within 45 days after referral, a report containing its
4 recommendation concerning the redevelopment plan. This report
5 shall include an identification of any provisions in the proposed
6 redevelopment plan which are inconsistent with the master plan and
7 recommendations concerning these inconsistencies and any other
8 matters as the board deems appropriate. The governing body, when
9 considering the adoption of a redevelopment plan or revision or
10 amendment thereof, shall review the report of the planning board
11 and may approve or disapprove or change any recommendation by a
12 vote of a majority of its full authorized membership and shall
13 record in its minutes the reasons for not following the
14 recommendations. Failure of the planning board to transmit its
15 report within the required 45 days shall relieve the governing body
16 from the requirements of this subsection with regard to the pertinent
17 proposed redevelopment plan or revision or amendment thereof.
18 Nothing in this subsection shall diminish the applicability of the
19 provisions of subsection d. of this section with respect to any
20 redevelopment plan or revision or amendment thereof.

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

35
36 3. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read
37 as follows:

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

40 (1) Give at least 30 days' notice of its intended action. The
41 notice shall include a statement of either the terms or substance of
42 the intended action or a description of the subjects and issues
43 involved, and the time when, the place where, and the manner in
44 which interested persons may present their views thereon. The
45 notice shall be mailed to all persons who have made timely requests
46 of the agency for advance notice of its rule-making proceedings and
47 in addition to other public notice required by law shall be published

1 in the New Jersey Register. Notice shall also be distributed to the
2 news media maintaining a press office to cover the State House
3 Complex, and made available electronically through the largest
4 nonproprietary cooperative public computer network. Each agency
5 shall additionally publicize the intended action and shall adopt rules
6 to prescribe the manner in which it will do so, and inform those
7 persons most likely to be affected by or interested in the intended
8 action. Methods that may be employed include publication of the
9 notice in newspapers of general circulation or in trade, industry,
10 governmental or professional publications, distribution of press
11 releases to the news media and posting of notices in appropriate
12 locations. The rules shall prescribe the circumstances under which
13 each additional method shall be employed;

14 (2) Prepare for public distribution at the time the notice appears
15 in the Register a statement setting forth a summary of the proposed
16 rule, a clear and concise explanation of the purpose and effect of the
17 rule, the specific legal authority under which its adoption is
18 authorized, a description of the expected socio-economic impact of
19 the rule, a regulatory flexibility analysis, or the statement of finding
20 that a regulatory flexibility analysis is not required, as provided in
21 section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement
22 which shall include an assessment of the number of jobs to be
23 generated or lost if the proposed rule takes effect, **[and]** an
24 agriculture industry impact statement as provided in section 7 of
25 P.L.1998, c.48 (C.4:1C-10.3) , and a housing affordability impact
26 statement and a smart growth development impact statement, as
27 provided in section 31 of P.L. , c. (C.) (pending before
28 the Legislature as this bill); and

29 (3) Afford all interested persons reasonable opportunity to
30 submit data, views, or arguments, orally or in writing. The agency
31 shall consider fully all written and oral submissions respecting the
32 proposed rule. If within 30 days of the publication of the proposed
33 rule sufficient public interest is demonstrated in an extension of the
34 time for submissions, the agency shall provide an additional 30 day
35 period for the receipt of submissions by interested parties. The
36 agency shall not adopt the proposed rule until after the end of that
37 30 day extension.

38 The agency shall conduct a public hearing on the proposed rule
39 at the request of a committee of the Legislature, or a governmental
40 agency or subdivision, or if sufficient public interest is shown,
41 provided such request is made to the agency within 30 days
42 following publication of the proposed rule in the Register. The
43 agency shall provide at least 15 days' notice of such hearing, which
44 shall be conducted in accordance with the provisions of subsection
45 (g) of this section.

46 The head of each agency shall adopt as part of its rules of
47 practice adopted pursuant to section 3 of P.L.1968, c.410

1 (C.52:14B-3) definite standards of what constitutes sufficient public
2 interest for conducting a public hearing and for granting an
3 extension pursuant to this paragraph.

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

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

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

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

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

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

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

3 (2) The reasons for the request and the petitioner's interest in the
4 request;

5 (3) References to the authority of the agency to take the
6 requested action.

7 The petitioner may provide the text of the proposed new rule,
8 amended rule or repealed rule.

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

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

1 proposal based upon the petition. This report shall be filed with the
2 agency and delivered or mailed to the petitioner. A copy of the
3 report shall be filed with the Legislature along with the petition for
4 rule-making.

5 (g) All public hearings shall be conducted by a hearing officer,
6 who may be an official of the agency, a member of its staff, a
7 person on assignment from another agency, a person from the
8 Office of Administrative Law assigned pursuant to subsection o. of
9 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent
10 contractor. The hearing officer shall have the responsibility to
11 make recommendations to the agency regarding the adoption,
12 amendment or repeal of a rule. These recommendations shall be
13 made public. At the beginning of each hearing, or series of
14 hearings, the agency, if it has made a proposal, shall present a
15 summary of the factual information on which its proposal is based,
16 and shall respond to questions posed by any interested party.
17 Hearings shall be conducted at such times and in locations which
18 shall afford interested parties the opportunity to attend. A verbatim
19 record of each hearing shall be maintained, and copies of the record
20 shall be available to the public at no more than the actual cost ,
21 which shall be that of the agency where the petition for rule-making
22 originated.

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

24

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

27 2. The Legislature finds that:

28 a. The New Jersey Supreme Court, through its rulings in South
29 Burlington County NAACP v. Mount Laurel, 67 N.J.151 (1975) and
30 South Burlington County NAACP v. Mount Laurel, 92 N.J.158
31 (1983), has determined that every municipality in a growth area has
32 a constitutional obligation to provide through its land use
33 regulations a realistic opportunity for a fair share of its region's
34 present and prospective needs for housing for low and moderate
35 income families.

36 b. In the second Mount Laurel ruling, the Supreme Court stated
37 that the determination of the methods for satisfying this
38 constitutional obligation "is better left to the Legislature," that the
39 court has "always preferred legislative to judicial action in their
40 field," and that the judicial role in upholding the Mount Laurel
41 doctrine "could decrease as a result of legislative and executive
42 action."

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

1 d. There are a number of essential ingredients to a
2 comprehensive planning and implementation response, including
3 the establishment of reasonable fair share housing guidelines and
4 standards, the initial determination of fair share by officials at the
5 municipal level and the preparation of a municipal housing
6 element, State review of the local fair share study and housing
7 element, and continuous State funding for low and moderate income
8 housing to replace the federal housing subsidy programs which
9 have been almost completely eliminated.

10 e. The State can maximize the number of low and moderate
11 income units provided in New Jersey by allowing its municipalities
12 to adopt appropriate phasing schedules for meeting their fair share,
13 so long as the municipalities permit a timely achievement of an
14 appropriate fair share of the regional need for low and moderate
15 income housing as required by the Mt. Laurel I and II opinions and
16 other relevant court decisions.

17 f. The State can also maximize the number of low and
18 moderate income units by creating new affordable housing and by
19 rehabilitating existing, but substandard, housing in the State [, and,
20 in order to achieve this end, it is appropriate to permit the transfer
21 of a limited portion of the fair share obligations among
22 municipalities in a housing region, so long as the transfer occurs on
23 the basis of sound, comprehensive planning, with regard to an
24 adequate housing financing plan, and in relation to the access of
25 low and moderate income households to employment
26 opportunities]. Because the Legislature has determined, pursuant
27 to P.L. , c. (C.) (pending before the Legislature as this
28 bill), that it is no longer appropriate or in harmony with the *Mount*
29 *Laurel* doctrine to permit the transfer of the fair share obligations
30 among municipalities within a housing region, it is necessary and
31 appropriate to create a new program to create new affordable
32 housing and to foster the rehabilitation of existing, but substandard,
33 housing.

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

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

1 i. Certain amendments to the enabling act of the Council on
2 Affordable Housing are necessary to provide guidance to the
3 council to ensure consistency with the legislative intent, while at the
4 same time clarifying the limitations of the council in its rulemaking.
5 Although the court has remarked in several decisions that the
6 Legislature has granted the council considerable deference in its
7 rulemaking, the Legislature retains its power and obligation to
8 clarify and amend the enabling act from which the council derives
9 its rulemaking power, from time to time, in order to better guide the
10 council.

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

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

17

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

20 4. As used in this act:

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

25 b. "Housing region" means a geographic area of not less than
26 two nor more than four contiguous, whole counties which exhibit
27 significant social, economic and income similarities, and which
28 constitute to the greatest extent practicable the primary metropolitan
29 statistical areas as last defined by the United States Census Bureau
30 prior to the effective date of **[this act]** P.L.1985, c.222 (C.52:27D-
31 301 et al.).

32 c. "Low income housing" means housing affordable according
33 to federal Department of Housing and Urban Development or other
34 recognized standards for home ownership and rental costs and
35 occupied or reserved for occupancy by households with a gross
36 household income equal to 50% or less of the median gross
37 household income for households of the same size within the
38 housing region in which the housing is located.

39 d. "Moderate income housing" means housing affordable
40 according to federal Department of Housing and Urban
41 Development or other recognized standards for home ownership
42 and rental costs and occupied or reserved for occupancy by
43 households with a gross household income equal to more than 50%
44 but less than 80% of the median gross household income for
45 households of the same size within the housing region in which the
46 housing is located.

- 1 e. "Resolution of participation" means a resolution adopted by
2 a municipality in which the municipality chooses to prepare a fair
3 share plan and housing element in accordance with this act.
- 4 f. "Inclusionary development" means a residential housing
5 development in which a substantial percentage of the housing units
6 are provided for a reasonable income range of low and moderate
7 income households.
- 8 g. "Conversion" means the conversion of existing commercial,
9 industrial, or residential structures for low and moderate income
10 housing purposes where a substantial percentage of the housing
11 units are provided for a reasonable income range of low and
12 moderate income households.
- 13 h. "Development" means any development for which
14 permission may be required pursuant to the "Municipal Land Use
15 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 16 i. "Agency" means the New Jersey Mortgage and Housing
17 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
18 seq.).
- 19 j. "Prospective need" means a projection of housing needs
20 based on development and growth which is reasonably likely to
21 occur in a region or a municipality, as the case may be, as a result
22 of actual determination of public and private entities. In
23 determining prospective need, consideration shall be given to
24 approvals of development applications, real property transfers and
25 economic projections prepared by the State Planning Commission
26 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-
27 196 et seq.).
- 28 k. "Disabled person" means a person with a physical disability,
29 infirmity, malformation or disfigurement which is caused by bodily
30 injury, birth defect, aging or illness including epilepsy and other
31 seizure disorders, and which shall include, but not be limited to, any
32 degree of paralysis, amputation, lack of physical coordination,
33 blindness or visual impediment, deafness or hearing impediment,
34 muteness or speech impediment or physical reliance on a service or
35 guide dog, wheelchair, or other remedial appliance or device.
- 36 l. "Adaptable" means constructed in compliance with the
37 technical design standards of the barrier free subcode adopted by
38 the Commissioner of Community Affairs pursuant to the "State
39 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
40 et seq.) and in accordance with the provisions of section 5 of
41 P.L.2005, c.350 (C.52:27D-123.15).
- 42 m. "Very low income housing" means housing affordable
43 according to federal Department of Housing and Urban
44 Development or other recognized standards for home ownership
45 and rental costs and occupied or reserved for occupancy by
46 households with a gross household income equal to 30% or less of
47 the median gross household income for households of the same size

1 within the housing region in which the housing is located.
2 (cf: P.L.2005, c.350, s.2)

3

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

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

10 a. Determine housing regions of the State;

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

13 c. Adopt criteria and guidelines for:

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

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

41 Nothing in P.L.1995, c.81 shall affect the validity of substantive
42 certification granted by the council prior to November 21, 1994, or
43 to a judgment of compliance entered by any court of competent
44 jurisdiction prior to that date. Additionally, any municipality that
45 received substantive certification or a judgment of compliance prior
46 to November 21, 1994 and filed a motion prior to November 21,
47 1994 to amend substantive certification or a judgment of

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

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

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

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

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

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

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

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

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

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

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

33 e. In its discretion, place a limit, based on a percentage of
34 existing housing stock in a municipality and any other criteria
35 including employment opportunities which the council deems
36 appropriate, upon the aggregate number of units which may be
37 allocated to a municipality as its fair share of the region's present
38 and prospective need for low and moderate income housing. No
39 municipality shall be required to address a fair share of housing
40 units affordable to households with a gross household income of
41 less than 80% of the median gross household income beyond 1,000
42 units within ten years from the grant of substantive certification,
43 unless it is demonstrated, following objection by an interested party
44 and an evidentiary hearing, based upon the facts and circumstances
45 of the affected municipality that it is likely that the municipality
46 through its zoning powers could create a realistic opportunity for
47 more than 1,000 low and moderate income units within that ten-

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

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

17 The council, with respect to any municipality seeking substantive
18 certification, shall require that a minimum percentage of housing
19 units in any residential development resulting from a zoning change
20 made to a previously non-residentially-zoned property, where the
21 change in zoning precedes or follows the application for residential
22 development by no more than 24 months, be reserved for occupancy
23 by low or moderate income households, which percentage shall be
24 determined by the council based on economic feasibility with
25 consideration for the proposed density of development.

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

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

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

26 8. (New section) a. The council may authorize a municipality
27 that has petitioned for substantive certification, or that has been so
28 authorized by a court of competent jurisdiction, and which has
29 adopted a municipal development fee ordinance to impose and
30 collect development fees from developers of residential property, in
31 accordance with rules promulgated by the council. Each amount
32 collected shall be deposited and shall be accounted for separately,
33 by payer and date of deposit.

34 A municipality may not spend or commit to spend any affordable
35 housing development fees, including Statewide non-residential fees
36 collected and deposited into the municipal affordable housing trust
37 fund, without first obtaining the council's approval of the
38 expenditure. The council shall promulgate regulations regarding
39 the establishment, administration and enforcement of the
40 expenditure of affordable housing development fees by
41 municipalities. The council shall have exclusive jurisdiction
42 regarding the enforcement of these regulations, provided that any
43 municipality which is not in compliance with the regulations
44 adopted by the council may be subject to forfeiture of any or all
45 funds remaining within its municipal trust fund. Any funds so
46 forfeited shall be deposited into the "New Jersey Affordable

1 Housing Trust Fund" established pursuant to section 20 of
2 P.L.1985, c.222 (C.52:27D-320).

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

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

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

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

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

23 (b) Affordability assistance to households earning 30 percent or
24 less of median income may include buying down the cost of low
25 income units in a municipal fair share plan to make them affordable
26 to households earning 30 percent or less of median income. The use
27 of development fees in this manner shall not entitle a municipality
28 to bonus credits except as may be provided by the rules of the
29 council.

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

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

38 d. The council shall establish a time by which all development
39 fees collected within a calendar year shall be expended; provided,
40 however, that all fees shall be committed for expenditure within
41 four years from the date of collection. A municipality that fails to
42 commit to expend the balance required in the development fee trust
43 fund by the time set forth in this section shall be required by the
44 council to transfer the remaining unspent balance at the end of the
45 four-year period to the "New Jersey Affordable Housing Trust
46 Fund," established pursuant to section 20 of P.L.1985, c.222
47 (C.52:27D-320), as amended by P.L. , c. (C.) (pending

1 before the Legislature as this bill), to be used in the housing region
2 of the transferring municipality for the authorized purposes of that
3 fund.

4 e. Notwithstanding any provision of this section, or regulations
5 of the council, a municipality shall not collect a development fee
6 from a developer whenever that developer is providing for the
7 construction of affordable units, either on-site or elsewhere within
8 the municipality.

9 This section shall not apply to the collection of a Statewide
10 development fee imposed upon non-residential development
11 pursuant to sections 32 through 38 of P.L. , c. (C.) (pending
12 before the Legislature as this bill) by the State Treasurer, when such
13 collection is not authorized to be retained by a municipality.
14

15 9. (New section) a. The council may authorize a municipality
16 that has petitioned for substantive certification to impose and
17 collect payments-in-lieu of constructing affordable units on site
18 upon the construction of residential development, which payments
19 may be imposed and collected as provided pursuant to the rules of
20 the council. Payment-in-lieu fees shall be deposited into a trust
21 fund, and accounted for separately from any other fees collected by
22 a municipality. Whenever a payment-in-lieu is charged by a
23 municipality pursuant to this subsection, a development fee
24 authorized pursuant to section 8 of P.L. , c. (C.) (pending
25 before the Legislature as this bill) shall not be charged in
26 connection with the same development.

27 b. A municipality shall commit to expend collections from
28 payments-in-lieu imposed pursuant to subsection a. of this section
29 within four years of the date of collection. The council may extend
30 this deadline if the municipality submits sufficient proof of building
31 or other permits, or other efforts concerning land acquisition or
32 project development. The council shall provide such administrative
33 assistance as may be required to aid in the construction of
34 affordable housing units. A municipality that fails to commit to
35 expend the amounts collected pursuant to this section within the
36 timeframes established shall be required to transfer any unexpended
37 revenue collected pursuant to subsection a. of this section to the
38 "New Jersey Affordable Housing Trust Fund," established pursuant
39 to section 20 of P.L.1985, c.222 (C.52:27D-320), to be used within
40 the same housing region for the authorized purposes of that fund, in
41 accordance with regulations promulgated by the council.
42

43 10. (New section) The council shall maintain on its website,
44 and also publish on a regular basis, an up-to-date municipal status
45 report concerning the petitions for substantive certification of each
46 municipality that has submitted to the council's jurisdiction, and
47 shall collect and publish information concerning the number of

1 housing units actually constructed, construction starts, certificates
2 of occupancy granted, rental units maintained, and the number of
3 housing units transferred or sold within the previous 12-month
4 period. With respect to units actually constructed, the information
5 shall specify the characteristics of the housing, including housing
6 type, tenure, affordability level, number of bedrooms, and whether
7 occupancy is reserved for families, senior citizens, or other special
8 populations. No later than 60 months after the effective date of
9 P.L. , c. (C.) (pending before the Legislature as this bill), the
10 council shall require each municipality, as a condition of
11 substantive certification, to provide, in a standardized electronic
12 media format as determined by the council, the details of the fair
13 share plan as adopted by the municipality and approved by the
14 council. The council shall publish and maintain such approved
15 plans on its website.

16

17 11. (New section) Sections 11 through 14 of P.L. , c.
18 (C.) (pending before the Legislature as this bill) shall be known
19 and may be cited as the "Housing Rehabilitation and Assistance
20 Program Act."

21

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

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

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

35 c. There is a need to assist municipalities in the rehabilitation
36 of housing for occupancy by low and moderate income households.
37 To this end, a specific program for housing rehabilitation by
38 municipalities would best serve this need. It is the intent of the
39 Legislature that this program, as well as funds earmarked for the
40 purposes of the program, will be utilized, especially in urban areas
41 which were the main recipients of regional contribution agreements,
42 to continue to upgrade housing stock in order to provide a wide
43 variety and choice of housing for persons living in those areas.

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

- 1 13. (New section) a. There is established within the
2 Department of Community Affairs an Urban Housing Assistance
3 Program for the purposes of assisting certain municipalities in the
4 provision of housing through the rehabilitation of existing buildings
5 or the construction of affordable housing.
- 6 b. Within the program there shall be established a trust fund to
7 be known as the "Urban Housing Assistance Fund," into which may
8 be deposited:
- 9 (1) monies which may be available to the fund from any other
10 programs established for the purposes of housing rehabilitation,
11 other than monies from the "New Jersey Affordable Housing Trust
12 Fund," established pursuant to section 20 of P.L.1985, c.222
13 (C.52:27D-320);
- 14 (2) monies appropriated by the Legislature to the fund; and
- 15 (3) any other funds made available through State or federal
16 housing programs for the purposes of producing affordable housing,
17 other than monies from the "New Jersey Affordable Housing Trust
18 Fund," established pursuant to section 20 of P.L.1985, c.222
19 (C.52:27D-320).
- 20 c. The Commissioner of Community Affairs shall develop a
21 strategic five-year plan for the program aimed at developing
22 strategies to assist municipalities in creating rehabilitation programs
23 and other programs to produce safe, decent housing within the
24 municipality.
- 25 d. The commissioner may award a housing rehabilitation grant
26 to a municipality that qualifies for aid pursuant to P.L.1978, c.14
27 (C.52:27D-178 et seq.) and that has submitted a valid application to
28 the Department of Community Affairs which details the manner in
29 which the municipality will utilize funding in order to meet the
30 municipality's need to rehabilitate or create safe, decent, and
31 affordable housing.
- 32 e. The commissioner shall promulgate rules and regulations,
33 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
34 (C.52:14B-1 et seq.), to effectuate the purposes of P.L. , c.
35 (C.) (pending before the Legislature as this bill); provided that
36 the regulations shall permit a municipality broad discretion in
37 shaping its housing rehabilitation and construction program, but
38 shall not permit a municipality to provide assistance to any
39 household having an income greater than 120% of median
40 household income for the housing region. The department may
41 require a return of a grant upon its determination that a municipality
42 is not performing in accordance with its grant or with the
43 regulations.
- 44
- 45 14. (New section) a. There shall be appropriated annually from
46 the amounts collected by the State Treasurer from the imposition of
47 Statewide non-residential development fees and retained by the

1 State pursuant to P.L. , c. (C.) (pending before the
2 Legislature as this bill), the sum of \$20,000,000 for deposit into the
3 “Urban Housing Assistance Fund,” established pursuant to section
4 13 of P.L. , c. (C.) (pending before the Legislature as this
5 bill), to be used for the purposes authorized under that section. Any
6 surplus amounts remaining after crediting the “Urban Housing
7 Assistance Fund,” in the amount required under this section from
8 the collection of Statewide non-residential development fees, shall
9 be annually appropriated to the “New Jersey Affordable Housing
10 Trust Fund,” established pursuant to section 20 of P.L.1985, c.222
11 (C.52:27D-320).

12 b. In the event the full amount required to be transferred
13 pursuant to subsection a. of this section is not transferred in any
14 fiscal year, the Legislature shall subsequently appropriate in the
15 same fiscal year from the General Fund an amount equal to the
16 difference between the amount actually transferred and the amount
17 required to be transferred pursuant to subsection a. of this section,
18 so that the total funds made available to the “Urban Housing
19 Assistance Fund” annually shall be equal to the amount established
20 pursuant to subsection a. of this section.

21

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

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

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

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

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

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

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

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

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

17 i. The council, upon the application of a municipality and a
18 developer, may approve reduced affordable housing set-asides or
19 increased densities to ensure the economic feasibility of an
20 inclusionary development.

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

22

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

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

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

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

1 has been determined that the agreement provides a realistic
2 opportunity for low and moderate income housing within
3 convenient access to employment opportunities, and that the
4 agreement is consistent with sound, comprehensive regional
5 planning, the council shall approve the regional contribution
6 agreement by resolution. All determinations of a county planning
7 board or agency shall be in writing and shall be made within such
8 time limits as the council may prescribe, beyond which the council
9 shall make those determinations and no fee shall be paid to the
10 county planning board or agency pursuant to this subsection.

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

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

41 f. The council shall establish guidelines for the duration and
42 amount of contributions in regional contribution agreements. In
43 doing so, the council shall give substantial consideration to the
44 average of: (1) the median amount required to rehabilitate a low and
45 moderate income unit up to code enforcement standards; (2) the
46 average internal subsidization required for a developer to provide a
47 low income housing unit in an inclusionary development; (3) the

1 average internal subsidization required for a developer to provide a
2 moderate income housing unit in an inclusionary development.
3 Contributions may be prorated in municipal appropriations
4 occurring over a period not to exceed ten years and may include an
5 amount agreed upon to compensate or partially compensate the
6 receiving municipality for infrastructure or other costs generated to
7 the receiving municipality by the development. Appropriations
8 shall be made and paid directly to the receiving municipality or
9 municipalities or to the agency or other governmental entity
10 designated by the council, as the case may be.

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

19 No consideration shall be given to any regional contribution
20 agreement for which the council did not complete its review and
21 grant approval prior to the effective date of P.L. , c. (C.)
22 (pending before the Legislature as this bill). On or after the
23 effective date of P.L. , c. (C.) (pending before the
24 Legislature as this bill), no regional contribution agreement shall be
25 entered into by a municipality, or approved by the council or the
26 court.

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

28

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

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

39 There is established in the Department of Community Affairs a
40 separate trust fund, to be used for the exclusive purposes as
41 provided in this section, and which shall be known as the “New
42 Jersey Affordable Housing Trust Fund.” The fund shall be a non-
43 lapsing, revolving trust fund, and all monies deposited or received
44 for purposes of the fund shall be accounted for separately, by source
45 and amount, and remain in the fund until appropriated for such
46 purposes. The fund shall be the repository of all State funds
47 appropriated for affordable housing purposes, including the

1 proceeds from the receipts of the additional fee collected pursuant
2 to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49
3 (C.46:15-7), proceeds from available receipts of the Statewide non-
4 residential development fees collected pursuant to section 35 of
5 P.L. , c. (C.) (pending before the Legislature as this bill),
6 monies lapsing or reverting from municipal development trust
7 funds, or other monies as may be dedicated, earmarked, or
8 appropriated by the Legislature for the purposes of the fund. All
9 references in any law, order, rule, regulation, contract, loan,
10 document, or otherwise, to the “Neighborhood Preservation
11 Nonlapsing Revolving Fund” shall mean the “New Jersey
12 Affordable Housing Trust Fund.” The department shall be
13 permitted to utilize annually up to 7.5 percent of the monies
14 available in the fund for the payment of any necessary
15 administrative costs related to the administration of the “Fair
16 Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.), the State
17 Housing Commission, or any costs related to administration of
18 P.L. , c. (C.) (pending before the Legislature as this bill).

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

29 Of those monies deposited into the “New Jersey Affordable
30 Housing Trust Fund” that are derived from municipal development
31 fee trust funds, or from available collections of Statewide non-
32 residential development fees, a priority for funding shall be
33 established for projects in municipalities that have petitioned the
34 council for substantive certification.

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

38 b. The commissioner shall establish rules and regulations
39 governing the qualifications of applicants, the application
40 procedures, and the criteria for awarding grants and loans and the
41 standards for establishing the amount, terms and conditions of each
42 grant or loan.

43 c. **【During the first 12 months from the effective date of**
44 **P.L.1985, c.222 (C.52:27D-301 et al.) and for】** For any
45 **【additional】** period which the council may approve, the
46 commissioner may assist affordable housing programs which are
47 not located in municipalities whose housing elements have been

1 granted substantive certification or which are not in furtherance of a
2 regional contribution agreement; provided that the affordable
3 housing program will meet all or part of a municipal low and
4 moderate income housing obligation.

5 d. Amounts deposited in the [Neighborhood Preservation]
6 “New Jersey Affordable Housing Trust Fund” shall be targeted to
7 regions based on the region's percentage of the State's low and
8 moderate income housing need as determined by the council.
9 Amounts in the fund shall be applied for the following purposes in
10 designated neighborhoods;

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

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

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

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

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

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

35 (7) Other housing programs for low and moderate income
36 housing, including, without limitation, (a) infrastructure projects
37 directly facilitating the construction of low and moderate income
38 housing not to exceed a reasonable percentage of the construction
39 costs of the low and moderate income housing to be provided and
40 (b) alteration of dwelling units occupied or to be occupied by
41 households of low or moderate income and the common areas of the
42 premises in which they are located in order to make them accessible
43 to handicapped persons.

44 e. Any grant or loan agreement entered into pursuant to this
45 section shall incorporate contractual guarantees and procedures by
46 which the division will ensure that any unit of housing provided for
47 low and moderate income households shall continue to be occupied

1 by low and moderate income households for at least 20 years
2 following the award of the loan or grant, except that the division
3 may approve a guarantee for a period of less than 20 years where
4 necessary to ensure project feasibility.

5 f. Notwithstanding the provisions of any other law, rule or
6 regulation to the contrary, in making grants or loans under this
7 section, the department shall not require that tenants be certified as
8 low or moderate income or that contractual guarantees or deed
9 restrictions be in place to ensure continued low and moderate
10 income occupancy as a condition of providing housing assistance
11 from any program administered by the department, when that
12 assistance is provided for a project of moderate rehabilitation if the
13 project (1) contains 30 or fewer rental units and (2) is located in a
14 census tract in which the median household income is 60 percent or
15 less of the median income for the housing region in which the
16 census tract is located, as determined for a three person household
17 by the council in accordance with the latest federal decennial
18 census. A list of eligible census tracts shall be maintained by the
19 department and shall be adjusted upon publication of median
20 income figures by census tract after each federal decennial census.

21 g. In addition to other grants or loans awarded pursuant to this
22 section, and without regard to any limitations on such grants or
23 loans for any other purposes herein imposed, the commissioner
24 shall annually allocate such amounts as may be necessary in the
25 commissioner's discretion, and in accordance with section 3 of
26 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
27 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
28 287.1 et al.). Such rental assistance grants shall be deemed
29 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
30 301 et al.), in order to meet the housing needs of certain low income
31 households who may not be eligible to occupy other housing
32 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

33 h. The department and the State Treasurer shall submit the
34 "New Jersey Affordable Housing Trust Fund" for an audit annually
35 by the State Auditor or State Comptroller, at the discretion of the
36 Treasurer. In addition, the department shall prepare an annual
37 report for each fiscal year, and submit it by November 30th of each
38 year to the Governor and the Legislature, and the Joint Committee
39 on Housing Affordability, or its successor, and post the information
40 to its web site, of all activity of the fund, including details of the
41 grants and loans by number of units, number and income ranges of
42 recipients of grants or loans, location of the housing renovated or
43 constructed using monies from the fund, the number of units upon
44 which affordability controls were placed, and the length of those
45 controls. The report also shall include details pertaining to those
46 monies allocated from the fund for use by the State rental assistance

1 program pursuant to section 3 of P.L.2004, c.140 (C.52:27D-287.3)
2 and subsection g. of this section.
3 (cf: P.L.2004, c.140, s.4)
4

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

22 b. A developer of a project consisting of newly-constructed
23 residential units being financed in whole or in part with State funds,
24 including, but not limited to, transit villages designated by the
25 Department of Transportation, units constructed on State-owned
26 property, and urban transit hubs as defined pursuant to section 2 of
27 P.L.2007, c.346 (C.34:1B-208), shall be required to reserve at least
28 20 percent of the residential units constructed for occupancy by low
29 or moderate income households, as those terms are defined in
30 section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability
31 controls as required under the rules of the council, unless the
32 municipality in which the property is located has received
33 substantive certification from the council and such a reservation is
34 not required under the approved affordable housing plan, or the
35 municipality has been given a judgment of repose or a judgment of
36 compliance by the court, and such a reservation is not required
37 under the approved affordable housing plan.

38 c. (1) The Legislature recognizes that regional planning entities
39 are appropriately positioned to take a broader role in the planning
40 and provision of affordable housing based on regional planning
41 considerations. In recognition of the value of sound regional
42 planning, including the desire to foster economic growth, create a
43 variety and choice of housing near public transportation, protect
44 critical environmental resources, including farmland and open space
45 preservation, and maximize the use of existing infrastructure, there
46 is created a new program to foster regional planning entities.

1 (2) The regional planning entities identified in subsection a. of
2 this section shall identify and coordinate regional affordable
3 housing opportunities in cooperation with municipalities in areas
4 with convenient access to infrastructure, employment opportunities,
5 and public transportation. Coordination of affordable housing
6 opportunities may include methods to regionally provide housing in
7 line with regional concerns, such as transit needs or opportunities,
8 environmental concerns, or such other factors as the council may
9 permit; provided, however, that such provision by such a regional
10 entity may not result in more than a 50 percent change in the fair
11 share obligation of any municipality; provided that this limitation
12 shall not apply to affordable housing units directly attributable to
13 development by the New Jersey Sports and Exposition Authority
14 within the New Jersey Meadowlands District.

15 (3) In addition to the entities identified in subsection a. of this
16 section, the Casino Reinvestment Development Authority, in
17 conjunction with the Atlantic County Planning Board, shall identify
18 and coordinate regional affordable housing opportunities directly
19 attributable to Atlantic City casino development, which may be
20 provided anywhere within Atlantic County, subject to the
21 restrictions of paragraph (4) of this subsection.

22 (4) The coordination of affordable housing opportunities by
23 regional entities as identified in this section shall not include
24 activities which would provide housing units to be located in those
25 municipalities that are eligible to receive aid under the “Special
26 Municipal Aid Act,” P.L.1987, c.75 (C.52:27D-118.24 et seq.), or
27 are coextensive with a school district which qualified for
28 designation as a “special needs district” pursuant to the “Quality
29 Education Act of 1990,” P.L.1990, c.52 (C.18A:7D-1 et seq.), or at
30 any time in the last 10 years has been qualified to receive assistance
31 under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the
32 jurisdiction of any of the regional entities specified in subsection a.
33 of this section.

34
35 19. (New section) Notwithstanding any rules of the New Jersey
36 Housing and Mortgage Finance Agency to the contrary, the
37 allocation of low income tax credits shall be made by the agency to
38 the full extent such credits are permitted to be allocated under
39 federal law, including allocations of 4 percent or 9 percent federal
40 low income tax credits, and including allocations allowable for
41 partial credits. The affordable portion of any mixed income or
42 mixed use development that is part of a fair share housing plan
43 approved by the council, or a court-approved judgment of repose or
44 compliance, including, but not limited to, a development that has
45 received a density bonus, shall be permitted to receive allocations
46 of low income tax credits, provided that the applicant can
47 conclusively demonstrate that the market rate residential or

1 commercial units are unable to internally subsidize the affordable
2 units, and the affordable units are developed contemporaneously
3 with the commercial or market rate residential units.
4

5 20. (New section) The New Jersey Housing and Mortgage
6 Finance Agency shall maintain on its website and publish annually
7 a report concerning its activities during the year in promotion of
8 affordable housing, including any activity pursuant to section 21 of
9 P.L.1985, c.222 (C.52:27D-321). The report shall detail the number
10 and amounts of grants, loans, the average loan amount made, the
11 amounts of low income tax credits allocated by the agency, by
12 location, and the number of proposed units, and any additional
13 information which the agency deems informative to the public.
14

15 21. (New section) Sections 21 through 30 of P.L. , c.
16 (C.) (pending before the Legislature as this bill) shall be known
17 and may be cited as the “Strategic Housing Plan Act.”
18

19 22. (New section) The Legislature finds that:

20 a. High housing prices, escalating property taxes, increasing
21 municipal fees, rising energy costs, and the costs to implement
22 various State rules and regulations have put housing out of the
23 reach of many citizens;

24 b. The State of New Jersey suffers from a serious lack of
25 housing affordable to its low and moderate income households,
26 reflected in the large number of households living in overcrowded
27 and substandard housing conditions, or burdened by unreasonable
28 and excessive housing costs;

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

34 d. While new housing affordable to households at all income
35 levels is urgently needed, the need to preserve existing housing
36 owned or rented by low and moderate income households, much of
37 which is at risk of loss, is also urgent;

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

44 f. Although the State has devoted substantial public resources
45 for many years towards alleviating the housing needs of lower
46 income households, the effective use of those resources and their
47 impact on urban revitalization has been limited by inadequate

1 strategic planning in the allocation of public resources, as well as
2 inadequate coordination with and leveraging of private resources;

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

7 h. A strategic housing plan should provide for a means of
8 coordinating the activities of the many State departments and
9 agencies whose activities affect the ability of the State to meet its
10 housing needs;

11 i. The active involvement of individuals outside State
12 government with knowledge and experience in all phases of housing
13 preservation, development, and management, as well as planning
14 and urban revitalization, in the preparation and adoption of the plan,
15 and the monitoring of State activities pursuant to the plan, should
16 significantly enhance the value and effectiveness of the plan in
17 increasing the State's ability to meet its housing needs and foster
18 urban revitalization.

19

20 23. (New section) As used in sections 21 through 30 of P.L. ,
21 c. (C.) (pending before the Legislature as this bill):

22 "Agency" means the New Jersey Housing and Mortgage Finance
23 Agency.

24 "Commission" means the State Housing Commission established
25 pursuant to section 24 of P.L. , c. (C.) (pending before
26 the Legislature as this bill).

27 "Council" means the New Jersey Council on Affordable
28 Housing.

29 "Department" means the Department of Community Affairs.

30 "Middle income housing" means housing affordable according to
31 federal Department of Housing and Urban Development or other
32 recognized standards for home ownership and rental costs and
33 occupied or reserved for occupancy by households with a gross
34 household income equal to or more than 80% but less than 120% of
35 the median gross household income for households of the same size
36 within the housing region in which the housing is located.

37 "Plan" means the Annual Strategic Housing Plan prepared
38 pursuant to section 27 of P.L. , c. (C.) (pending before
39 the Legislature as this bill).

40 "Report" means the Annual Housing Performance Report
41 required to be prepared pursuant to section 29 of P.L. , c.
42 (C.) (pending before the Legislature as this bill).

43 "Senior Deputy Commissioner for Housing" means the position
44 established within the department which is charged with overseeing
45 all housing programs.

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

4
5 24. (New section) a. The State Housing Commission is created
6 and established in the Executive Branch of the State Government.
7 For the purposes of complying with the provisions of Article V,
8 Section IV, paragraph 1 of the New Jersey Constitution, the
9 commission is allocated within the Department of Community
10 Affairs, but notwithstanding this allocation, the commission shall be
11 independent of any supervision or control by the department except
12 as expressly authorized under P.L. , c. (C.) (pending
13 before the Legislature as this bill). The commission shall consist of
14 15 public members and shall also include the Commissioner of
15 Community Affairs, the Commissioner of Environmental
16 Protection, the Commissioner of Human Services, the
17 Commissioner of Transportation, the Commissioner of Education,
18 the Chairman of the State Planning Commission, and the State
19 Treasurer, who shall be nonvoting, ex-officio members of the
20 commission. The non-public members may each designate a
21 qualified employee to serve in their stead.

22 Thirteen of the public members shall be appointed by the
23 Governor with the advice and consent of the Senate as follows:
24 four members shall be individuals qualified by expertise in housing
25 preservation, development, and management and who do not hold
26 public office or public employment, and one of the four shall have
27 particular experience in addressing the needs of the homeless; two
28 of the four members shall be individuals qualified by expertise in
29 urban revitalization and redevelopment and who do not hold public
30 office, one of whom shall be a nonprofit builder, and another
31 member of the four shall be a for-profit developer; two members
32 shall be elected local officials at the time of initial appointment, one
33 of whom shall be an elected official in a municipality having a
34 population greater than 50,000; two members shall be individuals
35 who do not hold public office and are qualified by their position and
36 experience to represent the interests of low and moderate income
37 and middle income families and individuals; one member shall be
38 an individual who does not hold public office and who is qualified
39 by expertise in planning and land use, one member who does not
40 hold public office shall be a licensed real estate broker or a licensed
41 real estate salesperson, and one member who shall be an executive
42 director of a public housing authority within the State. Two
43 additional public members who do not hold public office or public
44 employment shall be appointed as follows: one member by the
45 Speaker of the General Assembly and one member by the President
46 of the Senate. The public members of the commission shall reflect
47 the diversity of housing sector professionals.

- 1 b. The Governor shall nominate 13 public members of the
2 commission, within 90 days following the effective date of P.L. ,
3 c. (C.) (pending before the Legislature as this bill), and shall
4 designate a public member to preside over the commission until a
5 chair and vice-chair are elected by the members of the commission.
6 The Speaker of the General Assembly and the President of the
7 Senate shall each appoint a member, respectively, within 90 days
8 following the effective date of P.L. , c. (C.) (pending before
9 the Legislature as this bill).
- 10 c. Each public member of the commission shall serve for a
11 term of three years, except that of the initial members so appointed:
12 three members appointed by the Governor shall serve for terms of
13 one year; one member appointed by the President of the Senate, one
14 member appointed by the Speaker of the General Assembly and five
15 members appointed by the Governor shall serve for terms of two
16 years; and the remaining appointees shall serve for terms of three
17 years. Public members shall be eligible for reappointment. They
18 shall serve until their successors are appointed and qualified, and
19 the term of the successor of any incumbent shall be calculated from
20 the expiration of the term of that incumbent. A vacancy occurring
21 other than by expiration of term shall be filled in the same manner
22 as the original appointment, but for the unexpired term only.
- 23 The members of the commission shall serve without
24 compensation, but shall be entitled to reimbursement for all
25 necessary expenses incurred in the performance of their duties.
26 Each member of the commission may be removed from office by
27 the Governor, for cause, upon notice and opportunity to be heard.
- 28 d. The commission shall elect annually a chair and vice-chair
29 from among the public members of the commission, who shall serve
30 for one year and until a successor is elected.
- 31 e. The executive secretary of the commission shall be the
32 Senior Deputy Commissioner for Housing. In the event the
33 commissioner designates the Senior Deputy Commissioner for
34 Housing to serve in his or her stead as a member of the commission,
35 the Senior Deputy Commissioner for Housing shall designate a
36 qualified employee of the department to serve as executive
37 secretary of the commission. Eight of the voting members of the
38 commission shall constitute a quorum and a vote of the majority of
39 the members present shall be necessary for any action taken by the
40 commission.
- 41 f. The duties of the commission shall be as follows:
- 42 (1) To provide guidance and direction with respect to the
43 policies and strategies to be pursued by State agencies with respect
44 to housing which are incorporated into the plan.
- 45 (2) To prepare and adopt the Annual Strategic Housing Plan as
46 set forth in section 28 of P.L. , c. (C.) (pending before the
47 Legislature as this bill).

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

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

8
9 25. (New section) The department shall provide such staff
10 services as may be needed for the commission to carry out its
11 responsibilities, including assembly of necessary information and
12 statistics, preparation of draft reports and analyses, and preparation
13 of the draft plan for review by the members of the commission,
14 acting under the supervision of the Senior Deputy Commissioner
15 for Housing.

16
17 26. (New section) a. An interdepartmental working group is
18 established for the purpose of supporting the activities of the
19 commission and its preparation of the draft plan.

20 b. The membership of the working group shall consist of the
21 commissioners or executive directors of the following departments
22 or agencies of State government: the Department of Community
23 Affairs, the Council on Affordable Housing, the New Jersey
24 Housing and Mortgage Finance Agency, the Department of Human
25 Services, the Department of Children and Families, the Department
26 of Health and Senior Services, the Public Advocate, the Department
27 of Education, the Department of Environmental Protection, the
28 Department of Transportation, the Office of Smart Growth, the
29 Department of the Treasury, the Highlands Council, the Pinelands
30 Commission, and the New Jersey Meadowlands Commission.

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

34 d. Each other commissioner or executive director may appoint
35 a representative to serve on the working group, who shall be a
36 senior employee of the department or agency with substantial
37 background, experience, or training relevant to the mission of the
38 working group.

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

42 f. Meetings of the working group shall be called by the chair as
43 needed during the course of preparation of the plan or the annual
44 performance report.

45 g. Each department or agency constituting the working group
46 shall make available such personnel and information as may be

1 necessary to enable the working group to perform its
2 responsibilities.

3

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

7 The objectives of the plan shall be as follows:

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

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

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

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

20 (5) To address the needs of communities that have been
21 historically underserved and segregated due to barriers and trends in
22 the housing market, and frame strategies to address the needs of
23 those communities.

24 (6) To facilitate the preservation of existing affordable rental
25 housing, including both subsidized and private market rental
26 housing.

27 (7) To further the preservation of low and moderate income and
28 middle income homeownership, including strategies to protect
29 lower income homeowners from the loss of their homes through
30 foreclosure.

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

33 (1) Households earning below 50% of the area median income,
34 with particular emphasis on households earning less than 30% of
35 the area median income;

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

37 (3) Low income persons with disabilities, including but not
38 limited to physical disability, developmental disability, mental
39 illness, co-occurring mental illness and substance abuse disorder,
40 and HIV/AIDS;

41 (4) Homeless persons and families, and persons deemed at high
42 risk of homelessness;

43 (5) Low and moderate income and middle income households
44 unable to find housing near work or transportation;

45 (6) Low and moderate income and middle income persons and
46 families in existing affordable housing that is at risk of becoming
47 unaffordable or being lost for any reason;

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

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

5 d. The plan shall provide for both annual and long-term targets
6 and priorities.

7
8 28. (New section) a. The commission shall complete a draft
9 plan on or before October 1 of each year. The commission shall
10 adopt the plan by a vote of a majority of its members and transmit
11 the plan to the Governor and the Joint Committee on Housing
12 Affordability, or its successor, on or before the next January 1. The
13 plan shall cover the fiscal year from July 1 to June 30th, beginning
14 with July 1 of the preceding year, except that the first annual plan
15 shall be transmitted on the first January 1 that falls after the annual
16 anniversary of the effective date of P.L. , c. (C.) (pending
17 before the Legislature as this bill).

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

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

29
30 29. (New section) a. On or before January 1 of each year,
31 beginning with the first January 1 that falls after the annual
32 anniversary of the effective date of P.L. , c. (C.) (pending
33 before the Legislature as this bill), the department, in consultation
34 with the commission and the working group, shall prepare and
35 submit to the Governor and the Joint Committee on Housing
36 Affordability, or its successor, an Annual Housing Performance
37 Report. Within 30 days following receipt of the Annual Housing
38 Performance Report, a hearing shall be held by the Joint Committee
39 on Housing Affordability, or its successor, to provide an
40 opportunity for public comment and discussion.

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

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

46 (a) Location;

47 (b) Affordability and income ranges of occupants;

- 1 (c) Target population; i.e., small family, large family, senior
2 citizens, people with disabilities;
- 3 (d) Type of housing, including ownership, rental, and other
4 forms of tenure; physical type such as single family or multifamily;
5 and whether the unit was newly constructed, rehabilitated, or
6 preserved; and
- 7 (e) The amount and source of all State-controlled funds used.
- 8 (2) All bond issuance activity by the agency, including interest
9 rates and the use of bond proceeds.
- 10 (3) All other activities, including financial support, technical
11 assistance, or other support conducted by the State to further
12 affordable housing.
- 13 (4) Municipal performance pursuant to the “Fair Housing Act,”
14 P.L.1985, c.222 (C.52:27D-301 et al.), including the number of
15 units listed for the distinct populations as enumerated in subsection
16 b. of section 27 of P.L. , c. (C.) (pending before the
17 Legislature as this bill), and the monies collected and the use of all
18 developer fee proceeds deposited into municipal housing trust
19 funds.
- 20 (5) For every report issued subsequent to the end of the first
21 year for which a plan has been prepared pursuant to sections 27 and
22 28 of P.L. , c. (C.) (pending before the Legislature as this
23 bill):
- 24 (a) A comparison between the goals, strategies, and priorities
25 set forth in the plan and the outcomes of programs and strategies
26 carried out by the State during the year, and a statement of the
27 reasons for any differences between the plan and the State’s
28 programs and strategies; and
- 29 (b) A description of the manner in which the State has addressed
30 the recommendations, if any, for procedural or substantive changes
31 to any State program or activity set forth in the plan.
- 32 (6) Statistical appendices providing information on individual
33 projects and funding allocations.
- 34 c. The report, appendices, and all supporting documentation
35 thereof shall be made available both in printed form from the
36 department and in downloadable form on the department’s web site.
37
- 38 30. (New section) a. The position of Senior Deputy
39 Commissioner for Housing is established within the department,
40 which position shall be filled by an individual with recognized and
41 extensive experience in housing policy, planning, and development
42 with particular emphasis on the planning and development of
43 housing affordable to low, moderate, and middle income
44 households.
- 45 b. The Senior Deputy Commissioner for Housing shall exercise
46 oversight over the housing programs of the department, including,
47 but not limited to, programs of the agency and the council.

1 c. The commissioner may appoint the Senior Deputy
2 Commissioner for Housing as his or her designee to chair the
3 agency, the commission, or the council, in which capacity or
4 capacities the Senior Deputy Commissioner for Housing will have
5 all of the powers vested in those positions by law.
6

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

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

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

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

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

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

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

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

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

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

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

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

11
12 32. (New section) Sections 32 through 38 of P.L. , c.
13 (C.) (pending before the Legislature as this bill) shall be known
14 and may be cited as the “Statewide Non-residential Development
15 Fee Act.”

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

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

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

36 d. Whereas pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),
37 organizations are directed to invest in the Casino Reinvestment
38 Development Authority to ensure that the development of housing
39 for families of low and moderate income shall be provided. The
40 Casino Reinvestment Development Authority, in consultation with
41 the council, shall work to effectuate the purpose and intent of P.L.
42 1985, c. 222 (C. 52:27D-301 et al.).

43
44 34. (New section) As used in sections 32 through 38 of P.L. ,
45 c. (C.) (pending before the legislature as this bill).

46 “Construction” means new construction and additions, but does
47 not include alterations, reconstruction, renovations, and repairs as

1 those terms are defined under the State Uniform Construction Code
2 promulgated pursuant to the "State Uniform Construction Code
3 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

4 "Commissioner" means the Commissioner of Community
5 Affairs.

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

8 "Developer" means the legal or beneficial owner or owners of a
9 lot or of any land proposed to be included in a proposed
10 development, including the holder of an option or contract to
11 purchase, or other person having an enforceable proprietary interest
12 in such land.

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

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

32 "Non-residential development" means: (1) any building or
33 structure, or portion thereof, including but not limited to any
34 appurtenant improvements, which is designated to a use group other
35 than a residential use group according to the State Uniform
36 Construction Code promulgated to effectuate the "State Uniform
37 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),
38 including any subsequent amendments or revisions thereto; (2)
39 hotels, motels, vacation timeshares, and child-care facilities, and (3)
40 the entirety of all continuing care facilities within a continuing care
41 retirement community which is subject to the "Continuing Care
42 Retirement Community Regulation and Financial Disclosure Act,"
43 P.L.1986, c.103 (C.52:27D-330 et seq.).

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

1 “Relating to the provision of housing” shall be liberally
2 construed to include the construction, maintenance, or operations of
3 housing, including but not limited to the provision of services to
4 such housing and the funding of any of the above.

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

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

11

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

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

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

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

32 (1) parking lots and parking structures, regardless of whether the
33 parking lot or parking structure is constructed in conjunction with a
34 non-residential development, such as an office building, or whether
35 the parking lot is developed as an independent non-residential
36 development;

37 (2) any non-residential development which is an amenity to be
38 made available to the public, including, but not limited to,
39 recreational facilities, community centers, and senior centers, which
40 are developed in conjunction with or funded by a non-residential
41 developer;

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

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

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

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

8 A developer of a non-residential development exempted from the
9 non-residential development fee pursuant to this section shall be
10 subject to it at such time the basis for the exemption set forth in this
11 subsection no longer applies, and shall make the payment of the
12 non-residential development fee, in that event, within three years
13 after that event or after the issuance of the final certificate of
14 occupancy of the non-residential development whichever is later.

15 For purposes of this subsection, “recreational facilities and
16 community center” means any indoor or outdoor buildings, spaces,
17 structures, or improvements intended for active or passive
18 recreation, including but not limited to ball fields, meeting halls,
19 and classrooms, accommodating either organized or informal
20 activity; and “senior center” means any recreational facility or
21 community center with activities and services oriented towards
22 serving senior citizens.

23 If a property which was exempted from the collection of a non-
24 residential development fee thereafter ceases to be exempt from
25 property taxation, the owner of the property shall remit the fees
26 required pursuant to this section within 45 days of the termination
27 of the property tax exemption. Unpaid non-residential development
28 fees under these circumstances may be enforceable by the
29 municipality as a lien against the real property of the owner.

30 c. (1) Unless authorized to pay directly to the municipality in
31 which the non-residential construction is occurring in accordance
32 with paragraph (2) of this subsection, developers shall pay non-
33 residential development fees imposed pursuant to P.L. , c.
34 (C.) (pending before the Legislature as this bill) to the
35 Treasurer, in accordance with subsection h. of this section in a
36 manner and on such forms as required by the Treasurer, provided
37 that a certified proof concerning the payment shall be furnished by
38 the Treasurer, to the municipality.

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

45 d. The payment of non-residential development fees required
46 pursuant to sections 32 through 38 of P.L. , c. (C.) (pending
47 before the Legislature as this bill) shall be made prior to the

1 issuance of a certificate of occupancy for such development. A
2 final certificate of occupancy shall not be issued for any non-
3 residential development until such time as the fee imposed pursuant
4 to this section has been paid by the developer. A non-residential
5 developer may deposit with the appropriate entity the development
6 fees as calculated by the municipality under protest, and the local
7 code enforcement official shall thereafter issue the certificate of
8 occupancy provided that the construction is otherwise eligible for a
9 certificate of occupancy.

10 e. The construction official responsible for the issuance of a
11 building permit shall notify the local tax assessor of the issuance of
12 the first building permit for a development which may be subject to
13 a non-residential development fee. Within 90 days of receipt of that
14 notice, the municipal tax assessor, based on the plans filed, shall
15 provide an estimate of the equalized assessed value of the non-
16 residential development. The construction official responsible for
17 the issuance of a final certificate of occupancy shall notify the local
18 assessor of any and all requests for the scheduling of a final
19 inspection on property which may be subject to a non-residential
20 development fee. Within 10 business days of a request for the
21 scheduling of a final inspection, the municipal assessor shall
22 confirm or modify the previously estimated equalized assessed
23 value of the improvements of the non-residential development in
24 accordance with the regulations adopted by the Treasurer pursuant
25 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential
26 development fee pursuant to sections 32 through 38 of P.L. , c.
27 (C.) (pending before the Legislature as this bill); and thereafter
28 notify the developer of the amount of the non-residential
29 development fee. Should the municipality fail to determine or
30 notify the developer of the amount of the non-residential
31 development fee within 10 business days of the request for final
32 inspection, the developer may estimate the amount due and pay that
33 estimated amount consistent with the dispute process set forth in
34 subsection b. of section 37 of P.L. , c. (C.) (pending before
35 the Legislature as this bill). Upon tender of the estimated non-
36 residential development fee, provided the developer is in full
37 compliance with all other applicable laws, the municipality shall
38 issue a final certificate of occupancy for the subject property.
39 Failure of the municipality to comply with the timeframes or
40 procedures set forth in this subsection may subject it to penalties to
41 be imposed by the commissioner; any penalties so imposed shall be
42 deposited into the “New Jersey Affordable Housing Trust Fund”
43 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
44 320).

45 A developer of a mixed use development shall be required to pay
46 the Statewide non-residential development fee relating to the non-
47 residential development component of a mixed use development

1 subject to the provisions of P.L. , c. (C.) (pending before
2 the Legislature as this bill).

3 Non-residential construction which is connected with the
4 relocation of the facilities of a for-profit hospital shall be subject to
5 the fee authorized to be imposed under this section to the extent of
6 the increase in equalized assessed valuation in accordance with
7 regulations to be promulgated by the Director of the Division of
8 Taxation, Department of the Treasury.

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

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

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

30
31 36. (New section) a. The commissioner, in consultation with
32 the council, shall promulgate, in accordance with the provisions of
33 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
34 seq.), such regulations as are necessary for the prompt and effective
35 implementation of the provisions and purposes of P.L. , c.
36 (C.) (pending before the Legislature as this bill), including, but
37 not limited to, provisions for the payment of any necessary
38 administrative costs related to the assessment of properties and
39 collection of any development fees by a municipality.

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

1 enforcement of a municipal affordable housing trust fund and
2 spending plan.

3

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

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

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

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

38 c. Whenever non-residential development is situated on real
39 property that has been previously developed with a building,
40 structure, or other improvement, the non-residential development
41 fee shall be equal to two and a half (2.5) percent of the equalized
42 assessed value of the land and improvements on the property where
43 the non-residential development is situated at the time the final
44 certificate of occupancy is issued, less the equalized assessed value
45 of the land and improvements on the property where the non-
46 residential development is situated, as determined by the tax
47 assessor of the municipality at the time the developer or owner,

1 including any previous owners, first sought approval for a
2 construction permit, including, but not limited to, demolition
3 permits, pursuant to the State Uniform Construction Code, or
4 approval under the "Municipal Land Use Law," P.L.1975, c.291
5 (C.40:55D-1 et seq.). If the calculation required under this section
6 results in a negative number, the non-residential development fee
7 shall be zero.

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

27 d. Unless otherwise provided for by law, no municipality shall
28 be required to return a financial or any other contribution made by
29 or committed to be made by the developer of a non-residential
30 development prior to the enactment of P.L. , c. (C.)
31 (pending before the Legislature as this bill) relating to the provision
32 of housing affordable to low and moderate income households,
33 provided that the developer does not obtain an amended, modified,
34 or new municipal land use approval with a substantial change in the
35 non-residential development. If the developer obtains an amended,
36 modified, or new land use approval for non-residential
37 development, the municipality, person, or entity shall be required to
38 return to the developer any funds or other contribution provided by
39 the developer for the provision of housing affordable to low and
40 moderate income households and the developer shall not be entitled
41 to a reduction in the affordable housing development fee based
42 upon that contribution.

43 e. The provisions of sections 32 through 38 of P.L. , c.
44 (C.) (pending before the Legislature as this bill) shall not be
45 construed in any manner as affecting the method or timing of
46 assessing real property for property taxation purposes. The

1 payment of a non-residential development fee shall not increase the
2 equalized assessed value of any property.

3
4 38. a. (New section) Except as expressly provided in P.L. ,
5 c. (C.) (pending before the Legislature as this bill) including
6 subsection b. of this section, any provision of a local ordinance
7 which imposes a fee for the development of affordable housing
8 upon a developer of non-residential property, including any and all
9 development fee ordinances adopted in accordance with any
10 regulations of the Council on Affordable Housing, or any provision
11 of an ordinance which imposes an obligation relating to the
12 provision of housing affordable to low and moderate income
13 households, or payment in-lieu of building as a condition of non-
14 residential development, shall be void and of no effect. A provision
15 of an ordinance which imposes a development fee which is not
16 prohibited by any provision of P.L. , c. (C.) (pending before
17 the Legislature as this bill) shall not be invalidated by this section.

18 b. No affordable housing obligation shall be imposed
19 concerning a mixed use development that would result in an
20 affordable housing obligation greater than that which would have
21 been imposed if the residential portion of the mixed use
22 development had been developed independently of the non-
23 residential portion of the mixed use development.

24 c. Whenever the developer of a non-residential development
25 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or
26 committed itself to make a financial or other contribution relating to
27 the provision of housing affordable to low and moderate income
28 households, the non-residential development fee authorized
29 pursuant to P.L. , c. (C.) (pending before the Legislature as
30 this bill) shall be satisfied through the investment obligations made
31 pursuant to P.L.1977, c.110 (C.5:12-1 et seq.).

32
33 39. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended
34 to read as follows:

35 1. When computing a municipal adjustment regarding available
36 land resources as part of the determination of a municipality's fair
37 share of affordable housing, the Council on Affordable Housing
38 shall exclude from designating as vacant land:

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

45 (b) any land listed on a master plan of a municipality as being
46 dedicated, by easement or otherwise, for purposes of conservation,
47 park lands or open space and which is owned , leased, licensed, or

1 in any manner operated by a county, municipality or tax-exempt,
2 nonprofit organization including a local board of education , or by
3 more than one municipality by joint agreement pursuant to
4 P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity
5 maintains such ownership, lease, license, or operational control of
6 such land ; **[and]**

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

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

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

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

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

20 No municipality shall be required to utilize for affordable
21 housing purposes land that is excluded from being designated as
22 vacant land.

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

24

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

28

29 41. This act shall take effect immediately.