

SENATE, No. 2485

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED JANUARY 13, 2009

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Co-Sponsored by:

Senators Whelan, Sarlo, Madden and Oroho

SYNOPSIS

Modifies laws concerning affordable housing and makes an appropriation to the Affordable Housing Trust Fund.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/27/2009)

1 AN ACT concerning affordable housing, supplementing and
2 amending various parts of the statutory law and making an
3 appropriation.

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

7
8 1. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to
9 read as follows

10 33. The Legislature finds and declares:

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

16 b. New Jersey's land resources are becoming more scarce,
17 while its redevelopment needs are increasing. In order to balance
18 the needs of developing and redeveloping communities, a
19 reasonable method of providing for the housing needs of low and
20 moderate income and middle income households, without
21 mandating the inclusion of housing in every non-residential project,
22 must be established.

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

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

36 e. During periods of economic downturn, development fees
37 exacerbate the contraction of the property development component
38 of the economy and, consequently, of related trade and industry
39 activity by imposing additional costs. Under these conditions, an
40 immediate and vigorous response is necessary to remove any
41 roadblocks to continued development activity.

42 f. State policy that relies on a fee structure may raise insufficient
43 revenues to subsidize affordable housing units and prove State
44 programs that require a municipality to impose onerous fees and
45 charges on developers in order to be deemed to have met a fair

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 share housing obligation must be balanced with the negative
2 economic impacts of such municipal regulation. It is undisputable
3 that the charging of fees high levels results in great disincentives for
4 commerce to locate within the State, region or locality, and for non-
5 residential and residential development to occur, and these directly
6 increase the overall costs of housing for everyone, and impede the
7 constitutional obligation provide for a realistic opportunity for
8 housing for families at all income levels.

9 g. It is declared to be in the public interest to provide a flexible
10 system that allows individual municipalities and individual
11 developments to be more responsive to market conditions, which is
12 not just economic, but also responsive to the individual consumer
13 who wants to live in a New Jersey community.

14 (cf: P.L.2008, c.46, s.33)

15

16 2. Section 3 of P.L.1985, c.222 (C.52:27D-303) is amended to
17 read as follows:

18 3. The Legislature declares that the statutory scheme set forth in
19 this act is in the public interest in that it comprehends a low and
20 moderate income housing planning and financing mechanism in
21 accordance with regional considerations and sound planning
22 concepts which satisfies the constitutional obligation enunciated by
23 the Supreme Court. The Legislature declares that the State's
24 preference for the resolution of existing and future disputes
25 involving exclusionary zoning is the mediation and review process
26 set forth in this act and not litigation, and that it is the intention of
27 this act to provide various alternatives to the use of the builder's
28 remedy as a method of achieving fair share housing.

29 State policy should recognize the need to treat local officials as
30 partners in providing affordable housing.

31 It is important to recognize that upheaval in the national housing
32 market may fundamentally alter the financing and economics of
33 constructing market rate housing during subsequent periods. It is
34 necessary, particularly during periods of economic contraction, to
35 efficiently take advantage of available sources of financing from the
36 federal government and to coordinate the utilization of resources
37 available from the State for affordable housing purposes.

38 It is declared to be in the public interest to provide a flexible
39 system that allows individual municipalities and individual
40 developments to be more responsive to market conditions in general
41 and also responsive to the individual consumer who wants to live in
42 a New Jersey community.

43 (cf: P.L.1985, c.222, s.3)

44

45 3. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to
46 read as follows:

47 34. As used in sections 32 through 38 of P.L.2008, c.46
48 (C.40:55D-8.1 through C.40:55D-8.7):

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

6 "Commissioner" means the Commissioner of Community
7 Affairs.

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

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

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

20 "Inherently beneficial use" means any use that by its essential
21 nature primarily serves the public good and promotes the general
22 welfare at a particular site. Such uses include, but are not limited
23 to, educational facilities, hospitals, nursing homes, public utility
24 facilities and infrastructure, and wind, solar or photovoltaic energy
25 facilities.

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

40 "Non-residential development" means: (1) any building or
41 structure, or portion thereof, including but not limited to any
42 appurtenant improvements, which is designated to a use group other
43 than a residential use group according to the State Uniform
44 Construction Code promulgated to effectuate the "State Uniform
45 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),
46 including any subsequent amendments or revisions thereto; (2)
47 hotels, motels, vacation timeshares, and child-care facilities; and (3)
48 the entirety of all continuing care facilities within a continuing care

1 retirement community which is subject to the "Continuing Care
2 Retirement Community Regulation and Financial Disclosure Act,"
3 P.L.1986, c.103 (C.52:27D-330 et seq.).

4 "Non-residential development fee" means the fee authorized to
5 be imposed pursuant to sections 32 through 38 of P.L.2008, c.46
6 (C.40:55D-8.1 through C.40:55D-8.7).

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

11 "Spending plan" means a method of allocating funds collected
12 and to be collected pursuant to an approved municipal development
13 fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)
14 for the purpose of meeting the housing needs of low and moderate
15 income individuals.

16 "Treasurer" means the Treasurer of the State of New Jersey.
17 (cf: P.L.2008, c.46, s.34)

18

19 4. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended to
20 read as follows:

21 35. a. Beginning on the effective date of P.L.2008, c.46
22 (C.52:27D-329.1 et al.), a fee is imposed on all construction
23 resulting in non-residential development, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

41 c. (1) Unless authorized to pay directly to the municipality in
42 which the non-residential construction is occurring in accordance
43 with paragraph (2) of this subsection, developers shall pay non-
44 residential development fees imposed pursuant to P.L.2008, c.46
45 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with
46 subsection g. of this section in a manner and on such forms as
47 required by the Treasurer, provided that a certified proof concerning

1 the payment shall be furnished by the Treasurer, to the
2 municipality.

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

9 d. The payment of non-residential development fees required
10 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1
11 through C.40:55D-8.7) shall be made prior to the issuance of a
12 certificate of occupancy for such development. A final certificate
13 of occupancy shall not be issued for any non-residential
14 development until such time as the fee imposed pursuant to this
15 section has been paid by the developer. A non-residential developer
16 may deposit with the appropriate entity the development fees as
17 calculated by the municipality under protest, and the local code
18 enforcement official shall thereafter issue the certificate of
19 occupancy provided that the construction is otherwise eligible for a
20 certificate of occupancy.

21 e. The construction official responsible for the issuance of a
22 building permit shall notify the local tax assessor of the issuance of
23 the first building permit for a development which may be subject to
24 a non-residential development fee. Within 90 days of receipt of that
25 notice, the municipal tax assessor, based on the plans filed, shall
26 provide an estimate of the equalized assessed value of the non-
27 residential development. The construction official responsible for
28 the issuance of a final certificate of occupancy shall notify the local
29 assessor of any and all requests for the scheduling of a final
30 inspection on property which may be subject to a non-residential
31 development fee. Within 10 business days of a request for the
32 scheduling of a final inspection, the municipal assessor shall
33 confirm or modify the previously estimated equalized assessed
34 value of the improvements of the non-residential development in
35 accordance with the regulations adopted by the Treasurer pursuant
36 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential
37 development fee pursuant to sections 32 through 38 of P.L.2008,
38 c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the
39 developer of the amount of the non-residential development fee.
40 Should the municipality fail to determine or notify the developer of
41 the amount of the non-residential development fee within 10
42 business days of the request for final inspection, the developer may
43 estimate the amount due and pay that estimated amount consistent
44 with the dispute process set forth in subsection b. of section 37 of
45 P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-
46 residential development fee, provided the developer is in full
47 compliance with all other applicable laws, the municipality shall
48 issue a final certificate of occupancy for the subject property.

1 Failure of the municipality to comply with the timeframes or
2 procedures set forth in this subsection may subject it to penalties to
3 be imposed by the commissioner; any penalties so imposed shall be
4 deposited into the "New Jersey Affordable Housing Trust Fund"
5 established pursuant to section 20 of P.L.1985, c.222 as amended
6 by section 17 of P.L.2008, c.46 (C.52:27D-320).

7 A developer of a mixed use development shall be required to pay
8 the Statewide non-residential development fee relating to the non-
9 residential development component of a mixed use development
10 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).
11 Non-residential construction which is connected with the relocation
12 of the facilities of a for-profit hospital shall be subject to the fee
13 authorized to be imposed under this section to the extent of the
14 increase in equalized assessed valuation in accordance with
15 regulations to be promulgated by the Director of the Division of
16 Taxation, Department of the Treasury.

17 f. Any municipality that is not in compliance with the
18 requirements established pursuant to sections 32 through 38 of
19 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or
20 regulations of the council adopted thereto, may be subject to
21 forfeiture of any or all funds remaining within its municipal
22 development trust fund. Any funds so forfeited shall be deposited
23 into the New Jersey Affordable Housing Trust Fund established
24 pursuant to section 20 of P.L.1985, c.222 as amended by section 17
25 of P.L.2008, c.46 (C.52:27D-320).

26 g. The Treasurer shall credit to the "Urban Housing Assistance
27 Fund," established pursuant to section 13 of P.L.2008, c.46
28 (C.52:27D-329.7) annually from the receipts of the fees authorized
29 to be imposed pursuant to this section an amount equal to \$20
30 million; all receipts in excess of this amount shall be deposited into
31 the "New Jersey Affordable Housing Trust Fund," established
32 pursuant to section 20 of P.L.1985, c.222 as amended by section 17
33 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of
34 that fund.

35 The Treasurer shall adopt such regulations as necessary to
36 effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1
37 through C.40:55D-8.7), in accordance with the "Administrative
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
39 (cf: P.L.2008, c.46, s.35)

40

41 5. Section 37 of P.L.2008, c.46 (C.40:55D-8.6) is amended to
42 read as follows:

43 37. a. The provisions of sections 32 through 38 of P.L.2008,
44 c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall not apply to:

45 (1) Non-residential property for which **[a certificate of**
46 **occupancy has been issued]** a site plan has received either
47 preliminary approval, pursuant to section 34 of P.L.1975, c.291
48 (C.40:55D-46), or final approval, pursuant to section 38 of

1 P.L.1975, c.291 (C.40:55D-50) prior to the effective date of
2 P.L.2008, c.46 (C.52:27D-329.1 et al.); or

3 (2) A non-residential planned development which has received
4 approval of a general development plan pursuant to section 5 of
5 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
6 for which the developer has entered into a developer's agreement
7 pursuant to a development approval granted pursuant to P.L.1975,
8 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
9 into a redevelopment agreement pursuant to P.L.1992, c.79
10 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46
11 (C.52:27D-329.1 et al.); provided, however, that the general
12 development plan, developer's agreement, redevelopment
13 agreement, or any development agreement pursuant to the
14 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.)
15 provides that the developer or redeveloper pay a fee for affordable
16 housing of at least one percent of the equalized assessed value of
17 the improvements which are the subject of the development plan,
18 developer's agreement, or redevelopment agreement.

19 b. A developer may challenge non-residential development fees
20 imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by
21 filing a challenge with the Director of the Division of Taxation.
22 Pending a review and determination by the director, which shall be
23 made within 45 days of receipt of the challenge, collected fees shall
24 be placed in an interest bearing escrow account by the municipality
25 or by the State, as the case may be. Appeals from a determination
26 of the director may be made to the tax court in accordance with the
27 provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et
28 seq., within 90 days after the date of such determination. Interest
29 earned on amounts escrowed shall be credited to the prevailing
30 party.

31 c. Whenever non-residential development is situated on real
32 property that has been previously developed with a building,
33 structure, or other improvement, the non-residential development
34 fee shall be equal to two and a half (2.5) percent of the equalized
35 assessed value of the land and improvements on the property where
36 the non-residential development is situated at the time the final
37 certificate of occupancy is issued, less the equalized assessed value
38 of the land and improvements on the property where the non-
39 residential development is situated, as determined by the tax
40 assessor of the municipality at the time the developer or owner,
41 including any previous owners, first sought approval for a
42 construction permit, including, but not limited to, demolition
43 permits, pursuant to the State Uniform Construction Code, or
44 approval under the "Municipal Land Use Law," P.L.1975, c.291
45 (C.40:55D-1 et seq.). If the calculation required under this section
46 results in a negative number, the non-residential development fee
47 shall be zero.

1 Whenever the developer of a non-residential development has
2 made or committed itself to make a financial or other contribution
3 relating to the provision of housing affordable to low and moderate
4 income households prior to the enactment of P.L.2008, c.46
5 (C.52:27D-329.1 et al.), the non-residential development fee shall
6 be reduced by the amount of the financial contribution and the fair
7 market value of any other contribution made by or committed to be
8 made by the developer. For purposes of this section, a developer is
9 considered to have made or committed itself to make a financial or
10 other contribution, if and only if: (1) the contribution has been
11 transferred, including but not limited to when the funds have
12 already been received by the municipality; (2) the developer has
13 obligated itself to make a contribution as set forth in a written
14 agreement with the municipality, such as a developer's agreement;
15 or (3) the developer's obligation to make a contribution is set forth
16 as a condition in a land use approval issued by a municipal land use
17 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
18 (C.40:55D-1 et seq.).

19 d. Unless otherwise provided for by law, no municipality shall
20 be required to return a financial or any other contribution made by
21 or committed to be made by the developer of a non-residential
22 development prior to the enactment of P.L.2008, c.46 (C.52:27D-
23 329.1 et al.) relating to the provision of housing affordable to low
24 and moderate income households, provided that the developer does
25 not obtain an amended, modified, or new municipal land use
26 approval with a substantial change in the non-residential
27 development. If the developer obtains an amended, modified, or
28 new land use approval for non-residential development, the
29 municipality, person, or entity shall be required to return to the
30 developer any funds or other contribution provided by the developer
31 for the provision of housing affordable to low and moderate income
32 households and the developer shall not be entitled to a reduction in
33 the affordable housing development fee based upon that
34 contribution.

35 e. The provisions of sections 32 through 38 of P.L.2008, c.46
36 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any
37 manner as affecting the method or timing of assessing real property
38 for property taxation purposes. The payment of a non-residential
39 development fee shall not increase the equalized assessed value of
40 any property.

41 (cf: P.L.2008, c.46, s.37)

42

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

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

- 1 a. Determine housing regions of the State;
- 2 b. Estimate the present and prospective need for low and
3 moderate income housing at the State and regional levels;
- 4 c. Adopt criteria and guidelines for:

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

8 Notwithstanding any rule or regulation to the contrary, any
9 development project constructed under the authority of the New
10 Jersey Sports and Exposition Authority established pursuant to
11 section 4 of P.L.1971, c.137 (C.5:10-4) shall not create any
12 additional affordable fair share housing obligation for a
13 municipality.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 e. In its discretion, place a limit, based on a percentage of
30 existing housing stock in a municipality and any other criteria
31 including employment opportunities which the council deems
32 appropriate, upon the aggregate number of units which may be
33 allocated to a municipality as its fair share of the region's present
34 and prospective need for low and moderate income housing. No
35 municipality shall be required to address a fair share of housing
36 units affordable to households with a gross household income of
37 less than 80% of the median gross household income beyond 1,000
38 units within ten years from the grant of substantive certification,
39 unless it is demonstrated, following objection by an interested party
40 and an evidentiary hearing, based upon the facts and circumstances
41 of the affected municipality that it is likely that the municipality
42 through its zoning powers could create a realistic opportunity for
43 more than 1,000 low and moderate income units within that ten-
44 year period. For the purposes of this section, the facts and
45 circumstances which shall determine whether a municipality's fair
46 share shall exceed 1,000 units, as provided above, shall be a finding
47 that the municipality has issued more than 5,000 certificates of
48 occupancy for residential units in the ten-year period preceding the

1 petition for substantive certification in connection with which the
2 objection was filed.

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

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

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

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

42 (cf: P.L.2008, c.46, s.6)

43

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

46 11. a. In adopting its housing element, the municipality may
47 provide for its fair share of low and moderate income housing by
48 means of any technique or combination of techniques which provide

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

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

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

19 (3) Determination of measures that the municipality will take to
20 assure that low and moderate income units remain affordable to low
21 and moderate income households for an appropriate period of not
22 less than six years;

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

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

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

31 (7) Utilization of funds obtained from any State or federal
32 subsidy toward the construction of low and moderate income
33 housing;

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

36 (9) The purchase of privately owned real property used for
37 residential purposes at the value of all liens secured by the property;
38 excluding any tax liens, notwithstanding that the total amount of
39 debt secured by liens exceeds the appraised value of the property,
40 pursuant to regulations promulgated by the Commissioner of
41 Community Affairs pursuant to subsection b. of section 41 of
42 P.L.2000, c.126 (C.52:27D-311.2).

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

45 c. (Deleted by amendment, P.L.2008, c.46)

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

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

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

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

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

28 i. The council, upon the application of a municipality and a
29 developer, may approve reduced affordable housing set-asides or
30 increased densities to ensure the economic feasibility of an
31 inclusionary development.

32 j. When a municipality's housing element reserves for occupancy
33 a maximum of 25 percent of the units affordable to persons of low
34 and moderate income who live or work in the municipality, or
35 within a 10 mile radius of the municipality, and for which adequate
36 measures to retain such affordability pursuant to paragraph (3) of
37 subsection a. of this section are included in the housing element,
38 those housing units shall be fully credited against a municipality's
39 fair share of the regional housing need. Affirmative regional
40 marketing of any unit of affordable housing that meets the criteria
41 of this section shall not be required in order for the unit to be
42 credited toward the fair share obligation pursuant to P.L.1985,
43 c.222. (C.52:27D-301 et al.)
44 (cf: P.L.2008, c.46, s.15)

45
46 8. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended to
47 read as follows;

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

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

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

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

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

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

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

44 (b) Affordability assistance to households earning 30 percent or
45 less of median income may include buying down the cost of low
46 income units in a municipal fair share plan to make them affordable
47 to households earning 30 percent or less of median income. The use
48 of development fees in this manner shall not entitle a municipality

1 to bonus credits except as may be provided by the rules of the
2 council.

3 (4) A municipality may contract with a private or public entity
4 to administer any part of its housing element and fair share plan,
5 including the requirement for affordability assistance, or any
6 program or activity for which the municipality expends
7 development fee proceeds, in accordance with rules of the council.

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

11 d. The council shall establish a time by which all development
12 fees collected within a calendar year shall be expended; provided,
13 however, that all fees shall be committed for expenditure within
14 four years from the date of collection, provided further that the
15 council in its discretion may extend this deadline for a municipality
16 that submits sufficient proof of building or other permits, or other
17 efforts concerning land acquisition or project development. A
18 municipality that fails to commit to expend the balance required in
19 the development fee trust fund by the time set forth in this section
20 shall be required by the council to transfer the remaining unspent
21 balance at the end of the four-year period to the "New Jersey
22 Affordable Housing Trust Fund," established pursuant to section 20
23 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46
24 (C.52:27D-329.1 et al.), to be used in the housing region of the
25 transferring municipality for the authorized purposes of that fund.

26 e. Notwithstanding any provision of this section, or regulations
27 of the council, a municipality shall not collect a development fee
28 from a developer whenever that developer is providing for the
29 construction of affordable units, either on-site or elsewhere within
30 the municipality.

31 This section shall not apply to the collection of a Statewide
32 development fee imposed upon non-residential development
33 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1
34 et seq.) by the State Treasurer, when such collection is not
35 authorized to be retained by a municipality.

36 (cf: P.L.2008, c.46, s.8)

37

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

40 18. a. Notwithstanding any rules of the council to the contrary,
41 for developments consisting of newly-constructed residential units
42 located, or to be located, within the jurisdiction of any regional
43 planning entity required to adopt a master plan or comprehensive
44 management plan pursuant to statutory law, including the New
45 Jersey Meadowlands Commission pursuant to subsection (i) of
46 section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission
47 pursuant to section 7 of the "Pinelands Protection Act," P.L.1979,
48 c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization

1 Planning Authority pursuant to section 5 of P.L.2006, c.16
2 (C.52:27I-5), or its successor, and the Highlands Water Protection
3 and Planning Council pursuant to section 11 of P.L.2004, c.120
4 (C.13:20-11), but excluding joint planning boards formed pursuant
5 to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be
6 required to be reserved for occupancy by low or moderate income
7 households at least 20 percent of the residential units constructed, to
8 the extent this is economically feasible.

9 b. A developer of a project consisting of newly-constructed
10 residential units being financed in whole or in part with State funds,
11 including, but not limited to, transit villages designated by the
12 Department of Transportation, units constructed on State-owned
13 property, and urban transit hubs as defined pursuant to section 2 of
14 P.L.2007, c.346 (C.34:1B-208), shall be required to reserve at least
15 20 percent of the residential units constructed for occupancy by low
16 or moderate income households, as those terms are defined in
17 section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability
18 controls as required under the rules of the council, unless the
19 municipality in which the property is located has received
20 substantive certification from the council and such a reservation is
21 not required under the approved affordable housing plan, or the
22 municipality has been given a judgment of repose or a judgment of
23 compliance by the court, and such a reservation is not required
24 under the approved affordable housing plan.

25 c. (1) The Legislature recognizes that regional planning entities
26 are appropriately positioned to take a broader role in the planning
27 and provision of affordable housing based on regional planning
28 considerations. In recognition of the value of sound regional
29 planning, including the desire to foster economic growth, create a
30 variety and choice of housing near public transportation, protect
31 critical environmental resources, including farmland and open space
32 preservation, and maximize the use of existing infrastructure, there
33 is created a new program to foster regional planning entities.

34 (2) The regional planning entities identified in subsection a. of
35 this section shall identify and coordinate regional affordable
36 housing opportunities in **[cooperation]** consultation with
37 municipalities in areas with convenient access to infrastructure,
38 employment opportunities, and public transportation. Coordination
39 of affordable housing opportunities may include methods to
40 regionally provide housing in line with regional concerns, such as
41 transit needs or opportunities, environmental concerns, or such
42 other factors as the council may permit; provided, however, that
43 such provision by such a regional entity may not result in more than
44 a 50 percent change in the fair share obligation of any
45 municipality**;** provided that this limitation shall not apply to
46 affordable housing units directly attributable to development by the
47 New Jersey Sports and Exposition Authority within the New Jersey
48 Meadowlands District**].**

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

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

20 (cf: P.L.2008, c.46, s.18)

21

22 10. Section 29 of P.L.2008, c.46 (C.52:27D-329.18) is amended
23 to read as follows:

24 29. a. On or before January 1 of each year, beginning with the
25 first January 1 that falls after the annual anniversary of the effective
26 date of P.L.2008, c.46 (C.52:27D-329.1 et al.), the department, in
27 consultation with the commission and the working group, shall
28 prepare and submit to the Governor and the Joint Committee on
29 Housing Affordability, or its successor, an Annual Housing
30 Performance Report. Within 30 days following receipt of the
31 Annual Housing Performance Report, a hearing shall be held by the
32 Joint Committee on Housing Affordability, or its successor, to
33 provide an opportunity for public comment and discussion.

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

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

39 (a) Location;

40 (b) Affordability and income ranges of occupants;

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

43 (d) Type of housing, including ownership, rental, and other
44 forms of tenure; physical type such as single family or multifamily;
45 and whether the unit was newly constructed, rehabilitated, or
46 preserved; and

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

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

3 (3) All other activities, including financial support, technical
4 assistance, or other support conducted by the State to further
5 affordable housing, including the use of surplus and underutilized
6 State property for actual construction of affordable housing.

7 (4) Municipal performance pursuant to the "Fair Housing Act,"
8 P.L.1985, c.222 (C.52:27D-301 et al.), including the number of
9 units listed for the distinct populations as enumerated in subsection
10 b. of section 27 of P.L.2008, c.46 (C.52:27D-329.16), and the
11 monies collected and the use of all developer fee proceeds
12 deposited into municipal housing trust funds.

13 (5) For every report issued subsequent to the end of the first
14 year for which a plan has been prepared pursuant to sections 27 and
15 28 of P.L.2008, c.46 (C.52:27D-329.16 and C.52:27D-329.17):

16 (a) A comparison between the goals, strategies, and priorities
17 set forth in the plan and the outcomes of programs and strategies
18 carried out by the State during the year, and a statement of the
19 reasons for any differences between the plan and the State's
20 programs and strategies; and

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

24 (6) Statistical appendices providing information on individual
25 projects and funding allocations.

26 c. The report, appendices, and all supporting documentation
27 thereof shall be made available both in printed form from the
28 department and in downloadable form on the department's web site.
29 (cf: P.L.2008, c.46, s.29)

30
31 11. (New section) Notwithstanding any law or regulation to the
32 contrary, for a period of 18 months following the effective date of
33 P.L. , c. (C.) (pending before the Legislature as this bill)
34 neither the State, a county, a municipality, nor any agency or
35 instrumentality thereof shall collect development fees imposed upon
36 developers of non-residential property by the "Statewide Non-
37 Residential Development Fee Act," sections 32 through 38 of
38 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) or by any
39 ordinance adopted pursuant to regulations of the Council on
40 Affordable Housing promulgated pursuant to any section of the
41 "Statewide Non-Residential Development Fee Act."
42

43 12. (New section) a. A developer of a property that received
44 preliminary site plan approval, pursuant to section 34 of P.L.1975,
45 c.291 (C.40:55D-46), or final approval, pursuant to section 38 of
46 P.L.1975, c.291 (C.40:55D-50) prior to July 17, 2008, and that was
47 subject to the payment of a nonresidential development fee prior to
48 the enactment of P.L. , c. (C.) (pending before the

1 Legislature as this bill), shall be entitled to a return of any moneys
2 paid.

3 b. If moneys are required to be returned under subsection a. of
4 this section, a claim shall be submitted, in writing, to the same
5 entity to which the moneys were paid, within 120 days of the
6 effective date of P.L. , c. (C.) (pending before the
7 Legislature as this bill). The entity to whom the funds were paid
8 shall promptly review all requests for returns, and the fees paid
9 shall be returned to the claimant within 30 days of receipt of the
10 claim for return.

11

12 13. (New section) a. In recent years, affordable housing
13 production has fallen far short of the expectations of the State and
14 the citizens of New Jersey, and quantities housing units affordable
15 to residents of the State at all income levels have not been generated
16 in proportion to housing construction as a whole.

17 b. The reasons for the current affordable housing shortage in
18 New Jersey are varied, complex and interrelated, but may be
19 attributed in part to a patchwork system or regulation created by the
20 courts and the council, deflation in the housing market as a whole,
21 and the failure of the State Planning Commission to provide the
22 Council on Affordable Housing with economic growth,
23 development and decline projections for each housing region
24 pursuant to the requirements of the "Fair Housing Act," P.L.1985,
25 c.222.

26 c. Efforts to coordinate the regulatory practices of the multiple
27 State planning agencies, and to harmonize the responsibilities and
28 practices of the State's system for affordable housing with available
29 federal resources for creating affordable housing have not been
30 thorough or efficacious.

31 d. Instead of the "low and moderate income housing planning
32 and financing mechanism in accordance with regional
33 considerations and sound planning concepts which satisfies the
34 constitutional obligation enunciated by the Supreme Court," the net
35 effect of the "Fair Housing Act" has been to create a bureaucracy
36 that micromanages communities disparate and conflicting
37 requirements that impede the provision of the Constitutional
38 requirement of realistic opportunity for a fair share of its region's
39 present and prospective needs for affordable housing for New
40 Jerseyans of all income levels.

41 e. Existing rigid regulatory requirements create barriers to the
42 development of affordable housing because they ignore local
43 market conditions often require the creation of affordable housing
44 units that stand vacant, and create a financial burden upon an
45 affordable developer.

46 f. The overregulation has created an unworkable system for
47 planners and developers as well as municipalities because it
48 requires onerous compliance paperwork that requires expensive

1 administrative capacity and provides a disincentive to work
2 honestly within the system.

3 g. A regulatory system that burdens market rate residential
4 development drives up the prices of those units, forcing the price of
5 these units past the levels that are affordable for consumers with
6 moderate income, creating a barrier to opportunities for affordable
7 housing for New Jersey citizens at this income level.

8 h. During times of national economic contraction, which have a
9 dramatic impact on the State because the financial sector is the
10 source of many New Jerseyans' livelihood, the affordable housing
11 bureaucracy inhibits economic growth, exacerbating an already
12 untenable situation.

13

14 14. (New section) Notwithstanding any law or regulation to the
15 contrary, for purposes of crediting units of housing against a
16 municipality's fair share, the council shall permit a municipality to
17 satisfy no less than two units of its fair share obligation for each
18 unit of rental housing occupied or reserved for occupancy by
19 households of moderate income This section shall not apply to units
20 in an age-restricted development.

21

22 15. (New section) No more than 12 months following the
23 effective date of P.L. , c. (C.) (pending before the Legislature
24 as this bill), the commission shall review and report on:

25 a. The performance of the program and practices established
26 pursuant to the "Statewide Non-Residential Development Fee Act,"
27 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 et seq.).
28 The commission shall report separately to the Governor and the
29 Legislature on:

30 (1) the effect of the Statewide Non-Residential Development Fee
31 Act and the programs established thereunder on the economic
32 development of municipalities, regions and the State;

33 (2) the effectiveness of the fee in generating a revenue stream to
34 be deposited in the New Jersey Affordable Housing Trust Fund
35 established pursuant to section 17 of P.L.2008, c.46; and

36 (3) the effectiveness of the Statewide Non-Residential
37 Development Fee Act in promoting the provision of low- and
38 moderate income housing in the several housing regions of this
39 State.

40 The commission shall develop recommendations for repeal,
41 modification or other action on the Act as part of the commission's
42 report to the Governor and Legislature.

43 b. The performance of the regulations promulgated by the
44 council for the housing round ending December 31, 2018 and the
45 practices established thereunder. The commission shall report
46 separately to the Governor and the Legislature on:

47 (1) the effectiveness of the regulations in promoting low- and
48 moderate-income housing;

1 (2) the reasonableness and effect of the administrative burden
2 placed on municipalities, planners and developers by the
3 regulations; and

4 The commission shall develop recommendations for repeal,
5 modification or other action on the Act as part of the commission's
6 report to the Governor and Legislature.

7 c. Appropriate, effective and feasible strategies to provide
8 affordable housing generally and work force in the State based on
9 available research, if any, from the Office of Legislative Services.

10 Pursuant to the authority granted in this section, the commission
11 may, based on the commission's review and recommendations, may
12 submit rule pre-proposals for adoption by the council in the
13 council's discretion, pursuant to section 4 of P.L.1968, c.410
14 (C.52:14B-4)

15

16 16. (New section) a. Notwithstanding the provisions of
17 P.L.2008, c.22 (C.52:9H-2.1 et al.), there is appropriated to the
18 Affordable Housing Trust Fund established pursuant to Section 20
19 of P.L.1985, c.222, the sum of \$15,000,000 from the Long Term
20 Obligation and Capital Expenditure Fund, created line item for the
21 purposes of creating opportunities for affordable housing pursuant
22 to the Fair Housing Act, P.L.1985, c.222.

23 b. The State Housing Commission is authorized to utilize up to
24 \$500,000 of the appropriation herein to pay the salaries and costs of
25 professionals performing technical or professional analysis pursuant
26 to section 19 of P.L. , c. (C.) (pending before the Legislature
27 as this bill).

28

29 17. This act shall take effect immediately.

30

31

32

STATEMENT

33

34 This bill makes various changes to the "Fair Housing Act,"
35 P.L.1985, c.222 and to recently adopted law affecting the provision
36 of affordable housing (P.L.2008, c.46 (C.52:27D-329.1 et al)). It is
37 the belief of the sponsor that current regulatory scheme, rather than
38 facilitating the creation of Mt. Laurel's "reasonable opportunity for
39 an appropriate variety and choice of housing...to meet the needs,
40 desires and resources of all categories of people may desire to live
41 within its boundaries," impedes the development of housing
42 affordable to all.

43 If enacted, this legislation would impose a moratorium on the
44 collection of the 2.5 percent non-residential development fee
45 imposed by the "Statewide Non-Residential Development Fee Act,"
46 P.L.2008, c.46, for 18 months following the effective date. The
47 revenue stream halted by the moratorium would be replaced by a
48 \$15 million appropriation from the Long term Obligation and

1 Capital Expenditure Fund. Simultaneously, the bill charges the
2 newly created State Housing Commission with reviewing the non-
3 residential development fee program to determine whether the
4 program has been effective and with making a recommendation
5 about modifications or repeal of the fee collection program.

6 This legislation also now exempts properties used for an
7 inherently beneficial use, including energy provision, from the non-
8 residential development fee. The “Statewide Non-residential
9 Development Fee Act” is also amended to exempt projects that that
10 received site approvals prior to July 17, 2008, the effective date of
11 the act. The bill also includes a refund mechanism for improperly
12 paid fees.

13 This legislation would require the Council on Affordable
14 Housing to fully credit municipalities when they reserve up to 25
15 percent of affordable units for individuals who work in or near the
16 municipality. This bill also permits bonus credits whenever a
17 municipality provides housing for very low income individuals, and
18 provides for a two-to-one credit bonus for rental housing.

19 The bill also clarifies that the council may extend time frames
20 for expenditure of municipal development trust funds on the basis
21 of construction permitting and similar documentation concerning
22 timelines. The bill provides that no municipality will have
23 additional affordable housing obligations on the basis of reviews
24 performed by its planning board or by the New Jersey Hackensack
25 Meadowlands Commission.

26 This bill also charges the State Housing Commission created
27 pursuant to P.L.2008, c.46, with reviewing the regulations of the
28 Council on Affordable Housing for its effectiveness in generating
29 affordable housing opportunities. The Commission is also required
30 to file a report making recommendations concerning the rules.