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SENATE COMMITTEE SUBSTITUTE FOR
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SENATE, No. 1

STATE OF NEW JERSEY
214th LEGISLATURE

ADOPTED JUNE 3, 2010

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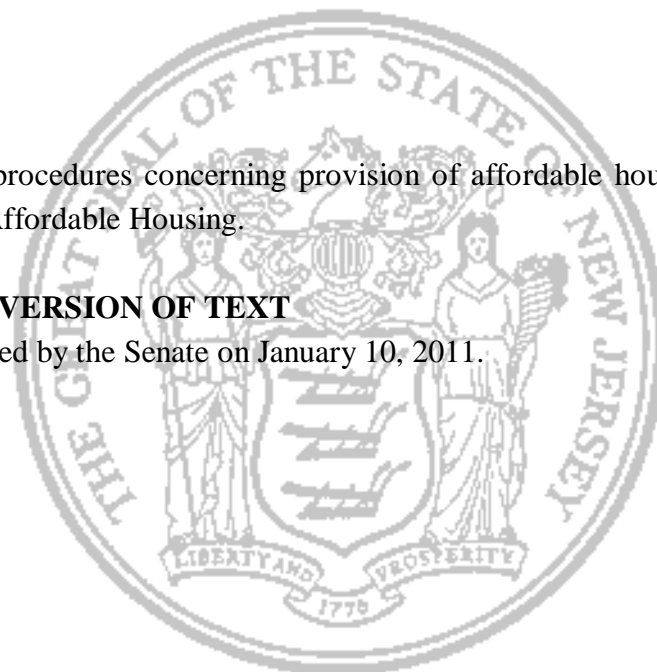
Senator Goodwin, Assemblywoman Spencer and Senator Stack

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended by the Senate on January 10, 2011.



(Sponsorship Updated As Of: 1/11/2011)

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

3

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

6

7 ¹[1.(New section) The Legislature finds and declares that:

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

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHO committee amendments adopted November 8, 2010.

² Assembly AHO committee amendments adopted December 10, 2010.

³ Senate floor amendments adopted January 10, 2011.

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

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

14 g. It is the public policy of this State to encourage the well-
15 organized production of low- and moderate-income housing to
16 serve the general welfare of all the State's residents by
17 implementing a clear, intelligible regulatory system.】¹

18

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

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

37

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

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

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

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

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

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

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

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

29 (cf: P.L.1984, c.20, s.10)]¹

30

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

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

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

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

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

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

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

27 (1) a use or principal structure in a district restricted against
28 such use or principal structure **【,】**;

29 (2) an expansion of a nonconforming use **【,】**;

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

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

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

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

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

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

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

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

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

34 (cf: P.L.2007, c.137, s.60)]¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 j. The Legislature finds that the use of regional contribution
15 agreements, which permits municipalities to transfer a certain
16 portion of their fair share housing obligation outside of the
17 municipal borders, should no longer be utilized as a mechanism for
18 the creation of affordable housing **【by the council】**.
19 (cf: P.L.2008, c.46, s.4)'¹

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

23 4. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (cf: P.L.2008, c.46, s.5)]¹

29

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

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

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

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

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

46 "Department" means the Department of Community Affairs.

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

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

17 "Register" means the Register of Housing Projects directed by
18 section 2 of **【this act】** P.L.1991, c.479 (C.52:27D-307.2) to be
19 established and maintained by the commissioner.
20 (cf: P.L.1991, c.479, s.1)¹
21

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

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

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

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

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

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

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

18 (cf: P.L.1991, c.479, s.3)]¹

19

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

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

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

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

12 (cf: P.L.1991, c.479, s.4)]¹

13

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

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

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

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

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

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

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

- 1 (6) Tax abatements for purposes of providing low and moderate
2 income housing;
- 3 (7) Utilization of funds obtained from any State or federal
4 subsidy toward the construction of low and moderate income
5 housing;
- 6 (8) Utilization of municipally generated funds toward the
7 construction of low and moderate income housing; and
- 8 (9) The purchase of privately owned real property used for
9 residential purposes at the value of all liens secured by the property;
10 excluding any tax liens, notwithstanding that the total amount of
11 debt secured by liens exceeds the appraised value of the property,
12 pursuant to regulations promulgated by the Commissioner of
13 Community Affairs pursuant to subsection b. of section 41 of
14 P.L.2000, c.126 (C.52:27D-311.2).] (Deleted by amendment,
15 P.L. , c.) (pending before the Legislature as this bill)
- 16 b. **【**The municipality may provide for a phasing schedule for
17 the achievement of its fair share of low and moderate income
18 housing.**】** (Deleted by amendment, P.L. , c.) (pending before the
19 Legislature as this bill)
- 20 c. (Deleted by amendment, P.L.2008, c.46)
- 21 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) or in
22 P.L. , c. (C.) (pending before the Legislature as this bill) shall
23 require a municipality to raise or expend municipal revenues in
24 order to provide low and moderate income housing.
- 25 e. **【**When a municipality's housing element includes the
26 provision of rental housing units in a community residence for the
27 developmentally disabled, as defined in section 2 of P.L.1977,
28 c.448 (C.30:11B-2), which will be affordable to persons of low and
29 moderate income, and for which adequate measures to retain such
30 affordability pursuant to paragraph (3) of subsection a. of this
31 section are included in the housing element, those housing units
32 shall be fully credited as permitted under the rules of the council
33 towards the fulfillment of the municipality's fair share of low and
34 moderate income housing.**】** (Deleted by amendment, P.L. , c.)
35 (pending before the Legislature as this bill)
- 36 f. **【**It having been determined by the Legislature that the
37 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is
38 a public purpose, a municipality or municipalities may utilize public
39 monies to make donations, grants or loans of public funds for the
40 rehabilitation of deficient housing units and the provision of new or
41 substantially rehabilitated housing for low and moderate persons,
42 providing that any private advantage is incidental.**】** (Deleted by
43 amendment, P.L. , c.) (pending before the Legislature as this
44 bill)
- 45 g. **【**A municipality which has received substantive certification
46 from the council, and which has actually effected the construction
47 of the affordable housing units it is obligated to provide, may

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

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

11 i. 【The council, upon the application of a municipality and a
12 developer, may approve reduced affordable housing set-asides or
13 increased densities to ensure the economic feasibility of an
14 inclusionary development.】 (Deleted by amendment, P.L. __, c. __)
15 (pending before the Legislature as this bill)
16 (cf: P.L.2008, c.46, s.15)】¹

17
18 ¹【12. Section 1 of P.L.2005, c.350 (C.52:27D-311a) is amended
19 to read as follows:

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

30
31 ¹【13. Section 6 of P.L. 2005, c.350 (C.52:27D-311b) is amended
32 to read as follows:

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

1 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that
2 the municipality fails to amend its fair share plan within 90 days of
3 receiving such notice, the council may revoke substantive
4 certification.】
5 (cf: P.L.2005, c.350, s.6)】¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 i. The commissioner may award or grant the amount of any
24 appropriation deposited in the "New Jersey Affordable Housing
25 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
26 320.1) to municipalities pursuant to the provisions of section 39 of
27 P.L.2009, c.90 (C.40:55D-8.8).
28 (cf: P.L.2009, c.90, s.38)]¹

29

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

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

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

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

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

9 (cf: P.L.2009, c.90 s.41)¹

10

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

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

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

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

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

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

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

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

1 any time in the last 10 years has been qualified to receive assistance
2 under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the
3 jurisdiction of any of the regional entities specified in subsection a.
4 of this section.】 (Deleted by amendment, P.L. , c.) (pending
5 before the Legislature as this bill)
6 (cf: P.L.2008, c.46, s.18)】¹

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

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

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

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

24 (cf: P.L.2008, c.46, s.30)】¹

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

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

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

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

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

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

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

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

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

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

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

29 (2) A municipality that does not meet the criteria in section 20
30 of P.L. , c. (C.) (pending before the Legislature as this bill)
31 may, nevertheless, be deemed to meet those criteria if it adopts an
32 ordinance providing that at least one fifth of its developable
33 property shall be reserved for use as workforce housing as defined
34 in subsection s. of section 4 of P.L.1985, c.222 (C.52:27D-304).]¹

35
36 ¹[20. (New section) a. The department shall determine that a
37 municipality is an inclusionary municipality if:

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

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

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

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

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

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

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

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

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

41 c. For units constructed following the effective date of
42 P.L.2005, c.350 (C.52:27D-311a et al.), to be considered price
43 restricted for purposes of a determination pursuant to this section, a
44 unit shall be adaptable as described in section 5 of P.L.2005, c.350
45 (C.52:27D-123.15) and section 1 of P.L.2005, c.350 (C.52:27D-
46 311a).

1 d. A municipality that received substantive certification under
2 N.J.A.C.5:96 and N.J.A.C.5:97, the rules of the Council on
3 Affordable Housing for the period beginning June 2, 2008, shall be
4 considered an inclusionary municipality pursuant to this section
5 until the end of its approved certification period; provided that the
6 municipality continues to fully and faithfully implement the
7 provisions of its fair-share plan.

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

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

19 For purposes of this section, "single family attached housing"
20 means two or more dwelling units sharing a wall that extends from
21 ground to roof with an adjoining unit, with no other units above or
22 below, with separate major utility systems and metering.】¹

23
24 ¹[21. (New section) a. (1) For any new residential development
25 project, as defined in subsection t. of section 4 of P.L.1985, c.222
26 (C.52:27D-304), and any redevelopment, rehabilitation, infill
27 development, or adaptive reuse of a residential development project
28 that would qualify as a residential development project if it was
29 new construction, a municipality shall require that one out of every
30 10 residential housing units proposed as part of that project be
31 reserved for occupancy as low income or moderate income housing.
32 For the purposes of this reservation, one special needs housing unit
33 shall count as two housing units.

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

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

1 Legislature as this bill) by satisfying the requirements of this
2 section.】¹

3

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

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

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

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

17 (4) Assisting a municipally-sponsored 100 percent affordable
18 development;

19 (5) Permitting construction of Elder Cottage Housing
20 Opportunity units;

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

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

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

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

39 For purposes of this section, "rehabilitation" means the repair,
40 renovation, alteration, reconstruction of a building or structure
41 containing a dwelling space, pursuant to the rehabilitation subcode
42 adopted by the Commissioner of Community Affairs pursuant to
43 section 5 of the "State Uniform Construction Code Act," P.L.1975,
44 c.217 (C.52:27D-123), that includes the rehabilitation of a major
45 system and a minimum average investment for hard costs of
46 \$10,000 per unit. The Department of Community Affairs shall

1 develop standards for minimum documentation for qualifying
2 rehabilitation.】¹

3

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

10

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

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

29 c. The provisions of this section shall not apply to a
30 municipality that has adopted an ordinance that reserves, for use as
31 workforce housing as defined in subsection s. of section 4 of
32 P.L.1985, c.222 (C.52:27D-304), at least one-fifth of its vacant,
33 developable property having reasonable access to sewer service, for
34 residential use.】¹

35

36 ¹【25. (New section) The Legislature finds and declares:

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

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

46 c. Revenues actually collected pursuant to the "Statewide Non-
47 Residential Development Fee Act," sections 32 through 38 of

1 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), fell far short
2 of the amounts anticipated before the "New Jersey Economic
3 Stimulus Act of 2009," P.L.2009, c.90 (C.52:27D-489a et al.)
4 suspended implementation of the Statewide non-residential
5 development fee.

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

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

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

27 g. It is essential to the public good to repeal the fee imposed
28 under the "Statewide Non-Residential Development Fee Act,"
29 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through
30 C.40:55D-8.7).¹

31

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

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

45 c. The provisions of this section shall not apply to a financial
46 or other contribution that a developer made or committed itself to
47 make for a non-residential property that received preliminary site

1 plan approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-
2 46), or final approval, pursuant to section 38 of P.L.1975, c.291
3 (C.40:55D-50) prior to July 17, 2008, or for a non-residential
4 project that, prior to July 17, 2008, was referred to a planning board
5 by the State, a governing body, or other public agency for review
6 pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31).

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

14
15 ¹[27. (New section) a. A municipality may impose development
16 fees of two and one-half percent of equalized assessed value for
17 residential development projects.

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

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

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

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

33 (b) Affordability assistance to households earning 30 percent or
34 less of median income may include buying down the cost of low
35 income units in a municipality to make them affordable to
36 households earning 30 percent or less of median income.

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

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

45 d. Notwithstanding any provision of this section, or regulations
46 of the department, a municipality shall not collect a development
47 fee from a developer whenever that developer is providing for the

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

11 e. All development fees collected and deposited in the trust
12 fund shall be committed for expenditure within four years from the
13 date of collection. A municipality that fails to commit to expend
14 the balance required in the development fee trust fund by the time
15 set forth in this subsection shall be required by the department to
16 transfer the remaining unspent balance at the end of the four-year
17 period to the "New Jersey Affordable Housing Trust Fund,"
18 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
19 320), to be used in the housing region of the transferring
20 municipality for the authorized purposes of that fund. A balance
21 transferred to the "New Jersey Affordable Housing Trust Fund"
22 from a municipality meeting the criteria described in subsection a.
23 of section 18 of P.L. , c. (C.) pending before the Legislature
24 as this bill) shall be expended for the authorized purposes in the
25 county in which the municipality where the funds were collected is
26 located. A balance transferred to the "New Jersey Affordable
27 Housing Trust Fund" from a municipality that does not meet the
28 criteria described in subsection a. of section 18 of P.L. ,
29 c. (C.) (pending before the Legislature as this bill) shall be
30 expended in the municipality where the funds were collected.]¹

31

32 ¹[28. (New section) If any persons benefitting from a housing
33 program established pursuant to P.L. , c. (C.) (pending
34 before the Legislature as this bill) that assists persons who have
35 experienced, or may experience, the foreclosure and loss of their
36 personal residence, or addresses the needs of low- and moderate-
37 income households residing within the municipality, are otherwise
38 income qualified to occupy such housing under federal or State law,
39 then any affirmative marketing requirements contained in
40 regulations promulgated to effectuate the program shall be waived
41 to permit the persons to occupy, rent, or purchase new or
42 rehabilitated affordable housing units that they may have previously
43 occupied or owned.]¹

44

45 ¹[29. (New section) a. A municipality shall not be liable for any
46 unmet housing obligation based on regulations promulgated by the
47 Council on Affordable Housing pursuant to the "Fair Housing Act,"

1 P.L.1985, c.222 (C.52:27D-301 et al.), or any law or fact in a time
2 period prior to the effective date of P.L. , c. (C.) (pending
3 before the Legislature as this bill).

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

10 c. Subsection b. of this section shall not apply to any property
11 that is the subject of pending exclusionary litigation that has not
12 reached final judgment through and including all appeals, including
13 an appeal to the New Jersey Supreme Court.】¹

14

15 ¹【30. (New section) a. No exclusionary zoning action naming a
16 municipality as a defendant shall be filed for 365 days following the
17 effective date of this act.

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

22 c. For any litigation involving exclusionary zoning instituted
23 prior to the effective date of P.L. , c. (C.) (pending before
24 the Legislature as this bill), jurisdiction may remain with the court,
25 which shall take judicial notice of the statutory intent stated
26 hereunder.】¹

27

28 ¹【31. (New section) The provisions of P.L. , c. (C.)
29 (pending before the Legislature as this bill) shall be severable, and
30 if any of its provisions shall be held to be unconstitutional, the
31 decision of the court shall not affect the validity of the remaining
32 provisions of P.L. , c. (C.) (pending before the Legislature as
33 this bill).】¹

34

35 ¹【32. Section 7 of P.L.1985, c.222 (C.52:27D-307) is repealed.】¹

36

37 ¹【33.The following sections are repealed:

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

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

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

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

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

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

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

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

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

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

1 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);
2 Section 8 of P.L.1985, c.222 (C.52:27D-308);
3 Section 9 of P.L.1985, c.222 (C.52:27D-309);
4 Section 10 of P.L.1985, c.222 (C.52:27D-310);
5 Section 1 of P.L.1995, c.231 (C.52:27D-310.1);
6 Section 2 of P.L.1995, c.231 (C.52:27D-310.2);
7 Section 40 of P.L.2009, c.90 (C. 52:27D-311.3);
8 Section 13 of P.L.1985 c.222 (C.52:27D-313);
9 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);
10 Section 14 of P.L.1985 c.222 (C.52:27D-314);
11 Section 15 of P.L.1985 c.222 (C.52:27D-315);
12 Section 16 of P.L.1985, c.222 (C.52:27D-316);
13 Section 17 of P.L.1985, c.222 (C.52:27D-317);
14 Section 18 of P.L.1985, c.222 (C.52:27D-318);
15 Section 19 of P.L.1985 c.222 (C.52:27D-319);
16 Section 7 of P.L.2008, c.46 (C.52:27D-329.1);
17 Section 8 of P.L.2008, c.46 (C.52:27D-329.2);
18 Section 9 of P.L.2008, c.46 (C.52:27D-329.3);
19 Section 10 of P.L.2008, c.46 (C.52:27D-329.4);
20 Section 12 of P.L.2008, c.46 (C.52:27D-329.6); and
21 Section 14 of P.L.2008, c.46 (C.52:27D-329.8).¹

22
23 ¹[34. This act shall take effect immediately, except that sections
24 2 and 32 shall be inoperative until the first day of the seventh month
25 following enactment.]¹

26
27 ¹1. (New section) The Legislature finds and declares that:

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

39 b. The Legislature further finds that this approach has not
40 resulted in the creation of housing opportunities for all categories of
41 the State's citizens. During ²the² first ²[35] 25² years of the "Fair
42 Housing Act's" existence, this complex system of regulation has
43 resulted in scores of lawsuits and court decisions, and the
44 unnecessary expenditure of millions of dollars by municipalities,
45 developers, and the State. In 2010, the system remains tied up with
46 multiple legal challenges, preventing the creation of housing
47 opportunities within the State.

1 c. It is incumbent on the State's elected officials to develop a
2 new approach that will result in the creation, through zoning
3 requirements, of a realistic opportunity for a variety and choice of
4 housing for low- and moderate-income families in each
5 municipality of the State, in consideration of regional and Statewide
6 needs for affordable housing. The welfare of the public requires a
7 new approach that does not waste the limited resources needed to
8 fulfill government's many functions, including public safety, health
9 care, education and environmental protection, ensuring the
10 affordability of mass transit, protection of civil rights, promotion of
11 economic growth, and job creation.

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

19 e. Municipalities that already have a healthy mix of housing
20 should not be encumbered with State zoning mandates that are
21 needed to create an opportunity for an appropriate variety and
22 choice of housing in municipalities where a reasonable mix of
23 housing does not already exist.

24 f. By requiring those municipalities not already having a
25 reasonable mix of housing to comply with the zoning mandates
26 established hereunder, the State will maximize the opportunity for
27 variety and choice of housing in those municipalities without
28 wasting limited resources necessary to provide for the other
29 governmental functions stated herein, which only represent some,
30 but not all, of government's responsibility to provide for the general
31 welfare of its residents².

32 g. It is the public policy of this State to encourage the well-
33 organized production of low- and moderate-income housing to
34 serve the general welfare of all the State's residents by
35 implementing a clear, intelligible regulatory system.¹

36 ²h. The State response to the constitutional obligation should
37 include both production by for-profit developers seeking market
38 opportunities and not-for-profit developers of homes for lower-
39 income people and people with special needs, which require
40 adequate funding opportunities from a range of sources as set forth
41 in P.L. , c. (C.) (pending before the Legislature as this bill).²
42

43 ¹2. (New section) The Council on Affordable Housing
44 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
45 301 et al.) is abolished, and all of its powers, functions, and duties
46 that are not repealed herein are continued in the Department of
47 Community Affairs, established pursuant to section 1 of P.L.1966,

1 c.293 (C.52:27D-1), except as herein otherwise provided.
2 Whenever, in any law, rule, regulation, order, contract, document,
3 judicial or administrative proceeding, or otherwise, reference is
4 made to the Council on Affordable Housing, the same shall mean
5 and refer to the Department of Community Affairs. All
6 appropriations and other moneys available, and to become
7 available, to the Council on Affordable Housing are hereby
8 continued in the Department of Community Affairs, and shall be
9 available for the objects and purposes for which such moneys are
10 appropriated, subject to any terms, restriction, limitations, or other
11 requirements imposed by State or federal law.

12 To effectuate this transfer there shall also be transferred all
13 necessary records and papers of the Council on Affordable Housing.

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

16

17 ¹3. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to
18 read as follows:

19 25. a. ²~~【The】~~² ~~【Council on Affordable Housing】~~² ~~【department~~
20 shall take into consideration the regional master plan prior to
21 making any determination】² ~~【regarding the allocation of the~~
22 prospective fair share of the housing need in】² ~~【, or promulgating~~
23 any regulation specifically concerning, any municipality in the
24 Highlands Region under the "Fair Housing Act," P.L.1985, c.222
25 (C.52:27D-301 et al.)】² ~~【for the fair share period subsequent to~~
26 1999】² ~~(Deleted by amendment, P.L. , c.)~~².

27 b. Nothing in ²~~【this act】~~ P.L.2004, c.120 (C.13:20-1 et al.)²
28 shall affect protections provided through a grant of substantive
29 certification or a judgment of repose granted prior to ²~~【the date of~~
30 enactment of this act】 August 10, 2004².¹
31 (cf: P.L.2004, c.120, s.25)

32

33 ¹4. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to
34 read as follows:

35 3. a. There is established in, but not of, the department a Site
36 Improvement Advisory Board, to devise statewide site improvement
37 standards pursuant to section 4 of this act. The board shall consist
38 of the commissioner or his designee, who shall be a non-voting
39 member of the board, the Director of the Division of ²~~【Housing】~~
40 Codes and Standards² in the Department of Community Affairs,
41 who shall be a voting member of the board, and ~~【10】~~ nine² other
42 voting members, to be appointed by the commissioner. The other
43 members shall include two professional planners, one of whom
44 serves as a planner for a governmental entity or whose professional
45 experience is predominantly in the public sector and who has
46 worked in the public sector for at least the previous five years and

1 the other of whom serves as a planner in private practice and has
2 particular expertise in private residential development and has been
3 involved in private sector planning for at least the previous five
4 years, and one representative each from:

- 5 (1) The New Jersey Society of Professional Engineers;
- 6 (2) The New Jersey Society of Municipal Engineers;
- 7 (3) The New Jersey Association of County Engineers;
- 8 (4) The New Jersey Federation of Planning Officials;
- 9 (5) **【The Council on Affordable Housing】** (Deleted by
10 amendment, P.L. , c. ²【(C.)²】);
- 11 (6) The New Jersey Builders' Association;
- 12 (7) The New Jersey Institute of Technology;
- 13 (8) The New Jersey State League of Municipalities.

14 b. Among the members to be appointed by the commissioner
15 who are first appointed, four shall be appointed for terms of two
16 years each, four shall be appointed for terms of three years each,
17 and two shall be appointed for terms of four years each. Thereafter,
18 each appointee shall serve for a term of four years. Vacancies in
19 the membership shall be filled in the same manner as original
20 appointments are made, for the unexpired term. The commission
21 shall select from among its members a chairman. Members may be
22 removed by the commissioner for cause.

23 c. Board members shall serve without compensation, but may
24 be entitled to reimbursement, from moneys appropriated or
25 otherwise made available for the purposes of this act, for expenses
26 incurred in the performance of their duties.¹

27 (cf: P.L.1993, c.32, s.3)

28

29 ¹5. Section 4 of P.L.1987, c.129 (C.40:55D-45.2) is amended to
30 read as follows:

31 4. A general development plan may include, but not be limited
32 to, the following:

33 a. A general land use plan at a scale specified by ordinance
34 indicating the tract area and general locations of the land uses to be
35 included in the planned development. The total number of dwelling
36 units and amount of nonresidential floor area to be provided and
37 proposed land area to be devoted to residential and nonresidential
38 use shall be set forth. In addition, the proposed types of
39 nonresidential uses to be included in the planned development shall
40 be set forth, and the land area to be occupied by each proposed use
41 shall be estimated. The density and intensity of use of the entire
42 planned development shall be set forth, and a residential density
43 and a nonresidential floor area ratio shall be provided;

44 b. A circulation plan showing the general location and types of
45 transportation facilities, including facilities for pedestrian access,
46 within the planned development and any proposed improvements to
47 the existing transportation system outside the planned development;

- 1 c. An open space plan showing the proposed land area and
2 general location of parks and any other land area to be set aside for
3 conservation and recreational purposes and a general description of
4 improvements proposed to be made thereon, including a plan for the
5 operation and maintenance of parks and recreational lands;
- 6 d. A utility plan indicating the need for and showing the
7 proposed location of sewage and water lines, any drainage facilities
8 necessitated by the physical characteristics of the site, proposed
9 methods for handling solid waste disposal, and a plan for the
10 operation and maintenance of proposed utilities;
- 11 e. A storm water management plan setting forth the proposed
12 method of controlling and managing storm water on the site;
- 13 f. An environmental inventory including a general description
14 of the vegetation, soils, topography, geology, surface hydrology,
15 climate and cultural resources of the site, existing man-made
16 structures or features and the probable impact of the development
17 on the environmental attributes of the site;
- 18 g. A community facility plan indicating the scope and type of
19 supporting community facilities which may include, but not be
20 limited to, educational or cultural facilities, historic sites, libraries,
21 hospitals, firehouses, and police stations;
- 22 h. A housing plan outlining the number of housing units to be
23 provided and the extent to which any affordable housing
24 [obligation assigned to the municipality pursuant to P.L.1985,
25 c.222 (C.52:27D-301 et al.) will be fulfilled] will be addressed by
26 the development;
- 27 i. A local service plan indicating those public services which
28 the applicant proposes to provide and which may include, but not be
29 limited to, water, sewer, cable and solid waste disposal;
- 30 j. A fiscal report describing the anticipated demand on
31 municipal services to be generated by the planned development and
32 any other financial impacts to be faced by municipalities or school
33 districts as a result of the completion of the planned development.
34 The fiscal report shall also include a detailed projection of property
35 tax revenues which will accrue to the county, municipality and
36 school district according to the timing schedule provided under
37 subsection k. of this section, and following the completion of the
38 planned development in its entirety;
- 39 k. A proposed timing schedule in the case of a planned
40 development whose construction is contemplated over a period of
41 years, including any terms or conditions which are intended to
42 protect the interests of the public and of the residents who occupy
43 any section of the planned development prior to the completion of
44 the development in its entirety; and
- 45 l. A municipal development agreement, which shall mean a
46 written agreement between a municipality and a developer relating

1 to the planned development.¹
2 (cf: P.L.1987, c.129, s.4)

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

6 3. As used in **[this act]** P.L.1992, c.79 (C.40A:12A-1 et al.):

7 "Bonds" means any bonds, notes, interim certificates, debentures
8 or other obligations issued by a municipality, county,
9 redevelopment entity, or housing authority pursuant to P.L.1992,
10 c.79 (C.40A:12A-1 et al.).

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

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

30 "Governing body" means the body exercising general legislative
31 powers in a county or municipality according to the terms and
32 procedural requirements set forth in the form of government
33 adopted by the county or municipality.

34 "Housing authority" means a housing authority created or
35 continued pursuant to this act.

36 "Housing project" means a project, or distinct portion of a
37 project, which is designed and intended to provide decent, safe and
38 sanitary dwellings, apartments or other living accommodations for
39 persons of low and moderate income; such work or undertaking
40 may include buildings, land, equipment, facilities and other real or
41 personal property for necessary, convenient or desirable
42 appurtenances, streets, sewers, water service, parks, site
43 preparation, gardening, administrative, community, health,
44 recreational, educational, welfare or other purposes. The term
45 "housing project" also may be applied to the planning of the
46 buildings and improvements, the acquisition of property, the
47 demolition of existing structures, the construction, reconstruction,

1 alteration and repair of the improvements and all other work in
2 connection therewith.

3 "Persons of low and moderate income" means persons or
4 families who are, in the case of State assisted projects or programs,
5 so defined by the Council on Affordable Housing in the Department
6 of Community Affairs, or in the case of federally assisted projects
7 or programs, defined as of "low and very low income" by the
8 United States Department of Housing and Urban Development.

9 "Public body" means the State or any county, municipality,
10 school district, authority or other political subdivision of the State.

11 "Public housing" means any housing for persons of low and
12 moderate income owned by a municipality, county, the State or the
13 federal government, or any agency or instrumentality thereof.

14 "Publicly assisted housing" means privately owned housing
15 which receives public assistance or subsidy, which may be grants or
16 loans for construction, reconstruction, conservation, or
17 rehabilitation of the housing, or receives operational or maintenance
18 subsidies either directly or through rental subsidies to tenants, from
19 a federal, State or local government agency or instrumentality.

20 "Real property" means all lands, including improvements and
21 fixtures thereon, and property of any nature appurtenant thereto or
22 used in connection therewith, and every estate, interest and right,
23 legal or equitable, therein, including terms for years and liens by
24 way of judgment, mortgage or otherwise, and indebtedness secured
25 by such liens.

26 "Redeveloper" means any person, firm, corporation or public
27 body that shall enter into or propose to enter into a contract with a
28 municipality or other redevelopment entity for the redevelopment or
29 rehabilitation of an area in need of redevelopment, or an area in
30 need of rehabilitation, or any part thereof, under the provisions of
31 this act, or for any construction or other work forming part of a
32 redevelopment or rehabilitation project.

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

42 "Redevelopment agency" means a redevelopment agency created
43 pursuant to subsection a. of section 11 of P.L.1992, c.79
44 (C.40A:12A-11) or established heretofore pursuant to the
45 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et
46 al.), repealed by this act, which has been permitted in accordance

1 with the provisions of this act to continue to exercise its
2 redevelopment functions and powers.

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

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

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

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

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

45 "Rehabilitation area" or "area in need of rehabilitation" means
46 any area determined to be in need of rehabilitation pursuant to

1 section 14 of P.L.1992, c.79 (C.40A:12A-14).¹
2 (cf: P.L.2008, c.46, s.1)

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

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

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

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

20 (2) Proposed land uses and building requirements in the project
21 area.

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

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

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

35 (6) As of the date of the adoption of the resolution finding the
36 area to be in need of redevelopment, an inventory of all housing
37 units affordable to low and moderate income households, as defined
38 pursuant to section **[4 of P.L.1985, c.222 (C.52:27D-304)]** ²**[22]**
39 21² of P.L. , c. (C.) (pending before the Legislature as this
40 bill), that are to be removed as a result of implementation of the
41 redevelopment plan, whether as a result of subsidies or market
42 conditions, listed by affordability level, number of bedrooms, and
43 tenure.

44 (7) A plan for the provision, through new construction or
45 substantial rehabilitation of one comparable, affordable replacement
46 housing unit for each affordable housing unit that has been
47 occupied at any time within the last 18 months, that is subject to

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

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

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

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

45 e. Prior to the adoption of a redevelopment plan, or revision or
46 amendment thereto, the planning board shall transmit to the
47 governing body, within 45 days after referral, a report containing its

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

18 f. The governing body of a municipality may direct the
19 planning board to prepare a redevelopment plan or an amendment
20 or revision to a redevelopment plan for a designated redevelopment
21 area. After completing the redevelopment plan, the planning board
22 shall transmit the proposed plan to the governing body for its
23 adoption. The governing body, when considering the proposed
24 plan, may amend or revise any portion of the proposed
25 redevelopment plan by an affirmative vote of the majority of its full
26 authorized membership and shall record in its minutes the reasons
27 for each amendment or revision. When a redevelopment plan or
28 amendment to a redevelopment plan is referred to the governing
29 body by the planning board under this subsection, the governing
30 body shall be relieved of the referral requirements of subsection e.
31 of this section.¹

32 (cf: P.L.2008, c.46, s.2)

33

34 ¹8. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to
35 read as follows:

36 16. a. In order to carry out the housing purposes of this act, a
37 municipality, county, or housing authority may exercise the
38 following powers, in addition to those set forth in section 22 of
39 P.L.1992, c.79 (C.40A:12A-22):

40 (1) Plan, construct, own, and operate housing projects; maintain,
41 reconstruct, improve, alter, or repair any housing project or any part
42 thereof; and for these purposes, receive and accept from the State or
43 federal government, or any other source, funds or other financial
44 assistance;

45 (2) Lease or rent any dwelling house, accommodations, lands,
46 buildings, structures or facilities embraced in any housing project;

1 and pursuant to the provisions of this act, establish and revise the
2 rents and charges therefor;

3 (3) Acquire property pursuant to subsection i. of section 22 of
4 P.L.1992, c.79 (C.40A:12A-22);

5 (4) Acquire, by condemnation, any land or building which is
6 necessary for the housing project, pursuant to the provisions of the
7 "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.);

8 (5) Issue bonds in accordance with the provisions of section 29
9 of P.L.1992, c.79 (C.40A:12A-29);

10 (6) Cooperate with any other municipality, private, county, State
11 or federal entity to provide funds to the municipality or other
12 governmental entity and to homeowners, tenant associations,
13 nonprofit or private developers to acquire, construct, rehabilitate or
14 operate publicly assisted housing, and to provide rent subsidies for
15 persons of low and moderate income, including the elderly,
16 pursuant to applicable State or federal programs;

17 (7) Encourage the use of demand side subsidy programs such as
18 certificates and vouchers for low-income families and promote the
19 use of project based certificates which provide subsidies for units in
20 newly constructed and substantially rehabilitated structures, and of
21 tenant based certificates which subsidize rent in existing units;

22 (8) Cooperate with any State or federal entity to secure mortgage
23 assistance for any person of low or moderate income;

24 (9) Provide technical assistance and support to nonprofit
25 organizations and private developers interested in constructing low
26 and moderate income housing;

27 (10) If it owns and operates public housing units, provide to the
28 tenants public safety services, including protection against drug
29 abuse, and social services, including counseling and financial
30 management, in cooperation with other agencies;

31 (11) Provide emergency shelters, transitional housing and
32 supporting services to homeless families and individuals.

33 b. All housing projects, programs and actions undertaken
34 pursuant to this act shall accord with the housing element of the
35 master plan of the municipality within which undertaken, and with
36 [any fair share housing plan filed by the municipality with the
37 Council on Affordable Housing, based upon the council's criteria
38 and guidelines, pursuant to] the "Fair Housing Act," P.L.1985,
39 c.222 (C.52:27D-301 et al.)[, whether or not the municipality has
40 petitioned for substantive certification of the plan].¹

41 (cf: P.L.1992, c.79, s.16)

42
43 ¹9. Section 2 of P.L.1992, c.148 (C.46:15-10.2) is amended to
44 read as follows:

45 2. a. The annual appropriations act for each State fiscal year
46 shall, without other conditions, limitations or restrictions on the
47 following:

1 (1) credit amounts paid to the State Treasurer, if any, in
2 payment of fees collected pursuant to paragraph (1) or paragraph
3 (2) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7) to the
4 "Shore Protection Fund" created pursuant to section 1 of P.L.1992,
5 c.148 (C.13:19-16.1), the **【Neighborhood Preservation Nonlapsing**
6 **Revolving Fund】** "New Jersey Affordable Housing Trust Fund,"
7 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
8 320), and the "Highlands Protection Fund" created pursuant to
9 section 21 of P.L.2004, c.120 (C.13:20-19), pursuant to the
10 requirements of section 4 of P.L.1968, c.49 (C.46:15-8);

11 (2) appropriate the balance of the "Shore Protection Fund"
12 created pursuant to section 1 of P.L.1992, c.148 (C.13:19-16.1), for
13 the purposes of that fund;

14 (3) appropriate the balance of the **【Neighborhood Preservation**
15 **Nonlapsing Revolving Fund】** "New Jersey Affordable Housing
16 Trust Fund," established pursuant to section 20 of P.L.1985, c.222
17 (C.52:27D-320), for the purposes of that fund, including any
18 permitted transfer of monies to the "Urban Housing Assistance
19 Fund," established pursuant to section 13 of P.L.2008, c.46
20 (C.52:27D-329.7); and

21 (4) appropriate the balance of the "Highlands Protection Fund"
22 created pursuant to section 21 of P.L.2004, c.120 (C.13:20-19), for
23 the purposes of that fund.

24 b. If the requirements of subsection a. of this section are not
25 met on the effective date of an annual appropriations act for the
26 State fiscal year, or if an amendment or supplement to an annual
27 appropriations act for the State fiscal year should violate any of the
28 requirements of subsection a. of this section, the Director of the
29 Division of Budget and Accounting in the Department of the
30 Treasury shall, not later than five days after the enactment of the
31 annual appropriations act, or an amendment or supplement thereto,
32 that violates any of the requirements of subsection a. of this section,
33 certify to the Director of the Division of Taxation that the
34 requirements of subsection a. of this section have not been met.¹

35 (cf: P.L.2004, c.120, s.62)

36

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

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

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

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

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

29 (cf: P.L.1973, c.208, s.10)

30

31 ²**[**¹11. Section 1 of P.L.1991, c.479 (C52:27D-307.1) is amended
32 to read as follows:

33 1. As used in **[this act]** P.L.1991, c.479 (C52:27D-307.1 et
34 seq.):

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

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

41 **["Council" means the Council on Affordable Housing created by**
42 **the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.)]**

43 "Department" means the Department of Community Affairs.

44 "Housing region" means a housing region as determined by the
45 Council on Affordable Housing pursuant to section 7 of P.L.1985,
46 c.222 (C.52:27D-307).

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

12 "Register" means the Register of Housing Projects directed by
13 section 2 of **[this act]** P.L.1991, c.479 (C.52:27D-307.2) to be
14 established and maintained by the commissioner.¹
15 (cf: P.L.1991, c.479, s.1)]²

16
17 ²[¹12. Section 3 of P.L.1991, c.479 (C.52:27D-307.3) is
18 amended to read as follows:

19 3. a. The commissioner shall cause to be developed a system
20 for assigning and designating priority ratings to each project
21 included in the register. Priority ratings shall be based upon the
22 following factors, giving to each factor such weight as the
23 commissioner shall judge to be appropriate:

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

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

45 (3) Efficiency. Each project shall be evaluated on the basis of
46 the cost to the State, in terms of financial assistance granted or
47 revenue forgone in order to further the project, for each affordable

1 dwelling unit judged by the commissioner to be feasible and
2 desirable according to the terms of the proposal or application made
3 for such assistance.

4 b. In developing the system of assigning and designating
5 priorities, and in evaluating individual projects for such assignment
6 and designation in the register, the commissioner shall consult with
7 the executive director of the agency [and the executive director of
8 the council]. The [council] person having control over the project
9 and the agency shall promptly and fully supply the commissioner
10 with all relevant information necessary for the commissioner's
11 timely and complete fulfillment of the requirements of this act.¹
12 (cf: P.L.1991, c.479, s.3)]²
13

14 ²[¹13. Section 4 of P.L.1991, c.479 (C.52:27D-307.4) is
15 amended to read as follows:

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

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

42 c. Reports made to the commissioner shall be promptly
43 forwarded [by him], not later than 10 days after their receipt, to the
44 Governor and to the presiding officers of the Houses of the
45 Legislature, who shall cause all members of their respective Houses
46 to be notified of the receipt of those reports and shall make

1 adequate provision for the inspection of the commissioner's reports
2 by members and committees of either House, and for the
3 dissemination of those reports to the public. The reports forwarded
4 by the commissioner shall in each instance indicate the priority
5 rating that has been assigned in the register to the project to which
6 the report relates.¹

7 (cf: P.L.1991, c.479, s.4)]²

8
9 ²11. Section 11 of P.L.1979, c.111 (C.13:18A-12) is amended to
10 read as follows:

11 11. a. The provisions of any other law, ordinance, rule or
12 regulation to the contrary notwithstanding, within one year of the
13 date of the adoption of the comprehensive management plan, or any
14 revision thereof, each county located in whole or in part in the
15 pinelands area shall submit to the commission such revisions of the
16 county master plan as may be necessary in order to implement the
17 objectives of the comprehensive management plan and conform
18 with the minimum standards contained therein. After receiving and
19 reviewing such revisions, as applicable to the development and use
20 of land in the pinelands area, the commission shall approve, reject,
21 or approve with conditions said revised plans, as it deems
22 appropriate, after public hearing, within 60 days of the submission
23 thereof.

24 Upon rejecting or conditionally approving any such revised plan,
25 the commission shall identify such changes therein that it deems
26 necessary for commission approval thereof, and the relevant county
27 shall adopt and enforce such plan, as so changed.

28 b. Within one year of the date of the adoption of the
29 comprehensive management plan, or any revision thereof, each
30 municipality located in whole or in part in the pinelands area shall
31 submit to the commission such revisions of the municipal master
32 plan and local land use ordinances as may be necessary in order to
33 implement the objectives of the comprehensive management plan
34 and conform with the minimum standards contained therein. After
35 receiving and reviewing such revisions, as applicable to the
36 development and use of land in the pinelands area, the commission
37 shall approve, reject, or approve with conditions said revised plans
38 and ordinances, as it deems appropriate, after public hearing, within
39 120 days of the date of the submission thereof. [The number of low
40 or moderate income housing units provided for in the revised plan
41 shall not be used by the commission as a criterion for the approval,
42 rejection, or conditional approval of the revised plan.]

43 The commission and each municipality located in whole or in
44 part in the pinelands area are hereby authorized and directed to
45 comply with the provisions of P.L. , c. (C.) (pending before
46 the Legislature as this bill) and section 18 of P.L.2008, c.46
47 (C.52:27D-329.9), as amended by P.L. , c. (C.) (pending

1 before the Legislature as this bill).

2 Upon rejecting or conditionally approving any such revised plan
3 or ordinance, the commission shall identify such changes therein
4 that it deems necessary for commission approval thereof, and the
5 relevant municipality shall adopt and enforce such plan or
6 ordinance, as so changed.

7 The commission may, as herein provided, delegate the review of
8 any municipal master plan or land use ordinance to the planning
9 board of the county wherein such municipality is located. Any such
10 delegation shall be made only: (1) upon a finding by the
11 commission that such delegation is consistent with the purposes and
12 provisions of this act and the Federal Act; (2) if the commission has
13 approved the master plan for such county; and (3) at the request of
14 the governing body of such county. The results of any such county
15 planning board review shall be transmitted to the commission prior
16 to the commission's review and approval of any such municipal
17 master plan or ordinance.

18 c. In the event that any county or municipality fails to adopt or
19 enforce an approved revised master plan or implementing land use
20 ordinances, as the case may be, including any condition thereto
21 imposed by the commission, the commission shall adopt and
22 enforce such rules and regulations as may be necessary to
23 implement the minimum standards contained in the comprehensive
24 management plan as applicable to any such county or municipality.

25 d. Any approval of any application for development granted by
26 any municipality, county, or agency thereof in violation of the
27 provisions of this section shall be null and void and of no force and
28 effect at law or equity.²

29 (cf: P.L.1987, c.267, s.1)

30

31 ²12. Section 14 of P.L.1979, c.111 (C.13:18A-15) is amended to
32 read as follows:

33 14. Subsequent to the adoption of the comprehensive
34 management plan, the commission is hereby authorized to
35 commence a review, within 15 days after any final municipal or
36 county approval thereof, of any application for development in the
37 pinelands area. Upon determining to exercise such authority, the
38 commission shall transmit, by certified mail, written notice thereof
39 to the person who submitted such application. The commission
40 shall, after public hearing thereon, approve, reject, or approve with
41 conditions any such application within 45 days of transmitting such
42 notice; provided, however, that such application shall not be
43 rejected or conditionally approved unless the commission
44 determines that such development does not conform with the
45 comprehensive management plan or the minimum standards
46 contained therein, as applicable to the county or municipality
47 wherein such development is located, or that such development

1 could result in substantial impairment of the resources of the
2 pinelands area. Such approval, rejection or conditional approval
3 shall be binding upon the person who submitted such application,
4 shall supersede any municipal or county approval of any such
5 development, and shall be subject only to judicial review as
6 provided in section 19 of this act.

7 【The number of low or moderate income housing units provided
8 for in the application for development shall not be used as a
9 criterion for the approval or rejection of the application.】 The
10 commission is hereby authorized and directed to comply with
11 section 18 of P.L.2008, c.46 (C. 52:27D-329.9), as amended by
12 P.L. , c. (C.) (pending before the Legislature as this bill).²
13 (cf: P.L.1987, c.267, s.2)

14
15 ²【¹⁴】 13.² Section 10 of P.L.1985, c.222 (C.52:27D-310) is
16 amended to read as follows:

17 10. A municipality's housing element shall be designed to
18 achieve the goal of access to affordable housing to 【meet present
19 and prospective】 achieve the mix of housing stock described in
20 paragraph (1) of subsection a. of section ²【²³】 ²² of P.L. , c.
21 (C.) (pending before the Legislature as this bill), with particular
22 attention to low and moderate income housing, and shall contain at
23 least:

24 a. An inventory of the municipality's housing stock by age,
25 condition, purchase or rental value, occupancy characteristics, and
26 type, including the number of units affordable to low and moderate
27 income households and substandard housing capable of being
28 rehabilitated, and in conducting this inventory the municipality
29 shall have access, on a confidential basis for the sole purpose of
30 conducting the inventory, to all necessary property tax assessment
31 records and information in the assessor's office, including but not
32 limited to the property record cards;

33 b. A projection of the municipality's housing stock, including
34 the probable future construction of low and moderate income
35 housing, for the next ten years, taking into account, but not
36 necessarily limited to, construction permits issued, approvals of
37 applications for development and probable residential development
38 of lands;

39 c. An analysis of the municipality's demographic
40 characteristics, including but not necessarily limited to, household
41 size, income level and age;

42 d. An analysis of the existing and probable future employment
43 characteristics of the municipality;

44 e. A determination of the municipality's 【present and
45 prospective fair share】 resources and need for low and moderate
46 income housing and its capacity to accommodate its 【present and

1 prospective] housing needs, including [its fair share for] low and
2 moderate income housing; and

3 f. A consideration of the lands that are most appropriate for
4 construction of low and moderate income housing and of the
5 existing structures most appropriate for conversion to, or
6 rehabilitation for, low and moderate income housing, including a
7 consideration of lands of developers who have expressed a
8 commitment to provide low and moderate income housing.

9 g. An analysis calculating the number of existing substandard
10 housing units in the municipality occupied by low and moderate
11 income families and a plan for rehabilitating at least that number of
12 units within the next 10 years.¹

13 (cf: P.L.2001, c.435, s.2)

14

15 ²[¹15.] 14.² Section 1 of P.L.2005, c.350 (C.52:27D-311a) is
16 amended to read as follows:

17 1. Beginning upon the effective date of P.L.2005, c.350
18 (C.52:27D-311a et al.), in order to be a qualified unit for purposes
19 of P.L. , c. (C.) (pending before the Legislature as this bill),
20 any new construction for which credit is sought [against a fair share
21 obligation] shall be adaptable in accordance with the provisions of
22 section 5 of P.L.2005, c.350 (C.52:27D-123.15). For the purposes
23 of P.L.2005, c.350 (C.52:27D-311a et al.), "new construction" shall
24 mean an entirely new improvement not previously occupied or used
25 for any purpose.¹

26 (cf: P.L.2005, c.350, s.1)

27

28 ²[¹16.] 15.² Section 6 of P.L.2005, c.350 (C.52:27D-311b) is
29 amended to read as follows:

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

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

1 ²[¹17.] 16.² Section 20 of P.L.1985, c.222 (C.52:27D-320) is
2 amended to read as follows:

3 20. There is established in the Department of Community
4 Affairs a separate trust fund, to be used for the exclusive purposes
5 as provided in this section, and which shall be known as the "New
6 Jersey Affordable Housing Trust Fund." The fund shall be a non-
7 lapsing, revolving trust fund, and all monies deposited or received
8 for purposes of the fund shall be accounted for separately, by source
9 and amount, and remain in the fund until appropriated for such
10 purposes. The fund shall be the repository of all State funds
11 appropriated for affordable housing purposes, including, but not
12 limited to, the proceeds from the receipts of the additional fee
13 collected pursuant to paragraph (2) of subsection a. of section 3 of
14 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the
15 Statewide non-residential development fees collected pursuant to
16 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or
17 reverting from municipal development trust funds, or other monies
18 as may be dedicated, earmarked, or appropriated by the Legislature
19 for the purposes of the fund. All references in any law, order, rule,
20 regulation, contract, loan, document, or otherwise, to the
21 "Neighborhood Preservation Nonlapsing Revolving Fund" shall
22 mean the "New Jersey Affordable Housing Trust Fund." No less
23 than 13 percent of the total expenditures in any State fiscal year
24 from the New Jersey Affordable Housing Trust Fund shall be used
25 for housing projects reserved for very low income households and
26 special needs housing units. The department shall be permitted to
27 utilize annually up to 7.5 percent of the monies available in the fund
28 for the payment of any necessary administrative costs related to the
29 administration of the "Fair Housing Act," P.L.1985, c.222
30 (C.52:27D-301 et al.), the State Housing Commission, or any costs
31 related to administration of P.L.2008, c.46 (C.52:27D-329.1 et al.).

32 a. **[**Except as permitted pursuant to subsection g. of this
33 section, and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the**]**
34 **The** commissioner shall award grants or loans from this fund for
35 housing projects and programs **[**in municipalities whose housing
36 elements have received substantive certification from the council,**]**
37 ²**[**in municipalities receiving State aid pursuant to P.L.1978, c.14
38 (C.52:27D-178 et seq.), and in municipalities subject to a builder's
39 remedy**]**² **[**as defined in section 28 of P.L.1985, c.222 (C.52:27D-
40 328) or in receiving municipalities in cases where the council has
41 approved a regional contribution agreement and a project plan
42 developed by the receiving municipality.

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

1 council for substantive certification]. The commissioner shall
2 ²prioritize funding for non-profits and projects² that include special
3 needs units when making grants and awards from the "New Jersey
4 Affordable Housing Trust Fund." The commissioner shall assess
5 the housing need in each region of the State and consider the
6 assessment in prioritizing awards from the fund.

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

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

15 c. ~~For any period which the council may approve, the~~
16 ~~commissioner may assist affordable housing programs which are~~
17 ~~not located in municipalities whose housing elements have been~~
18 ~~granted substantive certification or which are not in furtherance of a~~
19 ~~regional contribution agreement; provided that the affordable~~
20 ~~housing program will meet all or part of a municipal low and~~
21 ~~moderate income housing obligation.] (Deleted by amendment,~~
22 ~~P.L. , c.) (pending before the Legislature as this bill).~~

23 d. Amounts deposited in the "New Jersey Affordable Housing
24 Trust Fund" shall be targeted to ~~regions based on the region's~~
25 ~~percentage of the State's low and moderate income housing need as~~
26 ~~determined by the council] assist projects in municipalities that are~~
27 ~~deemed compliant pursuant to section ²[24] 23² of P.L. , c.~~
28 ~~(C.) ²(² pending before the Legislature as this bill) ²[or pursuant~~
29 ~~to section 25 of P.L. , c. (C.) (pending before the~~
30 ~~Legislature as this bill)]², and to assist projects in municipalities~~
31 ~~that are neither compliant nor deemed compliant pursuant to P.L. ,~~
32 ~~c. (C.) (pending before the Legislature as this bill). Amounts~~
33 ~~[in the fund] deposited in the "New Jersey Affordable Housing~~
34 ~~Trust Fund" shall be applied for the following purposes in~~
35 ~~designated neighborhoods:~~

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

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

40 (3) Conversion of non-residential space to residential purposes;
41 provided at least 10 percent of the resulting housing units are to be
42 occupied by low and moderate income households;

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

1 (5) Grants of assistance to eligible municipalities for costs of
2 necessary studies, surveys, plans and permits; engineering,
3 architectural and other technical services; costs of land acquisition
4 and any buildings thereon; and costs of site preparation, demolition
5 and infrastructure development for projects undertaken pursuant to
6 an approved regional contribution agreement;

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

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

24 (8) Transfers authorized pursuant to this section to the "Urban
25 Housing Assistance Fund" established by section 13 of P.L.2008,
26 c.46 (C.52:27D-329.7) to provide assistance for rehabilitation and
27 new construction through the Urban Housing Assistance Program
28 pursuant to section 13 of P.L.2008, c.46 (C.52:27D-329.7).

29 e. Any grant or loan agreement entered into pursuant to this
30 section shall incorporate contractual guarantees and procedures by
31 which the division will ensure that any unit of housing provided for
32 low and moderate income households shall continue to be occupied
33 by low and moderate income households for at least 20 years
34 following the award of the loan or grant, except that the division
35 may approve a guarantee for a period of less than 20 years where
36 necessary to ensure project feasibility.

37 f. Notwithstanding the provisions of any other law, rule or
38 regulation to the contrary, in making grants or loans under this
39 section, the department shall not require that tenants be certified as
40 low or moderate income or that contractual guarantees or deed
41 restrictions be in place to ensure continued low and moderate
42 income occupancy as a condition of providing housing assistance
43 from any program administered by the department, when that
44 assistance is provided for a project of moderate rehabilitation if the
45 project (1) contains 30 or fewer rental units and (2) is located in a
46 census tract in which the median household income is 60 percent or
47 less of the median income for the housing region in which the

1 census tract is located, as determined for a three person household
2 by the council in accordance with the latest federal decennial
3 census. A list of eligible census tracts shall be maintained by the
4 department and shall be adjusted upon publication of median
5 income figures by census tract after each federal decennial census.

6 g. In addition to other grants or loans awarded pursuant to this
7 section, and without regard to any limitations on such grants or
8 loans for any other purposes herein imposed, the commissioner
9 shall annually allocate such amounts as may be necessary in the
10 commissioner's discretion, and in accordance with section 3 of
11 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
12 under the program created pursuant to P.L.2004, c.140 (C.52:27D-
13 287.1 et al.). Such rental assistance grants shall be deemed
14 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
15 301 et al.), in order to meet the housing needs of certain low income
16 households who may not be eligible to occupy other housing
17 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

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

34 i. The commissioner may award or grant the amount of any
35 appropriation deposited in the "New Jersey Affordable Housing
36 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
37 320.1) to municipalities pursuant to the provisions of section 39 of
38 P.L.2009, c.90 (C.40:55D-8.8).

39 j. Not less than 10 percent and not more than 25 percent of the
40 amount ²[of the additional fees collected pursuant to paragraph (2)
41 of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7) and]²
42 deposited in the "New Jersey Affordable Housing Trust Fund" ²,
43 available for the purposes set forth in subsection d. of this section
44 during any fiscal year,² shall be transferred to the "Urban Housing
45 Assistance Fund" in any State fiscal year.¹

46 (cf: P.L.2009, c.90, s.38)

1 ²[¹18.] 17.² Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is
2 amended to read as follows:

3 19. a. Notwithstanding any rules of the New Jersey Housing
4 and Mortgage Finance Agency to the contrary, the allocation of low
5 income tax credits shall be made by the agency to the full extent
6 such credits are permitted to be allocated under federal law,
7 including allocations of 4 percent or 9 percent federal low income
8 tax credits, and including allocations allowable for partial credits.
9 The affordable portion of any mixed income or mixed use
10 development that is part of a **[fair share]** housing plan **[approved**
11 **by the council, or]** including a development that has received a
12 court-approved judgment of repose or compliance, including, but
13 not limited to, a development that has received a density bonus,
14 shall be permitted to receive allocations of low income tax credits,
15 provided that the applicant can conclusively demonstrate that the
16 market rate residential or commercial units are unable to internally
17 subsidize the affordable units, and the affordable units are
18 developed contemporaneously with the commercial or market rate
19 residential units. In adopting the Qualified Allocation Plan
20 pursuant to 26 U.S.C. s.42, and any rules promulgated thereunder,
21 the agency shall, ²assess the housing needs and resources in each
22 region and consider the assessment in issuing credits. The agency
23 shall, ²in issuing the credits, prioritize applications from projects in
24 municipalities that are deemed compliant pursuant to section ²[24
25 23² of P.L. , c. (C.) (pending before the Legislature as this bill)
26 ²[or pursuant to section to section 25 of P.L. , c. (C.) (pending
27 before the Legislature as this bill)]², and to assist projects in
28 municipalities that are neither compliant nor deemed compliant
29 pursuant to P.L. , c. (C.) (pending before the Legislature as this
30 bill) ²[, and that include at least 10 percent special needs or very
31 low income units]².

32 b. A housing unit financed in whole or in part through the
33 allocation of federal Low-Income Housing Tax Credits shall be
34 eligible to be counted as a qualified unit for purposes of
35 determining whether a municipality is a compliant municipality
36 pursuant to section ²[21] 20² of P.L. , c. (C.) (pending
37 before the Legislature as this bill) if the requirements of federal law
38 pursuant to 26 U.S.C. s.42 have been met for that unit.¹

39 (cf: P.L.2008, c.46, s.19)

40

41 ²[¹19.] 18.² Section 13 of P.L.2008, c.46 (C.52:27D-329.7) is
42 amended to read as follows:

43 13. a. There is established within the Department of Community
44 Affairs an Urban Housing Assistance Program for the purposes of
45 assisting certain municipalities in the provision of housing through

1 the rehabilitation of existing buildings or the construction of
2 affordable housing.

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

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

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

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

17 c. The Commissioner of Community Affairs shall develop a
18 strategic five-year plan for the program aimed at developing
19 strategies to assist municipalities in creating rehabilitation programs
20 and other programs to produce safe, decent housing within the
21 municipality.

22 d. The commissioner may award a housing rehabilitation grant
23 to a municipality that qualifies for aid pursuant to P.L.1978, c.14
24 (C.52:27D-178 et seq.), or a non-profit² or for-profit² corporation in
25 a municipality that qualifies for such aid, and that has submitted a
26 valid application to the Department of Community Affairs which
27 details the manner in which the municipality will utilize funding in
28 order to meet the municipality's need to rehabilitate or create safe,
29 decent, and affordable housing.

30 e. The commissioner shall promulgate rules and regulations,
31 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
32 (C.52:14B-1 et seq.), to effectuate the purposes of P.L.2008, c.46
33 (C.52:27D-329.1 et al.); provided that the regulations shall permit a
34 municipality broad discretion in shaping its housing rehabilitation
35 and construction program, but shall not permit a municipality to
36 provide assistance to any household having an income greater than
37 120 percent of median household income for the housing region.
38 The department may require a return of a grant upon its
39 determination that a municipality is not performing in accordance
40 with its grant or with the regulations.¹

41 (cf: P.L.2008, c.46, s.13)

42

43 ²[¹20.] 19.² Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is
44 amended to read as follows:

45 18. a. [Notwithstanding any rules of the council to the contrary,
46 for developments consisting of newly-constructed residential units
47 located, or to be located, within the jurisdiction of any regional

1 planning entity required to adopt a master plan or comprehensive
 2 management plan pursuant to statutory law, including the New
 3 Jersey Meadowlands Commission pursuant to subsection (i) of
 4 section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission
 5 pursuant to section 7 of the "Pinelands Protection Act," P.L.1979,
 6 c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization
 7 Planning Authority pursuant to section 5 of P.L.2006, c.16
 8 (C.52:27I-5), or its successor, and the Highlands Water Protection
 9 and Planning Council pursuant to section 11 of P.L.2004, c.120
 10 (C.13:20-11), but excluding joint planning boards formed pursuant
 11 to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be
 12 required to be reserved for occupancy by low or moderate income
 13 households at least 20 percent of the residential units constructed, to
 14 the extent this is economically feasible.] ²[(Deleted by amendment,
 15 P.L. , c.)]

16 In developments consisting of newly-constructed residential
 17 units located, or to be located, within the jurisdiction of the New
 18 Jersey Meadowlands Commission pursuant to section 6 of
 19 P.L.1968, c.404 (C.13:17-6), the Pinelands Commission pursuant to
 20 section 7 of the "Pinelands Protection Act," P.L.1979, c.111
 21 (C.13:18A-8), the Fort Monmouth Economic Revitalization
 22 Authority pursuant to section 9 of P.L.2010, c.51 (C.52:27I-26), or
 23 its successor, and the Highlands Water Protection and Planning
 24 Council pursuant to section 11 of P.L.2004, c.120 (C.13:20-11),
 25 there shall be required to be reserved for occupancy as qualified
 26 very-low, low, or moderate income housing units as those terms are
 27 defined pursuant to section 21 of P.L. , c. (C.) (pending
 28 before the Legislature as this bill), between 15 and 20 percent of the
 29 residential units constructed, in developments that meet or exceed
 30 the minimum applicable densities as set forth in subsection d. of
 31 section 23 of P.L. , c. (C.) (pending before the Legislature
 32 as this bill) ² .

33 b. A developer of a project consisting of newly-constructed
 34 residential units being financed in whole or in part with State funds,
 35 including, but not limited to, transit villages designated by the
 36 Department of Transportation, units constructed on State-owned
 37 property, and urban transit hubs as defined pursuant to section 2 of
 38 P.L.2007, c.346 (C.34:1B-208), shall be required to reserve ²[at
 39 least **[20]** 10 percent of the residential units constructed **[for**
 40 **occupancy by]** as low or moderate income **[households]** housing,
 41 as those terms are defined in section **[4** of P.L.1985, c.222
 42 (C.52:27D-304)] 21 of P.L. , c. (C.) (pending before the
 43 Legislature as this bill), with affordability controls as required
 44 under the rules of the **[council, unless the municipality in which the**
 45 **property is located has received substantive certification from the**
 46 **council]** department] ² **[and such a reservation is not required under**

1 the approved affordable housing plan, or the municipality has been
2 given a judgment of repose or a judgment of compliance by the
3 court, and such a reservation is not required under the approved
4 affordable housing plan] ²between 15 and 20 percent of the
5 residential units constructed in developments that meet or exceed
6 the minimum applicable densities as set forth in section 23 of
7 P.L. , c. (C.) (pending before the Legislature as this bill), as
8 qualified very-low, low, and moderate income housing units as
9 those terms are defined in section 21 of P.L. , c. (C.)
10 (pending before the Legislature as this bill), with affordability
11 controls as required ³[by the department]³, unless the municipality
12 in which the development is located is compliant pursuant to
13 section 24 of P.L. , c. (C.) (pending before the Legislature
14 as this bill)².

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

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

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

45 (4) The coordination of affordable housing opportunities by
46 regional entities as identified in this section shall not include
47 activities which would provide housing units to be located in those

1 municipalities that are eligible to receive aid under the "Special
2 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or
3 are coextensive with a school district which qualified for
4 designation as a "special needs district" pursuant to the "Quality
5 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at
6 any time in the last 10 years has been qualified to receive assistance
7 under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the
8 jurisdiction of any of the regional entities specified in subsection a.
9 of this section.] ²[(Deleted by amendment, P.L. , c.)]

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

19 (2) With the exception of the New Jersey Meadowlands
20 Commission, the regional planning entities identified in subsection
21 a. of this section shall identify and coordinate regional affordable
22 housing opportunities in cooperation with municipalities in areas
23 with convenient access to infrastructure, employment opportunities,
24 and public transportation. Coordination of affordable housing
25 opportunities may include methods to regionally provide housing in
26 line with regional concerns, such as transit needs or opportunities,
27 environmental concerns, or such other factors as the ³[council]
28 regional planning entities³ may permit; provided, however, that
29 such provision by such a regional entity may not result in more than
30 a 50 percent change in the number of qualified housing units for
31 which a realistic opportunity is required to be provided for in any
32 municipality pursuant to section 23 of P.L. , c. (C.) (pending
33 before the Legislature as this bill) and that the sum of such changes
34 may not reduce the aggregate number of qualified housing units
35 required in the region as determined pursuant to section 23 of
36 P.L. , c. (C.) (pending before the Legislature as this bill) in
37 the current housing period.

38 (3) With the exception of the New Jersey Meadowlands
39 Commission, the regional planning entities identified in subsection
40 a. of this section shall adopt and promulgate, in accordance with the
41 provisions of the "Administrative Procedure Act," P.L.1968, c. 410
42 (C.52:14B-1 et seq.), all rules and regulations necessary or
43 expedient for the prompt and effective carrying out of the
44 provisions and purposes of this section. Within six months of the
45 effective date of P.L. , c. (C.) (pending before the
46 Legislature as this bill), each regional planning entity shall adopt
47 regional housing plans identifying, among other things, to which

1 municipalities obligations have been transferred and the purpose for
2 doing so. The transfer of obligations to a municipality shall be at
3 the sole discretion of the regional planning entities subject to the
4 restrictions of this section. Except for municipalities located within
5 the jurisdiction of the New Jersey Meadowlands Commission,
6 municipalities located within the other regional planning entities
7 shall have another six-month period after the adoption of the
8 regional housing plans to file duly adopted and certified housing
9 elements and implementing ordinances with the department in
10 accordance with the standards governing such housing elements and
11 implementing ordinances set forth in section 23 of P.L. , c.
12 (C.) (pending before the Legislature as this bill).

13 (4) The coordination of affordable housing opportunities by
14 regional entities as identified in this section shall not include
15 activities which would provide housing units to be located in those
16 municipalities that are eligible to receive aid under the "Special
17 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or
18 are coextensive with a "special needs district" pursuant to the
19 "Quality Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et
20 al.), or at any time in the last 10 years has been qualified to receive
21 assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall
22 within the jurisdiction of any of the regional entities specified in
23 subsection a. of this section^{2, 1}
24 (cf: P.L.2008, c.46, s.18)

25
26 ²[¹21.] ²20. ²(New section) ²[To determine whether property
27 has access to sewer for purposes of determining whether the
28 property is developable land as defined in section 22 of P.L. , c.
29 (C.) (pending before the Legislature as this bill), any] ²Any²
30 party, ²including the property owner, municipality, or contract
31 purchaser,² may apply ², in such form and manner as shall be
32 established by the Commissioner of Environmental Protection,² to
33 the Department of Environmental Protection for a review ²[or]
34 and² determination of site specific or project specific amendments
35 or revisions to wastewater management plans and water quality
36 management plans ², when those plans are submitted to achieve
37 compliance with P.L. , c. (C.) (pending before the
38 Legislature as this bill), and where at least 15% of the units are
39 qualified units. The Department of Environmental Protection shall
40 review and act upon the amendments or revisions within 90 days of
41 receipt of a completed application for a determination and review^{2, 1}
42

43 ²[¹22.] ²21. ²(New section) As used in P.L. , c. (C.)
44 (pending before the Legislature as this bill):

45 "Adaptable" means constructed in compliance with the technical
46 design standards of the barrier free subcode adopted by the

1 Commissioner of Community Affairs pursuant to the "State
2 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
3 et seq.) and in accordance with the provisions of section 5 of
4 P.L.2005, c.350 (C.52:27D-123.15).

5 "Affordability control" means any deed restriction, covenant, or
6 other legally binding provision requiring that a low or moderate
7 income housing unit remains affordable to and restricted to
8 occupancy by low or moderate income households, as the case may
9 be, for a period of 30 years from the date of initial occupancy of the
10 unit ²[, or for the time period required pursuant to any regulation in
11 force at the time of sale of the unit]².

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

14 "Attached housing" means any form of residential development
15 other than detached single family housing, including, but not
16 limited to, two-family housing, three-family housing, attached
17 single family houses, multifamily apartments, and manufactured
18 housing communities.

19 "Compliance threshold" means the percentage of a
20 municipality's housing stock that is required to be qualified housing
21 units in order for the municipality to be deemed a compliant
22 municipality.

23 "Conversion" means the conversion of existing commercial,
24 industrial, or residential structures for low and moderate income
25 housing purposes where at least 10 percent of the housing units are
26 provided for a reasonable income range of low and moderate
27 income households.

28 "Council" means the former Council on Affordable Housing
29 established by section 5 of P.L.1985, c.222, and, following the
30 effective date of P.L. , c. (C.) (pending before the
31 Legislature as this bill), the Department of Community Affairs,
32 '[pursuant to]' pursuant to section 2 of P.L. , c. (C.)
33 (pending before the Legislature as this bill).

34 "Department" means the Department of Community Affairs
35 established pursuant to section 1 of P.L.1966, 293 (C.52:27D-1).

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

39 "Developable land" means any lot or parcel, whether or not the
40 parcel is vacant, or any part of a lot or parcel, having access to
41 sewer service, or that has been determined by the Department of
42 Environmental Protection, pursuant to section ²[21] 20² of P.L. ,
43 c. (C.) (pending before the Legislature as this bill), to be
44 legally able to connect to service, having a slope of less than 15
45 percent, and that is not:

46 (1) land that is owned by a local government entity that as of the
47 effective date of P.L. , c. (C.) (pending before the

1 Legislature as this bill), has adopted, prior to the institution of a
2 lawsuit seeking a builder's remedy, a resolution authorizing an
3 execution of agreement that the land be utilized for a public purpose
4 other than housing;

5 (2) ²[any]² land listed on a master plan of a municipality as
6 being dedicated, by easement or otherwise, for purposes of
7 conservation, park lands ², active recreation,² or open space and
8 which is owned, leased, licensed, or in any manner operated by a
9 county, municipality or tax-exempt, nonprofit organization
10 including a local board of education, or by more than one
11 municipality by joint agreement pursuant to the "Uniform Shared
12 Services and Consolidation Act," P.L.2007, c.63 (C.40A:65-1 et
13 seq.), for so long as the entity maintains such ownership, lease,
14 license, or operational control of such land;

15 (3) ²[any vacant]² contiguous ²with other² parcels of land in
16 private ownership ²which when combined are² of a size which
17 would accommodate fewer than five housing units ²[if the
18 economic viability standards of the department were applied
19 pertaining to housing density] pursuant to the standards of
20 paragraph (1) of subsection c. of section 23 of P.L. , c. (C.)
21 (pending before the Legislature as this bill)²;

22 (4) ²an² historic ²[and] or² architecturally important ²[sites]
23 site² listed on the State Register of Historic Places or National
24 Register of Historic Places ²[prior to the effective date of P.L. , c.
25 (C.) (pending before the Legislature as this bill)] unless
26 proposed for historically appropriate conversion or adaptive reuse²;

27 (5) agricultural ²[lands when the] land for which² development
28 rights ²[to these lands]² have been purchased or restricted by
29 covenant;

30 (6) ²[sites designated for active recreation that are designated
31 for recreational purposes in the municipal master plan; and

32 (7) ²environmentally sensitive lands where development is
33 prohibited by any State or federal agency, including prohibitions
34 pursuant to the "Freshwater Wetlands Protection Act," P.L.1987,
35 c.156 (C.13:9B-1 et seq.), the "Pinelands Protection Act," P.L.1979,
36 c.111 (C.13:18A-1 et seq.), the "Coastal Area Facility Review Act,"
37 P.L.1973, c.185 (C.13:19-1 et seq.), the "Highlands Water
38 Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.),
39 the federal Clean Water Act, 33 U.S.C. ss.1251 et seq., or the
40 "Hackensack Meadowlands Reclamation and Development Act¹, ¹"
41 P.L.1968, c.404 (C.13:17-1 et seq.).

42 Developable land shall include existing structures that are
43 appropriate for conversion to or rehabilitation ²or replacement² for
44 housing, including, but not limited to, structures abandoned or
45 underutilized.

1 ²"Family housing" means self-contained, residential dwelling
2 units, each having a lockable door on a private entrance ³[.] ³ a
3 kitchen, sanitary facilities, and separate sleeping quarters, and
4 which are available to the general public and not restricted to any
5 specific segment of the population by age or disability.²

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

12 ²"Inclusionary zoning ordinance" means any zoning ordinance
13 that provides for: qualified housing units as a portion of a
14 residential development, or a redevelopment plan that provides
15 qualified housing units as a portion of a residential development.

16 "Initial compliance period" means the period of 10 years
17 beginning on the effective date of P.L. , c. (C.) (pending
18 before the Legislature as this bill).

19 "Licensed housing compliance professional" means an individual
20 who is licensed by the State Board of Professional Planners to
21 determine the sufficiency of, and certify, those housing elements
22 and related ordinances submitted to the professional by a
23 municipality pursuant to P.L. , c. (C.) (pending before the
24 Legislature as this bill).²

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

32 "Moderate 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 more than 50 percent but less than 80
37 percent of the median gross household income for households of the
38 same size within the housing region in which the housing is located.

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

1 "Qualified housing units" means ²[the sum of housing units that
2 are very low income housing, low income housing, moderate
3 income housing, mobile home units, public housing units, and units
4 whose deeds contain sale, resale or transfer price restrictions
5 because the units were financed by federal Low Income Housing
6 Tax Credits, received project-based assistance under the program
7 authorized pursuant to section 8 of the United States Housing Act of
8 1937 as added by the Housing and Community Development Act of
9 1974, Pub.L.93-383 (42U.S.C. s. 1437f), or received financing from
10 funds received pursuant to a Regional Contribution Agreement;]
11 units subject to affordability controls, public housing, and
12 supportive and special needs units. Housing units shall be deemed
13 qualified housing units only if affordability controls or applicable
14 affordability restrictions expire no sooner than the end of the
15 current compliance period,² provided, that any qualified units shall
16 be adaptable, as required by section 1 of P.L.2005, c.350
17 (C.52:27D-311a). ³Homes located in a mobile home park, as
18 defined pursuant to section 2 of P.L.1990, c.61 (C.54:4-8.58) for
19 purposes of the homestead credit act and that are potentially
20 available for rental or sale to the general public for permanent,
21 year-round occupancy, may be deemed qualified housing units
22 without affordability controls, unless demolished or otherwise made
23 unavailable for occupancy, and shall be classified as qualified low-
24 or moderate-income units based on the sale or rental prices of the
25 units.³

26 "Qualified low income housing units" means ²qualified² housing
27 units that are affordable to and occupied by households earning no
28 more than 50 percent of the median income for the region in which
29 the municipality is located, as adjusted for family size, and which
30 are subject to affordability controls.

31 "Qualified moderate income housing units" means ²qualified²
32 housing that is affordable to and occupied by households earning no
33 more than 80 percent of the median income for the region in which
34 the municipality is located, as adjusted for family size, and which is
35 subject to affordability controls.

36 "Qualified very low income housing units" means ²qualified²
37 housing units that are affordable to and occupied by households
38 earning no more than 30 percent of the median income for the
39 region in which the municipality is located, as adjusted for family
40 size, and which are subject to affordability controls.

41 "Rehabilitation project" ²under P.L. , c. (C.) (pending
42 before the Legislature as this bill)² means a "gut rehabilitation"
43 project where the extent and nature of the work is such that the
44 work area cannot be occupied while the work is in progress and
45 where a new certificate of occupancy is required before the work
46 area can be reoccupied, pursuant to the Rehabilitation Subcode,

1 N.J.A.C.5:23-6. Reconstruction shall not include projects comprised
2 only of floor finish replacement, painting or wallpapering, or the
3 replacement of equipment or furnishings. Asbestos hazard
4 abatement and lead hazard abatement projects shall not be classified
5 as reconstruction solely because occupancy of the work area is not
6 permitted.

7 "Residential development project" means a new construction or
8 any residential development project requiring a new certificate of
9 occupancy, including, but not limited to any redevelopment,
10 rehabilitation, infill development, or adaptive reuse of property. A
11 "new residential development project" shall not mean any
12 construction or reconstruction of a single-family dwelling that is
13 occupied by, or intended to be occupied by, the owner.

14 ²"Subsequent compliance period" means any period of 10 years
15 following the initial compliance period and beginning on the day
16 following the last day of the prior compliance period.²

17 "Supportive and special needs housing" means homes for persons
18 with developmental disabilities and mental illness that are designed
19 as permanent housing, and licensed or regulated by the New Jersey
20 Department of Human Services; permanent supportive housing; and
21 permanent supportive shared living housing. This term does not
22 include housing restricted to occupancy by persons under 18 years
23 of age. ²Homes shall be affordable to and occupied by households
24 earning no more than 80 percent of the median income for the
25 region in which the municipality is located, as adjusted for family
26 size, and that are subject to affordability controls or established
27 with capital funding through a 20-year operating contract with the
28 Department of Human Services, Division of Developmental
29 Disabilities.²

30 ²"Total current housing stock" means all occupied and vacant
31 dwelling units within a municipality which are potentially available
32 for rental or sale to the general public for permanent ³year-round³
33 occupancy, including dwelling units that are age-restricted, or
34 restricted to persons of low or moderate income, and licensed
35 rooming or boarding houses, as defined pursuant to section 3 of
36 P.L.1979, c.496 (C.55:13B-3). The term shall not include hotels or
37 motels, as defined pursuant to section 3 of P.L.1967, c.76
38 (C.55:13A-3), or other transient facilities, dwelling units that are
39 available to only employees of a particular employer, or occupied
40 by students, members of a particular religious group, or residents of
41 a particular institution, military housing, or units within a health
42 care facility regulated by the New Jersey Department of Health.²

43 "Very low income housing" means housing affordable according
44 to federal Department of Housing and Urban Development or other
45 recognized standards for home ownership and rental costs and
46 occupied or reserved for occupancy by households with a gross
47 household income equal to 30 percent or less of the median gross

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

3

4 ²[¹23.¹] 22.² (New section) a. A municipality shall meet its
5 compliance threshold if it ²duly adopts and files a housing element,
6 that has been prepared pursuant to section 10 of P.L.1985, c.222
7 (C.52:27D-310), within 60 days of the effective date of P.L. , c.
8 (C.), and which element has been certified by a licensed housing
9 compliance professional that such housing element² demonstrates
10 that:

11 (1) [12] 10 percent of ²[its] the municipality's² total current
12 housing stock is qualified housing units; or

13 (2) ²for municipalities in which² at least ²[25] 20², but less than
14 50, percent of the children enrolled in schools in the municipality in
15 October of the preceding year were eligible for free or reduced price
16 meals under the federal School Lunch Program ², eight percent of
17 the municipality's total current housing stock is qualified housing
18 units².

19 b. For purposes of counting towards a compliance threshold
20 determined pursuant to ²[(1) in]² subsection a. of this section:

21 (1) at least 50 percent of the total number of qualified housing
22 units in any municipality shall be qualified low income units ², at
23 least 13 percent of the total qualified housing units in any
24 municipality ³[constructed] produced³ after the effective date of
25 P.L. , c. (C.) (pending before the Legislature as this bill)
26 ³[.] in each compliance period pursuant to section 23 of P.L. , c.
27 (C.) (pending before the Legislature as this bill)³ shall be
28 qualified very low income units²;

29 (2) no more than 25 percent of the total number of qualified low
30 income housing units and qualified moderate income housing units
31 in any municipality shall be age-restricted units as defined pursuant
32 to section 2 of P.L.2009, c.82 (C.45:22A-46.4) ²;

33 (3) at least 50 percent of the units reserved for each of very-low-
34 income housing, low income, and moderate income housing and
35 counted toward the compliance threshold pursuant to this section,
36 shall be family housing; and

37 (4) no more than 25 percent of the total number of qualified
38 housing units ³produced after the effective date of P.L. , c.
39 (C.) (pending before the Legislature as this bill) in each
40 compliance period pursuant to section 23 of P.L. , c. (C.)
41 (pending before the Legislature as this bill)³ in any municipality
42 shall be reserved for people living or working within that
43 municipality².

44 c. Each permanent supportive housing unit that receives a
45 certificate of occupancy following the effective date of P.L. , c.

1 (C.) (pending before the Legislature as this bill), shall be
2 counted as two units of qualified housing in the municipality in
3 which the unit is located. Each new unit of housing for persons with
4 developmental disabilities or mental illness, designed as permanent
5 housing, and regulated by the New Jersey Department of Human
6 Services, shall be counted as one and one-quarter unit of qualified
7 housing in the municipality in which the unit is located. Each new
8 bedroom in permanent supportive shared living housing created
9 following the effective date of P.L. , c. (C.) (pending before
10 the Legislature as this bill), shall be counted as one and one-quarter
11 unit of qualified housing in the municipality in which the unit is
12 located. The total added additional units counted pursuant to this
13 subsection shall not exceed 25 percent of the number of housing
14 units affordable to low- and moderate-income people counted to
15 determine that a municipality is a compliant municipality.

16 d. ²[A] Each² municipality ²[that is a compliant municipality
17 pursuant to this section shall remain a compliant municipality as
18 long as the requirements of this section are met, and the
19 affordability controls on any required qualified housing units
20 remain in effect. At the time the municipality files a resolution,
21 pursuant to subsection e. of this section, the Department shall
22 review affordability controls in effect for qualified units, where
23 relevant, for compliance with the requirements of P.L. , c.
24 (C.) (pending before the Legislature as this bill)] adopting a
25 housing element pursuant to this section shall file the housing
26 element and other relevant information with the department in an
27 electronic format pursuant to section 28 of P.L. , c. (C.)
28 (pending before the Legislature as this bill). Once the housing
29 element has been reviewed and certified by a licensed housing
30 compliance professional, the certified housing element and other
31 relevant information shall also be filed with the department in an
32 electronic format pursuant to section 28 of P.L. , c. (C.)
33 (pending before the Legislature as this bill), at which point the
34 municipality shall be compliant².

35 e. ²[To demonstrate that it has met the compliance threshold, a
36 municipal governing body shall adopt a resolution containing an
37 analysis of data demonstrating that it met its threshold. Each] The
38 housing element filed pursuant to subsection a. of this section shall
39 be valid for 10 years from the effective date of P.L. , c. (C.)
40 (pending before the Legislature as this bill). Anytime within the
41 year prior to the expiration of the initial compliance period, or any
42 subsequent compliance period, a² municipality ²[adopting a
43 resolution pursuant to this section shall file the resolution and other
44 relevant information with the Department in an electronic format]
45 seeking to demonstrate compliance for a subsequent compliance
46 period may adopt and file a housing element for certification
47 pursuant to this section².

1 f. Any municipality demonstrating that it has met the
2 compliance threshold pursuant to this section shall submit an
3 analysis ²as part of its housing element² calculating the number of
4 existing substandard housing units in the municipality occupied by
5 low and moderate income families, and a plan for rehabilitating at
6 least that number of units within the next 10 years.

7 g. The department shall make any ordinances or housing
8 element filed by a municipality available on the website established
9 pursuant to section ²[30] 28² of P.L. , c. (C.) (pending
10 before the Legislature as this bill).

11 ²[h. Upon receipt of a municipality's filing, the Commissioner
12 of Community Affairs will undertake a review of the municipality's
13 filing, for the sole purpose of determining whether the filing
14 accurately and completely represents the required composition of
15 the municipal housing stock and ordinances in conformance with
16 the requirements of this section.]²

17 For purposes of this section, a municipality ²[may] shall² rely
18 upon a determination of the number of children enrolled in schools
19 in the municipality in October of the ²[preceding]² year ²preceding
20 the start of the relevant 10-year period as established in subsection
21 e. of this section² that are eligible for free or reduced price meals
22 under the federal School Lunch Program ²[need for a period of up
23 to 10 years] for the subsequent 10-year period² .¹
24

25 ²23. (New section) a. A municipality may be deemed to be a
26 compliant municipality for the initial compliance period if, within
27 eight months of the effective date of P.L. , c. (C.) (pending
28 before the Legislature as this bill) it duly adopts and files with the
29 department a certified housing element and implementing
30 ordinances that have been prepared pursuant to section 10 of
31 P.L.1985, c.222 (C.52:27D-310) and meet the criteria of this
32 section.

33 b. The housing element shall include an analysis of the number
34 of qualified housing units already existing in the municipality and
35 the number of qualified housing units required to satisfy the criteria
36 set forth in subsection a. of section 22 of P.L. , c. (C.)
37 (pending before the Legislature as this bill). In the initial
38 compliance period, the housing element and implementing
39 ordinances shall provide, in addition to the number of existing
40 qualified housing units, a realistic opportunity for the least of the
41 following:

42 (1) Sufficient qualified housing units to meet at least 50 percent
43 of the difference between the number of qualified housing units
44 already existing in the municipality and the number of qualified
45 housing units required to satisfy the criteria set forth in subsection

1 a. of section 22 of P.L. , c. (C.) (pending before the
2 Legislature as this bill);

3 (2) 1000 qualified housing units; or

4 (3) A number of qualified housing units equal to the number for
5 the municipality set forth in the table appearing at 40 N.J.R. 2942-
6 2955 (June 2, 2008).

7 c. Within 12 months prior to the expiration of the initial
8 compliance period or any subsequent compliance period, the
9 municipality may be deemed compliant for the subsequent
10 compliance period if it duly adopts and files with the department a
11 certified housing element and implementing ordinances that have
12 been prepared pursuant to section 10 of P.L.1985, c.222 (C.52:27D-
13 310) and meet the criteria of this section. Any such housing element
14 and implementing ordinances shall not become effective until the
15 commencement of the subsequent compliance period. The housing
16 element shall include an analysis of the number of qualified housing
17 units already existing in the municipality and the number of
18 qualified housing units required to satisfy the criteria set forth in
19 subsection a. of section 22 of P.L. , c. (C.) (pending before
20 the Legislature as this bill). ³[The] Except for those municipalities
21 meeting the number of qualified housing units equal to the number
22 for the municipality set forth in the table appearing at 40 N.J.R.
23 2942-2955 (June 2, 2008) in the initial compliance period, the³
24 housing element and implementing ordinances shall provide a
25 realistic opportunity to meet the entire difference between the
26 number of qualified units already existing in the municipality and
27 the number of qualified units required to satisfy the criteria set forth
28 in subsection a. of section 22 of P.L. , c. (C.) (pending
29 before the Legislature as this bill). Notwithstanding the foregoing,
30 the housing element and implementing ordinances may alternatively
31 provide, in addition to the number of existing qualified housing
32 units plus any additional qualified housing units not yet created that
33 were or would have been required pursuant to this section for any
34 and all previous compliance periods, a realistic opportunity for
35 ³[the lessor of the following:]³

36 1000 qualified housing units ³[; or

37 A number of qualified housing units equal to the number for the
38 municipality set forth in the table appearing at 40 N.J.R. 2942-2955
39 (June 2, 2008)]³.

40 ³For those municipalities meeting the number of qualified
41 housing units equal to the number for the municipality set forth in
42 the table appearing at 40 N.J.R. 2942-2955 (June 2, 2008) in the
43 initial compliance period, the housing element and implementing
44 ordinances for the next subsequent compliance period shall provide
45 a realistic opportunity for sufficient qualified housing units to meet
46 at least 50 percent of the difference between the number of qualified
47 housing units already existing in the municipality and the number of

1 qualified housing units required to satisfy the criteria set forth in
2 subsection a. of section 22 of P.L. , c. (C.) (pending before
3 the Legislature as this bill); alternatively, the housing element and
4 implementing ordinances for the next subsequent compliance period
5 may provide, in addition to the number of existing qualified housing
6 units plus any additional qualified housing units not yet created that
7 were or would have been required pursuant to this section for any
8 and all previous compliance periods, a realistic opportunity for
9 1000 qualified housing units. In any subsequent compliance
10 periods beyond the next subsequent compliance period, the entire
11 difference between the number of qualified units already existing in
12 the municipality and the number of qualified units required to
13 satisfy the criteria set forth in subsection a. of section 22 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill) shall be
15 met, or the housing element and implementing ordinances shall
16 provide a realistic opportunity for 1000 qualified housing units.³

17 d. The municipality shall adopt inclusionary zoning ordinances
18 on sites that are developable land as defined in section 21 of P.L. ,
19 c. (C.) (pending before the Legislature as this bill) sufficient to
20 meet at least ³[50] 25³ percent of the units required pursuant to
21 ³[subsection] subsections³ b. ³and c. ³ of this section, or such lower
22 percentage of the units required as is practicable on the developable
23 land in the municipality. Such zoning shall permit minimum
24 densities and qualified housing set-asides as follows:

25 (1) In municipalities with a gross population density of over
26 5,000 people per square mile or more than twice the number of jobs
27 as the number of homes, inclusionary zoning shall permit
28 residential development at gross densities of between 10 and 50
29 units per acre and a set-aside of qualified housing units of between
30 15 and 20 percent of the total number of units in the development.

31 (2) In all other municipalities, inclusionary zoning shall permit
32 residential development at gross densities of between 6 and 20 units
33 per acre and a set-aside of qualified housing units of between 15
34 and 20 percent of the total number of units in the development.

35 (3) In determining the gross density from the ranges above, the
36 municipality shall take into consideration the current character of
37 the municipality, surrounding residential and non-residential
38 densities, the maximum densities permitted for residential and non-
39 residential uses elsewhere in the municipality, access to
40 employment, access to public transit, and the number of qualified
41 housing units required pursuant to subsections b. and c. of this
42 section.

43 (4) When the existing zoning on a site allows a density equal to
44 or greater than the minimum densities provided in this section and
45 does not require the a set-aside of affordable housing, a set-aside of
46 affordable housing that does not exceed 15 percent may be imposed
47 without a density increase.

1 (5) For any property located in an inclusionary zone, the
 2 developer may voluntarily elect at the time of application for
 3 development approvals to commit to developing the low and
 4 moderate units as rental units and maintaining them as rental units
 5 for a period of 30 years. This commitment shall be legally binding
 6 both on the developer and on all subsequent owners, and shall be
 7 expressly memorialized both in the resolution granting the
 8 development approval and in a recorded deed covenant. The set
 9 aside for qualified low and moderate income housing units shall be
 10 15 percent. The minimum gross density shall be increased by 20
 11 percent over the minimum gross density otherwise specified in the
 12 ordinance for inclusionary developments on that site.

13 (6) Half of the units reserved for low-income or moderate-
 14 income housing pursuant to this subsection shall be reserved for
 15 low- income housing and half the units shall be reserved for
 16 moderate- income housing. If an odd number of affordable units is
 17 being constructed, rehabilitated or developed pursuant to this
 18 subsection, the higher number of units shall be low-income housing.
 19 In rental developments, 13 percent of the units shall be reserved as
 20 qualified very-low-income units, which shall be included as part of
 21 the low-income housing total and shall not reduce the aggregate
 22 rents of the required qualified housing units in the development
 23 below the aggregate rents that would have resulted if the
 24 development did not include qualified very-low-income units. No
 25 municipality shall require qualified very-low-income units in an
 26 inclusionary development in which the qualified housing units are
 27 offered for sale.

28 (7) Upon the mutual agreement of the applicant for development
 29 and the municipality, the qualified very-low, low-, and moderate-
 30 income housing units may be provided in an off-site development in
 31 the municipality providing the same number and comparable type
 32 and tenure of qualified units, in a location that does not contribute
 33 to the concentration of poverty. Where no such mutual agreement
 34 exists, the qualified very-low, low- and moderate-income housing
 35 units shall be provided on site, and integrated throughout the
 36 development to the extent feasible.

37 (8) The municipality may not issue certificates of occupancy for
 38 the proposed project until a proportional share of the qualified
 39 housing units have been constructed and received certificates of
 40 occupancy, in accordance with the following schedule:

<u>Percentage of</u> <u>Market-rate Units</u> <u>Completed</u>	<u>Minimum Percentage of</u> <u>Qualified Housing Units</u> <u>Completed</u>
<u>25</u>	<u>0</u>
<u>25 plus 1 unit</u>	<u>10</u>

1	<u>50</u>	<u>50</u>
2	<u>75</u>	<u>75</u>
3	<u>90</u>	<u>100</u>
4		

5 The municipality may modify the foregoing schedule for up to
6 25 percent of the market rate units for good cause shown for
7 inclusionary developments in which the qualified housing units are
8 offered for rent.

9 (9) For purposes of determining appropriate densities for
10 inclusionary developments resulting from variances submitted
11 pursuant to section 25 of P.L. , c. (C.) (pending before the
12 Legislature as this bill), the densities set forth in this section shall
13 apply.

14 e. A municipality may also meet part of its compliance standards
15 through municipally sponsored 100 percent affordable development,
16 accessory apartment units affordable to low- and moderate-income
17 households, the purchase or subsidization of units that are
18 subsequently sold or rented to low- and moderate-income
19 households at affordable sale prices or rents ("buy down, write
20 down"); rehabilitation projects, and permitting the construction of
21 an assisted living residence in which all or a designated number of
22 units are restricted to low- or moderate-income households. In
23 order to meet compliance standards through these means, the
24 municipality shall:

25 (1) As a prerequisite for being deemed a compliant municipality,
26 show for each proposed development pursuant to this subsection
27 that the municipality or the developer controls a site that is
28 developable land, as defined pursuant to section 21 of P.L. , c.
29 (C.) (pending before the Legislature as this bill), or that is on
30 land that is not developable land but where development of 100%
31 affordable housing is permitted by all relevant environmental
32 statutes and regulations;

33 (2) Ensure construction of at least one-third of the total number
34 of units pursuant to this subsection begins three years after the
35 municipality is deemed to be a compliant municipality, at least one-
36 third begins six years after, and the final third begins nine years
37 after. At least two years prior to the date of completion required by
38 this subsection, the municipality shall execute an agreement with
39 the entity that will develop the site including a description of how
40 the development will be funded and any necessary actions by the
41 municipality to ensure the development will happen;

42 (3) If any construction required by this section does not occur,
43 the municipality will no longer be deemed to be a compliant
44 municipality.

45 f. The qualified very-low, low and moderate income units
46 required to be provided pursuant to this section shall be subject to
47 affordability controls of not less than 30 years' duration.

1 g. As a prerequisite to being deemed compliant pursuant to this
2 section, a municipality shall include in its housing element an
3 analysis calculating the number of existing substandard housing
4 units in the municipality occupied by low and moderate income
5 families and a plan for rehabilitating at least that number of units
6 within the next 10 years.

7 h. ³(1)³ Any housing element filed pursuant to this section shall
8 identify, with specificity, the site of any qualified units that shall be
9 built and are relied upon to meet the compliance threshold.

10 ³(2) Whenever a substantial step has been taken to develop a
11 development partly or entirely composed of qualified housing units
12 on a property designated in the certified housing element for the
13 current compliance period, a housing element for the subsequent
14 compliance period shall include the property on the same terms and
15 subject to the same implementing ordinances, unless the property
16 owner, and, in the case of a development described in subsection e.
17 of this section, the designated developer, has consented to the
18 removal of the property from the housing element, or to
19 modification of the terms for development, or an express
20 determination has been made in the housing element that the
21 property is not developable land. For purposes of this subsection, a
22 substantial step shall include, but not be limited to, the filing of an
23 application for a development approval, application to the
24 Department of Environmental Protection, Department of
25 Transportation, the Highlands Water Protection and Preservation
26 Commission, the Pinelands Commission, or the New Jersey
27 Meadowlands Commission for licenses, permits, or approvals
28 necessary for development on the property, entry into a
29 redevelopment agreement, entry into a developer agreement with
30 the municipality or with a regional sewer or water entity, or
31 application for local, State, or federal funding necessary to develop
32 the property.³

33 i. The governing body of a municipality seeking to be deemed a
34 compliant municipality pursuant to this section shall ³[require]
35 select³ a ³[licensed]³ housing compliance professional
36 ³[designated] licensed³ by the State Board of Professional Planners
37 pursuant to section 30 of P.L. , c. (C.) (pending before the
38 Legislature as this bill) to conduct a comprehensive and
39 independent review of the adopted housing element and
40 implementing ordinances. Upon transmission of the adopted
41 housing element and implementing ordinances to the licensed
42 housing compliance professional ³for³ review, the municipality
43 shall submit the adopted housing element, implementing
44 ordinances, and the name and the contact information of the
45 licensed housing compliance professional to the department
46 pursuant to section 28 of P.L. , c. (C.) (pending before the
47 Legislature as this bill).

1 j. Upon certification by the licensed housing compliance
2 professional in accordance with section 30 of P.L. , c. (C.)
3 (pending before the Legislature as this bill), any municipality
4 adopting ordinances and a housing element pursuant to this section
5 shall file its ordinances, housing element, and the certification of
6 the licensed housing compliance professional with the department
7 in an electronic format, in accordance with section 28 of P.L. , c.
8 (C.) (pending before the Legislature as this bill). If a
9 municipality does not file with the department a duly adopted and
10 certified housing element and implementing ordinances prior to the
11 dates set forth in this section, it may be deemed to be a compliant
12 municipality for the remainder of the compliance period if it
13 subsequently duly adopts and files with the department a certified
14 housing element and implementing ordinances that have been
15 prepared pursuant to section 10 of P.L.1985, c.222 (C.52:27D-310)
16 and meet the criteria of this section. The municipality shall be
17 deemed to be compliant from the date it files the certified housing
18 element and implementing ordinances with the department.

19 k. In any exclusionary zoning litigation, such certified housing
20 element and implementing ordinances filed with the department in
21 compliance with this section for the current compliance period and
22 prior to the filing of the litigation shall bear a presumption of
23 validity which shall only be overcome by clear and convincing
24 evidence that the plan does not meet the standards established in
25 P.L. , c. (C.) (pending before the Legislature as this bill). The
26 filing described in this section shall be the sole means, other than
27 entry of a judgment of compliance in exclusionary zoning litigation
28 brought against a municipality, by which a municipality that is not
29 compliant pursuant to section 22 of P.L. , c. (C.) (pending
30 before the Legislature as this bill) may be deemed to be compliant
31 and secure the presumption of validity pursuant to this subsection
32 and exemption from the variance requirements set forth in section
33 25 of P.L. , c. (C.) (pending before the Legislature as this
34 bill).

35 l. To continue being deemed compliant pursuant to this section,
36 the municipality shall submit in an electronic format to the
37 department annual status updates demonstrating that the
38 municipality is affirmatively complying with the requirements of
39 this section. The Department of Community Affairs shall make all
40 filings available through the Internet website established pursuant to
41 section 28 of P.L. , c. (C.) (pending before the Legislature as
42 this bill).²

43
44 ²[¹24. (New section) a. Notwithstanding the provisions of
45 section 23 of P.L. , c. (C.) (pending before the Legislature
46 as this bill) a municipality may be deemed to be a compliant
47 municipality if it adopts an ordinance providing that at least 20

1 percent of its developable property is zoned for use as housing
2 affordable to, according to federal Department of Housing and
3 Urban Development or other recognized standards for home
4 ownership and rental costs, and occupied by, or reserved for
5 occupancy by, households with a gross household income equal to
6 or less than 150 percent of the median gross household income for
7 households of the same size within the housing region in which the
8 housing is located, and zoning permitting minimum presumptive
9 densities as follows:

10 (1) Residential development resulting in single-family, detached
11 homes must allow for such development at a minimum gross
12 density of at least 4 dwelling units or greater per acre; and

13 (2) Residential development resulting in attached townhouses or
14 multi-family must allow for such development at a minimum gross
15 density of at least 8 dwelling units per acre.

16 When developable land in a municipality is subject to a federal
17 or State law or regulation that permits development, but restrict the
18 gross average density of a parcel or portion of a parcel to a density
19 below that specified by this subsection, a municipality shall comply
20 with this section by zoning for the greatest average density allowed
21 by law.

22 b. As a prerequisite to being deemed compliant pursuant to this
23 section, a municipality shall submit an analysis calculating the
24 number of existing substandard housing units in the municipality
25 occupied by low and moderate income families and a plan for
26 rehabilitating at least those units within the next 10 years.

27 c. Any municipality adopting an ordinance, a housing element,
28 or a rehabilitation plan pursuant to this section shall file its zoning
29 and development ordinances, housing element, or rehabilitation
30 plan with the Department in an electronic format. The Department
31 of Community Affairs shall make the filings available through the
32 internet website established pursuant to section 30 of P.L. , c.
33 (C.) (pending before the Legislature as this bill).

34 d. Upon receipt of a municipality's filing, the Commissioner of
35 Community Affairs will undertake a review of the municipality's
36 filing, for the sole purpose of determining whether the filing
37 accurately and completely represents the required composition of
38 the municipal housing stock and ordinances in conformance with
39 the requirements of this section.'²

40
41 ²['25. (New section) a. Notwithstanding the provisions of
42 section 23 of P.L. , c. (C.) (pending before the Legislature
43 as this bill) a municipality may be deemed to be a compliant
44 municipality if it adopts and files a housing element, prepared
45 pursuant to section 10 of P.L.1985, c.222 (C.52:27D-310), with the
46 department.

1 b. The housing element may provide for the qualified units
2 described in paragraph (1) of subsection a. of section 23 of P.L. ,
3 c. (C.) (pending before the Legislature as this bill) by means
4 of any technique approved by the department, including, but not
5 limited to, inclusionary zoning, and the creation of opportunities for
6 affordable housing through development including, but not limited
7 to, new construction, rehabilitation, and redevelopment. The
8 housing element shall take into consideration any weighted
9 counting authorized by subsection c. of section 23 of P.L. , c.
10 (C.) (pending before the Legislature as this bill). The
11 department shall approve at least the following techniques for
12 providing opportunities for affordable housing:

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

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

17 (3) Permitting a developer to pay a development fee in lieu of
18 constructing a portion of the inclusionary units into a municipal
19 trust fund for the construction of affordable housing pursuant to
20 section 34 of P.L. , c. (C.) (pending before the Legislature as
21 this bill);

22 (4) Assisting a municipally-sponsored 100 percent affordable
23 development;

24 (5) Permitting construction of Elder Cottage Housing
25 Opportunity units;

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

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

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

35 c. The governing body of a municipality seeking to be deemed
36 compliant pursuant to this section shall, by ordinance, require a
37 professional planner or consultant regularly employed or retained
38 by the planning board or zoning board of adjustment for the
39 municipality to certify to the accuracy and veracity of the element.

40 d. Prior to filing the plan with the department, the county
41 planning board by resolution shall adopt the housing element. In
42 adopting the housing element or any amendment thereto the board
43 shall hold at least one public hearing for presentation and review of
44 the housing element. Notice of the time and place of the meeting
45 shall be given by one publication in a newspaper of general
46 circulation in the county and by the transmission by delivery or by
47 certified mail, at least 20 days prior to such hearing. The

1 department shall provide any technical assistance required by the
2 county planning board.

3 e. The municipality shall act in good faith in complying with
4 the requirements of this section, including preparation of the
5 housing element. To continue being deemed compliant pursuant to
6 this section, the municipality shall submit interim status updates
7 demonstrating that the municipality is affirmatively complying with
8 the requirements of this section.

9 f. Any housing element filed pursuant to this section shall
10 identify, with specificity, the site of any qualified units that shall be
11 built and are relied upon to meet the compliance threshold.¹²

12
13 ²[¹26.] ²24.² (New section) a. Any municipality in which 50
14 percent or more of the children enrolled in schools in the
15 municipality in October of the ²[preceding]² year ²preceding the
16 start of the relevant 10-year period as calculated in subsection e. of
17 section 22 of P.L. , c. (C.)² were eligible for free or reduced
18 price meals under the federal School Lunch Program shall be
19 compliant pursuant to P.L. , c. (C.) upon filing an analysis
20 ²with the department pursuant to section ³[30] 28³ of P.L. , c.
21 (C.) (pending before the Legislature as this bill)² calculating the
22 number of existing substandard housing units in the municipality
23 occupied by low and moderate income families, and a plan for
24 rehabilitating at least those units within the next 10 years.

25 b. Nothing in this section shall be construed to prohibit a
26 municipality from adopting an ordinance requiring that units
27 proposed as part of a residential development project be set aside
28 for low- or moderate-income households, or establishing an
29 affordable housing trust fund and adopting corresponding fee
30 ordinances, pursuant to ²[paragraph (2) of subsection b. of]²
31 section ²[28] 26² of P.L. , c. (C.) (pending before the
32 Legislature as this bill) and section 8 of P.L.2008, c.46 (C.52:27D-
33 329.2). For purposes of this section, a municipality ²[may] shall²
34 rely upon a determination of the number of children enrolled in
35 schools in the municipality in October of the ²[preceding]² year
36 ²preceding the start of the relevant 10-year period as established in
37 subsection e. of section 22 of P.L. , c. (C.) (pending before
38 the Legislature as this bill)² that are eligible for free or reduced
39 price meals under the federal School Lunch Program need for ²[a]
40 the subsequent 10-year² period ²[of up to 10 years]².¹

41
42 ²[¹27.¹] ²25.² (New section) a. In a municipality that is not a
43 compliant municipality pursuant to section ²[23] 22² of P.L. , c.
44 (C.) (pending before the Legislature as this bill), or deemed
45 compliant pursuant to section ²[24] 23² of P.L. , c. (C.)
46 pending before the Legislature as this bill) ²[or pursuant to section

1 25¹ of P.L. , c. (C.) (pending before the Legislature as this
2 bill)]², a developer requesting a variance or other relief pursuant to
3 subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70) for a
4 proposed development, in which at least 20 percent of any dwelling
5 units are set aside for housing affordable to low income and
6 moderate income households, shall be required to make only a
7 showing that the variance or other relief can be granted without
8 substantial detriment to the public good. A development proposed
9 pursuant to this subsection shall be deemed to be inherently
10 beneficial.

11 b. The provisions of this section shall only apply to
12 applications under the "Municipal Land Use Law," P.L.1975, c.210
13 (C.40:55D-1 et seq.) concerning lots or parcels within a
14 municipality's developable property.¹

15

16 ²26. (New section) a. Every municipality of the State, except
17 municipalities compliant pursuant to section 24 of P.L. , c.
18 (C.) (pending before the Legislature as this bill), shall require
19 that a developer of any new residential development project pay a
20 development fee of 1.5 percent of the equalized assessed value of
21 the development into the municipal affordable housing trust fund as
22 a precondition to issuance of a certificate of occupancy.

23 b. Any residential development which has received preliminary
24 or final approval pursuant to section 38 of P.L.1975, c.291
25 (C.40:55D-50) on or before the effective date of P.L. , c.
26 (C.) (pending before the Legislature as this bill) and proceeds
27 based on those approvals without seeking a revised approval shall
28 be exempt from any set-aside requirement created by P.L. , c.
29 (C.) (pending before the Legislature as this bill) and the terms
30 of the approval previously issued by the municipality shall govern
31 the development.

32 c. A municipality shall not impose any additional financial
33 obligation related to affordable housing on a developer that has
34 complied with the provisions of this section.

35 d. A municipality shall not impose any fee pursuant to this
36 section for any inclusionary development that is a part of a housing
37 element pursuant to section 23 of P.L. , c. (C.), and
38 constructs the required qualified units.

39 e. Municipalities that, as of the date of the enactment of P.L. ,
40 c. (C.) (pending before the Legislature as this bill), collect a
41 development fee on residential development pursuant to ordinance,
42 shall continue to collect a development fee at that present rate until
43 12 months after the date of the enactment of P.L. , c. (C.)
44 (pending before the Legislature as this bill). Municipalities that, as
45 of the date of the enactment of P.L. , c. (C.) (pending before
46 the Legislature as this bill), do not collect a development fee on
47 residential development pursuant to ordinance, may not collect any

1 development fee until 12 months after the date of the enactment of
2 P.L. , c. (C.) (pending before the Legislature as this bill).
3 Beginning 12 months after the date of the enactment of P.L. , c.
4 (C.) (pending before the Legislature as this bill), all
5 municipalities shall collect a residential development fee pursuant
6 to subsection a. of this section.²
7

8 ²[¹28. (New section) a. Every municipality of the State, except
9 municipalities described in section 26 of P.L. , c. (C.) (pending
10 before the Legislature as this bill) shall require that no less than 10
11 percent of the residential housing units proposed as part of any new
12 residential development project resulting in 10 or more units be
13 reserved for occupancy as low income or moderate income housing.

14 b. (1) The municipality may waive, by resolution or ordinance
15 of the governing body, the requirement of this section that an
16 individual development include a set-aside of qualified units,
17 provided that, at the time the municipality and developer enter into
18 and execute any developer's agreement that proposes 10 or more
19 units, the developer's agreement contains provisions identifying one
20 or more activities that will result in creation of a number of new
21 qualified housing units elsewhere in the municipality that is no less
22 than the number that would have been required in the development
23 pursuant to subsection a. of this section.

24 (2) The municipality may waive, by resolution or ordinance of
25 the governing body, the requirement of this section that an
26 individual development include a set-aside of qualified units,
27 provided that any such resolution shall require that a developer
28 proposing 10 or more units pays a development fee instead of
29 actually constructing the affordable units. A developer of a project
30 in a municipality that has met its compliance threshold pursuant to
31 section 23 of P.L. , c. (C.) (pending before the Legislature as
32 this bill) shall make a payment of two percent of the equalized
33 assessed value of the development, and a developer in any other
34 municipality shall make a payment of three percent of the equalized
35 assessed value of the development, into the municipal affordable
36 housing trust fund as a precondition to issuance of a certificate of
37 occupancy.

38 (3) The municipality may waive, by resolution or ordinance of
39 the governing body, the requirement of this section that an
40 individual development include a set-aside of qualified units,
41 provided that, at the time the municipality and developer enter into
42 and execute any developer's agreement that proposes 10 or more
43 units, the developer's agreement contains provisions identifying one
44 or more rehabilitation projects that will result in creation of a
45 number of qualified housing units elsewhere in the municipality that
46 is no less than the number that would have been required in the
47 development pursuant to subsection a. of this section.

1 c. The municipality shall modify zoning ordinances to
2 authorize an increase in gross average density to facilitate the
3 economic viability of any residential development to which this
4 section applies. A municipality, in evaluating the economic viability
5 of an application for an inclusionary development, may be guided
6 by the applicable provisions of N.J.A.C.5:96 and N.J.A.C.5:97, the
7 regulations of the Council on Affordable Housing for the housing
8 round beginning June 2, 2008.

9 d. For any new residential development project resulting in the
10 production of fewer than 10 units, the developer shall pay a
11 residential development fee of one and one-half percent of the
12 equalized assessed value of the project at completion, or a
13 municipality shall require that five percent of residential housing
14 units proposed as part of that project be reserved for occupancy as
15 low-income or moderate- income housing. For the purposes of this
16 reservation, one special needs housing unit shall count as two
17 housing units.

18 e. A municipality shall be permitted to give preference for
19 occupancy for up to 25 percent of the low and moderate income
20 units required to be provided pursuant to this section to those
21 households that have at least one member who works or resides in
22 the municipality.

23 f. The low and moderate income units required to be provided
24 pursuant to this section shall be subject to affordability controls of
25 not less than 30 years' duration.

26 g. Any residential development which has received final
27 approval pursuant to section 38 of P.L.1975, c.291 (C.40:55D-50)
28 on or before the effective date of P.L. , c. (C.) (pending
29 before the Legislature as this bill) and proceeds based on those
30 approvals without seeking a revised approval shall be exempt from
31 any set-aside requirement created by P.L. , c. (C.) (pending
32 before the Legislature as this bill) and the terms of the approval
33 previously issued by the municipality shall govern the development.

34 h. Half of the units reserved for low-income or moderate-
35 income housing pursuant to this section shall be reserved for low-
36 income housing and half the units shall be reserved for moderate-
37 income housing. If an odd number of affordable units is being
38 constructed, rehabilitated or developed pursuant to this section, the
39 higher number of units may be determined by the municipality.

40 i. A municipality shall not impose any additional financial or
41 other obligation related to affordable housing on a developer that
42 has complied with the provisions of this section. '1]²

43
44 ²[¹29.] 27.² (New section) The Department of Community
45 Affairs, Department of Environmental Protection, and the
46 Department Transportation shall promulgate regulations to provide
47 that a municipality that has filed with the Department of

1 Community Affairs as a compliant municipality ²[,] or² a
2 municipality deemed compliant pursuant to section ²[24] 23² of
3 P.L. , c. (C.) (pending before the Legislature as this bill)
4 ²[or pursuant to section 25 of P.L. , c. (C.) (pending before
5 the Legislature as this bill) , or a municipality described by section
6 23 of P.L. , c. (C.) (pending before the Legislature as this
7 bill)]² shall receive preference with respect to discretionary grant
8 programs administered by those departments for which municipal
9 governments are eligible, and shall prioritize and expedite
10 applications from developments included in a housing element
11 prepared and filed pursuant to P.L. , c. (C.) (pending before
12 the Legislature as this bill).¹
13

14 ²[¹30.] 28.² (New section) a. The department shall design,
15 establish, and maintain a searchable Internet website accessible to
16 the general public for no charge. This website shall contain data and
17 information concerning affordable housing in each municipality of
18 the State ²including applications for such housing and other
19 information for people seeking such housing². The department may
20 consult with the Division of Information Technology in the
21 Department of the Treasury in order to develop the Internet website.

22 b. At least the following information about each municipality
23 shall be made available on the website:

24 (1) the total number of additional housing units created and the
25 number lost through demolition or other causes since the effective
26 date of P.L. , c. (C.) (pending before the Legislature as this
27 bill) in the municipality;

28 (2) the number of additional housing units created in the
29 municipality that are qualified very low income, low income or
30 moderate income housing and an itemized listing of these units,
31 whether they are restricted to seniors or people with special needs,
32 and the income levels served;

33 (3) the number of previously existing qualified very low income,
34 low income or qualified moderate income housing units which have
35 been demolished or are no longer subject to affordability controls;

36 (4) the amount of development fees collected and uses for these
37 fees as required pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.)
38 and P.L. , c. (C.) (pending before the legislature as this bill);
39 and

40 (5) Housing elements ², notices, updates, certifications and
41 reports and determinations related to certifications, ordinances,² and
42 amendments to municipal housing elements required to be posted
43 pursuant to P.L. , c. (C.) (pending before the Legislature as this
44 bill).

45 c. Each municipality shall ²report any information required in
46 other sections of P.L. , c. (C.) (pending before the

1 Legislature as this bill) at the time required by those sections and²
2 annually report the information described in subsection b. of this
3 section to the department. The department shall ensure that the
4 information is available to the public on the website within ³[seven
5 business days] 72 hours³ of receipt. To facilitate this process, the
6 department may choose to create a system in which municipalities
7 may directly enter this information in the internet website
8 established pursuant to this section.¹
9

10 ²[¹31.] 29.² (New section) a. Nothing in P.L. , c. (C.)
11 (pending before the Legislature as this bill) shall require a
12 municipality to raise or expend municipal revenues in order to
13 provide a realistic opportunity for low and moderate income
14 housing.

15 b. ²[Notwithstanding any law or rule to the contrary, a
16 municipality shall not alter the zoning of any development site
17 during the period that the site is subject to a judgment of repose, or
18 was, by court order, mediation settlement, or settlement in
19 exclusionary zoning litigation, designated or reserved for purposes
20 of affordable housing] Any property included or the subject of
21 substantive certification, or a judgment of repose, court order,
22 mediation agreement or settlement in exclusionary zoning litigation
23 entered prior to the effective date of P.L. , c. (C.) (pending
24 before the Legislature as this bill) which requires or provides for
25 zoning or rezoning of specified property for affordable housing
26 purposes shall continue to be subject to the terms of that judgment,
27 order, substantive certification, agreement, or settlement. A
28 municipality shall not, unless so required by substantive
29 certification, or a judgment of repose, court order, mediation
30 agreement or settlement in exclusionary zoning litigation, alter the
31 zoning of such property².

32 c. ²A municipality shall not alter the zoning classification of any
33 inclusionary development site that during a judgment of repose
34 period was designated or reserved for purposes of satisfying a
35 municipality's fair share of the region's housing opportunities.

36 d.² Except as provided in subsection b., for any ³builder's
37 remedy³ litigation ³[involving exclusionary zoning] instituted
38 within the 12-month period³ prior to the effective date of P.L. , c.
39 (C.) (pending before the Legislature as this bill), jurisdiction
40 ³[may] shall³ remain with the court ²[, which shall take judicial
41 notice of the statutory intent stated hereunder] , unless ³the licensed
42 housing compliance professional certifies to the court that the
43 project that is the subject of the litigation is not necessary for the
44 municipality to achieve compliance based upon a housing element
45 and implementing ordinances prepared by the municipality in
46 accordance with the requirements of section 23 of P.L. , c.

1 (C. _____). Except as provided in subsection b., for all other
2 litigation involving exclusionary zoning instituted prior to the
3 effective date of P.L. _____, c. (C. _____) (pending before the
4 Legislature as this bill), jurisdiction shall remain with the court
5 unless³ all parties stipulate that it should be dismissed on mutually
6 agreed terms³ [_____. Such litigation shall] and³ shall proceed
7 expeditiously towards a judgment of compliance at most eight
8 months after the effective date of P.L. _____, c. (C. _____) (pending
9 before the Legislature as this bill). The number of qualified
10 housing units required shall be based upon the standards of section
11 22 of P.L. _____, c. (C. _____) (pending before the Legislature as this
12 bill)².

13 ²[d.] e.² No exclusionary zoning action naming a municipality
14 as a defendant shall be filed² [for 365 days following the effective
15 date of this act] prior to (1) eight months following the effective
16 date of this act: or, (2) the filing by the municipality with the
17 department of a housing element and implementing ordinances that
18 have been duly adopted and certified by licensed housing
19 compliance professional in accordance with the provisions of
20 P.L. _____, c. (C. _____) (pending before the Legislature as this bill)².¹

21
22 ²[¹32. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended
23 to read as follows:

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

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

31 "Commissioner" means the Commissioner of Community
32 Affairs.

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

35 "Developer" means the legal or beneficial owner or owners of a
36 lot or of any land proposed to be included in a proposed
37 development, including the holder of an option or contract to
38 purchase, or other person having an enforceable proprietary interest
39 in such land.

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

45 "Mixed use development" means any development which
46 includes both a non-residential development component and a

1 residential development component, and shall include developments
2 for which (1) there is a common developer for both the residential
3 development component and the non-residential development
4 component, provided that for purposes of this definition, multiple
5 persons and entities may be considered a common developer if there
6 is a contractual relationship among them obligating each entity to
7 develop at least a portion of the residential or non-residential
8 development, or both, or otherwise to contribute resources to the
9 development; and (2) the residential and non-residential
10 developments are located on the same lot or adjoining lots,
11 including but not limited to lots separated by a street, a river, or
12 another geographical feature.

13 "Non-residential development" means: (1) any building or
14 structure, or portion thereof, including but not limited to any
15 appurtenant improvements, which is designated to a use group other
16 than a residential use group according to the State Uniform
17 Construction Code promulgated to effectuate the "State Uniform
18 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),
19 including any subsequent amendments or revisions thereto; (2)
20 hotels, motels, vacation timeshares, and child-care facilities; and (3)
21 the entirety of all continuing care facilities within a continuing care
22 retirement community which is subject to the "Continuing Care
23 Retirement Community Regulation and Financial Disclosure Act,"
24 P.L.1986, c.103 (C.52:27D-330 et seq.).

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

28 "Relating to the provision of housing" shall be liberally
29 construed to include the construction, maintenance, or operation of
30 housing, including but not limited to the provision of services to
31 such housing and the funding of any of the above.

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

37 "Treasurer" means the Treasurer of the State of New Jersey.¹
38 (cf: P.L.2008 c.46, s.34)]²

39
40 ²30. (New section) a. A municipal housing element and
41 implementing ordinance may be certified as compliant with the
42 requirements of section 23 only by a housing compliance
43 professional licensed by the State Board of Professional Planners.

44 b. The State Board of Professional Planners shall have the
45 following powers and duties, in addition to any other powers or
46 duties established by law:

- 1 (1) To promulgate and administer standards and requirements for
2 licensing housing compliance professionals, which may include
3 preparation and administration of licensing examinations;
- 4 (2) To review and approve or deny applications for licensing
5 housing compliance professionals;
- 6 (3) To issue licenses and license renewals to all qualifying
7 housing compliance professionals;
- 8 (4) To establish procedures for ³[random assignment]
9 maintaining a list³ of licensed housing compliance professionals
10 ³[to municipalities] to be provided, upon the request of a
11 municipality for such a list,³ for the purpose of conducting
12 comprehensive and independent reviews of housing elements and
13 implementing ordinances;
- 14 (5) To promulgate a standard schedule of fees for the
15 performance of comprehensive and independent reviews of housing
16 elements and implementing ordinances and other related services;
- 17 (6) To promulgate and administer standards and requirements for
18 continuing education of licensed housing compliance professionals;
- 19 (7) To establish and collect fees for examinations, licenses,
20 renewals, or any other services required for the licensing of housing
21 compliance professionals;
- 22 (8) To promulgate and administer standards for professional
23 conduct for licensed housing compliance professionals;
- 24 (9) To promulgate procedures for the receipt of complaints,
25 imposition of discipline, suspension or revocation of licenses of
26 housing compliance professionals;
- 27 (10) To investigate complaints, impose discipline, and suspend
28 and revoke licenses of housing compliance professionals;
- 29 (11) To publish and maintain a list of the names and contact
30 information of all licensed housing compliance professionals;
- 31 (12) To publish and maintain a list of all housing compliance
32 professionals whose license has been suspended or revoked by the
33 board and make the list available on the board's internet website.
- 34 c. An applicant shall be eligible to be licensed as a housing
35 compliance professional if the applicant:
 - 36 (1) is a professional planner licensed by the State Board of
37 Professional Planners for and has actively engaged in the practice of
38 a licensed professional planner for at least eight years.
 - 39 (2) has substantial experience in the preparation or independent
40 review of affordable housing elements for municipalities under New
41 Jersey law. Such experience shall include the personal preparation,
42 or the independent review culminating in a written report, of at least
43 20 affordable housing elements for municipalities under New Jersey
44 law ;
 - 45 (3) demonstrates through examination or other means established
46 by the State Board of Professional Planners knowledge of the legal
47 and constitutional standards governing the affordable housing

1 elements and of the planning, engineering, environmental,
2 economic and social considerations that affect whether mechanisms
3 for the provision of affordable housing create realistic housing
4 opportunities;

5 (4) has not been convicted of, or plead guilty to, any crime
6 concerning public office or employment, or any crime involving
7 fraud, theft by deception, forgery or any similar or related offense
8 under federal or state law; and

9 (5) has not had a professional license revoked by any state
10 licensing board or any other professional licensing agency within
11 the previous 10 years.

12 d. For a period of one year following the effective date of
13 P.L. , c. (C.) (pending before the Legislature as this bill),
14 the State Board of Professional Planners may issue temporary
15 licenses for housing compliance professionals to persons who
16 satisfy all standards set forth in subsection c., except those set forth
17 in paragraph (3) of that subsection. The State Board of Professional
18 Planners shall commence issuing temporary licenses for housing
19 compliance professionals no later than four months after the
20 enactment of P.L. , c. (C.) (pending before the Legislature
21 as this bill).

22 e. Each license shall be issued to an individual, shall be valid
23 only for the individual to whom it is issued, and shall not be
24 transferable. Each license, other than a temporary license, issued
25 shall be valid for a period not to exceed three years, unless a shorter
26 period is specified therein, or unless suspended or revoked. Each
27 temporary license shall be valid for one year.

28 f. Any certification by a licensed housing compliance
29 professional shall be based upon an independent review under
30 standards promulgated by the State Board of Professional Planners.
31 The standards shall provide that a licensed housing compliance
32 professional may not certify a housing element:

33 (1) which he or she prepared or which was prepared by any
34 person employed by the same entity as the licensed housing
35 compliance professional;

36 (2) for a municipality by which he or she, or any person
37 employed by the same entity, was employed, in any capacity,
38 including by any municipal commission or board, during the
39 previous two years;

40 (3) for a municipality to which he or she, or any person
41 employed by the same entity, provided professional services,
42 including but not limited to planning, engineering, or land
43 surveying services, in any capacity, including to any municipal
44 commission or board, during the previous three years. Independent
45 review of a municipality's housing element in the capacity of an
46 employee of the New Jersey Council on Affordable Housing, the
47 New Jersey Housing and Mortgage Finance Agency, the

1 Department of Community Affairs or as a court-appointed master
2 shall not be deemed to be the provision of professional services
3 under this paragraph; and
4 (4) for a municipality in which the licensed housing compliance
5 professional, or a member of licensed housing compliance
6 professional's family or households, owns real property or holds
7 local public office.
8 g. Upon request by a municipality, the State Board of
9 Professional Planners ³【shall designate】 shall provide a list from
10 which a municipality may select³ a licensed housing compliance
11 professional to conduct a comprehensive and independent review of
12 the municipality's housing element and implementing ordinances.
13 The State Board of Professional Planners shall ³【randomly select
14 the licensed housing compliance professional from the list of
15 licensed housing compliance professionals maintained by the State
16 Board of Professional Planners】 maintain the list³ in accordance
17 with the procedures established by the State Board of Professional
18 Planners.
19 h. A municipality ³【that has requested the State Board of
20 Professional Planners to designate】 utilizing³ a licensed housing
21 compliance professional to conduct a comprehensive and
22 independent review of its housing element and implementing
23 ordinances shall pay the fees and reasonable expenses of the
24 licensed housing compliance professional in accordance with the
25 standards established by the State Board of Professional Planners.
26 Such fees and reasonable expenses may be paid for out of the
27 administrative portion of the municipal housing trust fund pursuant
28 to the standards of section 8 of P.L.2008, c.46 (C.52:27D-329.2), as
29 amended by section 31 of P.L. , c. (C.) (pending before the
30 Legislature as this bill).
31 i. A licensed housing compliance professional shall certify a
32 municipal housing element if, after conducting a comprehensive
33 and independent review, the licensed housing compliance
34 professional makes a determination that the housing element and
35 implementing ordinances (1) accurately and completely represent
36 the qualified housing units already existing in the municipality and
37 the number of qualified housing units required to satisfy the criteria
38 set forth in subsections a. through c. of section 22 of P.L. , c.
39 (C.) (pending before the Legislature as this bill); (2) create
40 sufficient realistic opportunities for the development of qualified
41 very-low, low and moderate income housing units to bring the
42 municipality into compliance with the standards set forth in section
43 23 of P.L. , c. (C.) (pending before the Legislature as this
44 bill) ³, except that a licensed housing professional may determine
45 that the compliance standard must be reduced due to constraints on
46 development, conversion, rehabilitation, and replacement of homes
47 based on a lack of access to sewer service or the lack of legal ability

1 to connect to service as determined by the Department of
2 Environmental Protection pursuant to section 20 of P.L. , c.
3 (C.) (pending before the Legislature as this bill)³ ; and (3)
4 comply with all relevant standards under P.L. , c. (C.)
5 (pending before the Legislature as this bill) and any regulations
6 implementing P.L. , c. (C.) (pending before the Legislature
7 as this bill). The determination shall be set forth in a written report
8 which shall state with specificity the factual basis for the licensed
9 housing compliance professional's conclusions. If, after conducting
10 a comprehensive and independent review, the licensed housing
11 compliance professional determines that the municipal housing
12 element and implementing ordinances does not satisfy the criteria
13 set forth in subsection c. (1)(g) of section 23 of P.L. , c. (C.)
14 (pending before the Legislature as this bill), the licensed housing
15 compliance professional shall make a written determination to that
16 effect. The determination shall be set forth in a written report
17 which shall state with specificity the factual basis for this
18 conclusion, shall identify the deficiencies in the municipal housing
19 element and implementing ordinances, and shall make non-binding
20 recommendations as to how the deficiencies in housing element and
21 implementing ordinances might be rectified.

22 j. The licensed housing compliance professional shall complete
23 the determinations provided for in subsection i. no later than 90
24 days after the submission of the housing element to the department
25 pursuant to section 23 of P.L. , c. (C.) (pending before the
26 Legislature as this bill).

27 k. A licensed housing compliance professional ³[designated
28 pursuant to subsection g.]³ may conduct a comprehensive and
29 independent review pursuant to subsection i. ³of this section³ of a
30 municipal housing element and implementing ordinances that was
31 the subject of a prior unfavorable determination, and resubmitted to
32 the department pursuant to section 23 of P.L. , c. (C.)
33 (pending before the Legislature as this bill), but shall not certify the
34 housing element and implementing ordinances unless the housing
35 element and implementing ordinances satisfy the criteria in
36 subsection i. and

37 (1) the prior determination was withdrawn by the Board of
38 Professional Planners under subsection m., or

39 (2) the licensed housing compliance professional determines,
40 based on the new comprehensive and independent review, that
41 material changes have been made to the housing element and
42 implementing ordinances that rectify the deficiencies specified in
43 the prior determination.

44 l. A licensed housing compliance professional's highest priority
45 in the performance of professional services in that capacity shall be
46 the protection of the interests of low and moderate income
47 individuals and families in need of safe, decent affordable housing.

- 1 (1) A licensed housing compliance professional shall exercise
2 reasonable care and diligence, and shall apply the knowledge and
3 skill ordinarily exercised by licensed housing compliance
4 professionals in good standing practicing in the ³[state] State³ at
5 the time the services are performed.
- 6 (2) A licensed housing compliance professional shall exercise
7 independent professional judgment, make a reasonable effort to
8 identify and obtain the relevant and material facts, data, reports and
9 other information concerning the extent to which the municipal
10 housing element creates realistic housing opportunities and to
11 which the municipal housing element complies with applicable
12 standards under P.L. , c. (C.) (pending before the
13 Legislature as this bill) and any regulations implementing P.L. , c.
14 (C.) (pending before the Legislature as this bill), including both
15 facts, data, reports and other information in possession of the
16 municipality and facts, data, reports and other information that are
17 otherwise available, including information provided to the licensed
18 housing compliance professional by members of the public. The
19 licensed housing compliance professional shall personally inspect,
20 and communicate with the owners of, all sites proposed in the
21 housing element for qualified housing units, whether through
22 inclusionary zoning or other means. The licensed housing
23 compliance professional shall disclose and explain in his or her
24 report any facts, data, information, qualifications, or limitations
25 known by the licensed housing compliance professional that are not
26 supportive of the conclusions reached in the report.
- 27 (3) A licensed housing compliance professional may
28 communicate with representatives of the municipality during the
29 course of his or her comprehensive and independent review, request
30 additional information, make suggestions as to modification of the
31 housing element and implementing ordinances to bring them into
32 compliance with the criteria set forth in subsection c. (1)(g) of
33 section 23 of P.L. , c. (C.) (pending before the Legislature
34 as this bill), and provide interim reports. Such communications are
35 not confidential but shall be included in the written report of the
36 licensed housing compliance professional.
- 37 (4) A licensed housing compliance professional who learns of
38 material facts, data or other information subsequent to making a
39 determination which would result in a determination with material
40 differences from that determination, shall promptly amend or
41 supplement that determination, and, if appropriate, withdraw the
42 certification of the municipal housing element.
- 43 (5) If a licensed housing compliance professional learns of an
44 action or decision by a municipality, or any municipal board,
45 authority, or commission, that results in a deviation from a housing
46 element and implementing ordinances that the housing compliance
47 professional previously certified, the licensed housing compliance

1 professional shall promptly make a written report of that deviation
2 and its effect on the previous determination, and, if appropriate,
3 withdraw the certification of the municipal housing element.

4 (6) A licensed housing compliance professional shall promptly
5 provide all determinations, reports, and certifications to the
6 municipality and shall file them with the department, which shall
7 make them available to the public and post them on them on a
8 public website maintained by the department pursuant to section 28
9 of P.L. , c. (C.) (pending before the Legislature as this bill).

10 (7) A licensed housing compliance professional may only be
11 discharged by the municipality by good cause with approval of the
12 board. If the board approves discharge of a licensed housing
13 compliance professional, the licensed housing compliance
14 professional shall provide any reports made prior to that discharge
15 to the municipality and the department.

16 (8) A licensed housing compliance professional shall maintain
17 and preserve for a period of not less than 10 years all data,
18 documents, and information concerning each municipal housing
19 element and implementing ordinances the licensed affordable
20 housing professional has reviewed.

21 (9) A licensed housing compliance professional shall cooperate
22 in an investigation by the State Board of Professional Planners or
23 the department by promptly furnishing, in response to formal
24 requests, orders or subpoenas, any information the board or the
25 department, or persons duly authorized by the board or the
26 department, deems necessary to perform its duties. In an
27 investigation by the board of a license application or a license
28 suspension or revocation, a licensed housing compliance
29 professional shall not:

30 (a) knowingly make a false statement of material fact;

31 (b) fail to disclose a fact necessary to correct a material
32 misunderstanding known by the licensed housing compliance
33 professional to have arisen in the matter;

34 (c) knowingly and materially falsify, tamper with, alter, conceal,
35 or destroy any document, or data record that is relevant to the
36 investigation, without obtaining the prior approval of the board or
37 department; or

38 (d) knowingly allow or tolerate any employee, agent, or
39 contractor of the licensed housing compliance professional to
40 engage in any of the foregoing activities.

41 m. The State Board of Professional Planners may impose
42 sanctions under the following circumstances:

43 (1) In accordance with procedures established in its regulations,
44 the State Board of Professional Planners shall direct the licensed
45 housing compliance professional to withdraw any determination,
46 report, or certification filed with the department if it finds that the
47 determination, report, or certification

- 1 (a) Was not the product of a review that was independent under
2 standards promulgated by the State Board of Professional Planners;
3 (b) Was the product of fraud or coercion; or
4 (c) Contains misrepresentations of fact that would materially
5 alter the conclusions reached in the determination, report, or
6 certification.
7 (d) Egregiously violates P.L. , c. (C.) (pending before
8 the Legislature as this bill) or standards promulgated by the State
9 Board of Professional Planners.
10 (2) In accordance with procedures established in its regulations,
11 the State Board of Professional Planners may, if it finds that a
12 licensed housing compliance professional is in violation of P.L. ,
13 c. (C.) (pending before the Legislature as this bill), or any
14 rule, regulation, or order adopted or issued pursuant thereto, or who
15 knowingly has made any false statement, representation, or
16 certification in any documents or information required to be
17 submitted to the State Board of Professional Planners or the
18 Department of Community Affairs,
19 (a) revoke or suspend the license to practice as a housing
20 compliance professional;
21 (b) revoke or suspend the license to practice as professional
22 planner; or
23 (c) assess a civil administrative penalty of not more than \$10,000
24 for a first violation and not more than \$20,000 for every subsequent
25 violation of the provisions of P.L. , c. (C.) (pending before
26 the Legislature as this bill), or any rule, regulation, code of conduct,
27 or order adopted or issued pursuant thereto.
28 (3) Nothing in this section shall be deemed to create an
29 administrative remedy that must be exhausted prior to the filing of
30 any litigation against a municipality. The actions of a licensed
31 housing compliance professional shall not be deemed to be the
32 action of a State agency.
33 n. No person shall take retaliatory action if a licensed housing
34 compliance professional:
35 (1) discloses, or undertakes to disclose, to the State Board of
36 Professional Planners or to the department an activity, policy or
37 practice that the licensed housing compliance professional
38 reasonably believes: (a) is a violation of law, or a rule or regulation
39 adopted pursuant to law; or (b) is fraudulent or criminal, including
40 any activity, policy or practice of deception or misrepresentation
41 that the housing compliance professional reasonably believes may
42 defraud a municipality, property owner, low or moderate income
43 person or any other governmental entity;
44 (2) provides information to, or testifies before, any public body
45 conducting an investigation, hearing, or inquiry into any violation
46 of law, or a rule or regulation adopted pursuant to law, by a
47 municipality, including any violation involving deception of, or

1 misrepresentation to, any client, customer, the department or any
2 other governmental entity; or

3 (3) objects to, or refuses to participate in, any activity, policy or
4 practice which the licensed housing compliance professional
5 reasonably believes:

6 (a) is in violation of law, or a rule or regulation adopted pursuant
7 to law;

8 (b) is fraudulent or criminal, including any activity, policy or
9 practice of deception or misrepresentation which the licensed
10 housing compliance professional reasonably believes including any
11 activity, policy or practice of deception or misrepresentation that
12 the housing compliance professional reasonably believes may
13 defraud a municipality, property owner, low or moderate income
14 person or any other governmental entity; or

15 (c) is incompatible with a clear mandate of public policy
16 concerning the provision of safe, decent affordable housing to low
17 and moderate income households.²

18

19 ²[¹33. Section 35 of P.L.2008, c.46 (C.40:55D-8.4) is amended
20 to 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[.]; provided, that the fee shall
30 be imposed as described in this section and phased in pursuant to
31 section 34 of P.L. , c. (C.) (pending before the Legislature as
32 this bill).

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

43 (1) parking lots and parking structures, regardless of whether the
44 parking lot or parking structure is constructed in conjunction with a
45 non-residential development, such as an office building, or whether
46 the parking lot is developed as an independent non-residential
47 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 to
17 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
20 the non-residential development fee pursuant to this section shall be
21 subject to **[it] the fee** at such time the basis for the exemption set
22 forth in this subsection no longer applies, and the owner of the
23 property at that time shall make the payment of the non-residential
24 development fee**[, in that event,]** within three years after that event
25 or after the issuance of the final certificate of occupancy of the non-
26 residential development, whichever is later.

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

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

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

1 required by the Treasurer, provided that a certified proof concerning
2 the payment shall be furnished by the Treasurer, to the
3 municipality.

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

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

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

1 residential development fee, provided the developer is in full
2 compliance with all other applicable laws, the municipality shall
3 issue a final certificate of occupancy for the subject property.
4 Failure of the municipality to comply with the timeframes or
5 procedures set forth in this subsection may subject it to penalties to
6 be imposed by the commissioner; any penalties so imposed shall be
7 deposited into the "New Jersey Affordable Housing Trust Fund"
8 established pursuant to section 20 of P.L.1985, c.222 as amended
9 by section 17 of P.L.2008, c.46 (C.52:27D-320).

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

20 f. Any municipality that is not in compliance with the
21 requirements established pursuant to sections 32 through 38 of
22 P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or
23 regulations of the **[council]** department adopted thereto, may be
24 subject to forfeiture of any or all funds remaining within its
25 municipal development trust fund. Any funds so forfeited shall be
26 deposited into the New Jersey Affordable Housing Trust Fund
27 established pursuant to section 20 of P.L.1985, c.222 as amended
28 by section 17 of P.L.2008, c.46 (C.52:27D-320) and shall be subject
29 to the requirements of subsection b. of section 8 of P.L.2008, c.46
30 (C.52:27D-329.2).

31 g. **[The Treasurer shall credit to the "Urban Housing Assistance**
32 **Fund," established pursuant to section 13 of P.L.2008, c.46**
33 **(C.52:27D-329.7) annually from the receipts of the fees authorized**
34 **to be imposed pursuant to this section an amount equal to \$20**
35 **million; all receipts in excess of this amount shall be deposited into**
36 **the "New Jersey Affordable Housing Trust Fund," established**
37 **pursuant to section 20 of P.L.1985, c.222 as amended by section 17**
38 **of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of**
39 **that fund.] (Deleted by amendment, P.L. , c.) (pending before**
40 **the Legislature as this bill).**

41 h. The fee imposed pursuant to the "Statewide Non-Residential
42 Development Fee Act," sections 32 through 38 of P.L.2008, c.46
43 (C.40:55D-8.1 through C.40:55D-8.7), shall be collected by the
44 municipality in which the non-residential development is located,
45 pursuant to this section. Each amount collected shall be deposited
46 and shall be accounted for separately, by payer and date of deposit.
47 A municipality shall deposit 80 percent of all non-residential

1 development fees collected into a trust fund dedicated to those
2 purposes as set forth in section 34 of P.L. , c. (C.) (pending
3 before the Legislature as this bill). The remaining 20 percent shall
4 be transferred to the State Treasurer for deposit into the "Urban
5 Housing Assistance Fund" pursuant to section 13 of P.L. 2008, c. 46
6 (C.52:27D-329.7).

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

11 (cf: P.L.2008, c.46, s.35)]²

12

13 ²[¹34. (New section) Beginning July 1, 2010, the fee imposed
14 on all construction resulting in non-residential development
15 pursuant to section 35 of P.L.2008, c.46 (C.40:55D-8.4) shall be
16 phased in as follows:

17 a. No fee shall be imposed on projects receiving a construction
18 permit in the two years next following the enactment date of P.L. .
19 c. (C.) (pending before the Legislature as this bill).

20 b. For projects receiving construction permits in the third year
21 next following the enactment date of P.L. , c. (C.) (pending
22 before the Legislature as this bill), a fee equal to one percent of the
23 equalized assessed value of the land and improvements shall be
24 imposed on all new non-residential construction on an unimproved
25 lot or lots; and a fee equal to one percent of the increase in
26 equalized assessed value shall be imposed on additions to existing
27 structures to be used for non-residential purposes.

28 c. For projects receiving construction permits in the fourth year
29 next following the enactment date of P.L. , c. (C.) (pending
30 before the Legislature as this bill) a fee equal to two percent of the
31 equalized assessed value of the land and improvements shall be
32 imposed on all new non-residential construction on an unimproved
33 lot or lots; and a fee equal to two percent of the increase in
34 equalized assessed value shall be imposed on additions to existing
35 structures to be used for non-residential purposes.

36 d. For projects receiving construction permits in the fifth year
37 next following the enactment date of P.L. , c. (C.) (pending
38 before the Legislature as this bill) and later, a fee equal to two and
39 one half percent of the equalized assessed value of the land and
40 improvements shall be imposed on all new non-residential
41 construction on an unimproved lot or lots; and a fee equal to two
42 and one half percent of the increase in equalized assessed value
43 shall be imposed on additions to existing structures to be used for
44 non-residential purposes.¹]²

45

46 ²[¹35. Section 36 of P.L.2008, c.46 (C.40:55D-8.5) is amended
47 to read as follows:

1 36. a. The commissioner, in consultation with the [council]
2 Treasurer, shall promulgate, in accordance with the provisions of
3 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
4 seq.), [such] regulations [as are necessary for the prompt and
5 effective implementation of the provisions and purposes of
6 P.L.2008, c.46 (C.52:27D-329.1 et al.),] concerning non-residential
7 development fees including, but not limited to, provisions for the
8 payment of any necessary administrative costs related to the
9 assessment of properties and collection of any development fees by
10 a municipality.

11 b. [Notwithstanding the authority granted to the commissioner
12 herein, the council] The commissioner shall adopt and promulgate,
13 in accordance with the provisions of the "Administrative Procedure
14 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are
15 necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et
16 al.), including but not limited to, regulations necessary for the
17 establishment, implementation, review, monitoring, and
18 enforcement of a municipal affordable housing trust fund and
19 spending plan.¹

20 (cf: P.L.2008, c.46, s.36)]²

21
22 ²[¹36. Section 38 of P.L.2008, c.46 (C.40:55D-8.7) is amended
23 to read as follows:

24 38. a. Except as expressly provided in P.L.2008, c.46
25 (C.52:27D-329.1 et al.) including subsection b. of this section, any
26 provision of a local ordinance which imposes a fee for the
27 development of affordable housing upon a developer of non-
28 residential property, including any and all development fee
29 ordinances adopted in accordance with any regulations of the
30 [Council on Affordable Housing] commissioner, or any provision
31 of an ordinance which imposes an obligation relating to the
32 provision of housing affordable to low and moderate income
33 households, or payment in-lieu of building as a condition of non-
34 residential development, shall be void and of no effect. A provision
35 of an ordinance which imposes a development fee which is not
36 prohibited by any provision of P.L.2008, c.46 (C.52:27D-329.1 et
37 al.) shall not be invalidated by this section.

38 b. No affordable housing obligation shall be imposed concerning
39 a mixed use development that would result in an affordable housing
40 obligation greater than that which would have been imposed if the
41 residential portion of the mixed use development had been
42 developed independently of the non-residential portion of the mixed
43 use development.

44 c. Whenever the developer of a non-residential development
45 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or
46 committed itself to make a financial or other contribution relating to
47 the provision of housing affordable to low and moderate income

1 households, the non-residential development fee authorized
2 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied
3 through the investment obligations made pursuant to P.L.1977,
4 c.110 (C.5:12-1 et seq.).¹
5 (cf: P.L.2008, c.46, s.38)]²

6
7 ²[¹37.] 31.² Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is
8 amended to read as follows:

9 8. a. [The council may authorize a municipality that has
10 petitioned for substantive certification, or that has been so
11 authorized by a court of competent jurisdiction, and which that has
12 adopted a municipal development fee] ²[A] Every² municipality
13 ²[may] , other than a municipality ³[compliant] compliant³
14 pursuant to section 24 of P.L. , c. (C.) (pending before the
15 Legislature as this bill), shall² adopt an ordinance to impose and
16 collect [development] fees from developers of residential property,
17 in accordance with ²[paragraph (2) of subsection b. of section 28
18 of]² P.L. , c. (C.) ²(pending before the Legislature as this
19 bill), this section,² and rules promulgated by the [council]
20 department. Each amount collected shall be deposited and shall be
21 accounted for separately, by payer and date of deposit.

22 [A municipality may not spend or commit to spend any
23 affordable housing development fees, including Statewide non-
24 residential fees collected and deposited into the municipal
25 affordable housing trust fund, without first obtaining the council's
26 approval of the expenditure. The council shall promulgate
27 regulations regarding the establishment, administration and
28 enforcement of the expenditure of affordable housing development
29 fees by municipalities. The council shall have exclusive
30 jurisdiction regarding the enforcement of these regulations,
31 provided that any] ²[Any municipality which is not in compliance
32 with the regulations adopted by the]² [council] ²[department may
33 be subject to forfeiture of any or all funds remaining within its
34 municipal trust fund. Any funds so forfeited shall be deposited into
35 the "New Jersey Affordable Housing Trust Fund" established
36 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).]²

37 b. A municipality shall deposit all fees collected, whether or
38 not such collections were derived from fees imposed upon non-
39 residential or residential construction into a trust fund dedicated to
40 those purposes as required under this section, and such additional
41 purposes as may be approved by the [council] department.
42 ²[Within one year of the effective date of P.L. , c. (C.)
43 (pending before the Legislature as this bill), any municipality with
44 funds remaining in a municipal development trust fund and
45 collected pursuant to the "Statewide Non-Residential Development
46 Fee Act," P.L.2008, c.46 P.L.2008, c.46 prior to the enactment date

1 of P.L. , c. (C.) (pending before the Legislature as this bill)
2 shall develop and submit to the department a spending plan for
3 those funds.]²

4 c. (1) A municipality may only spend development fees for an
5 activity set forth in this section or² approved by the **[council]**
6 **department** to address the municipal **[fair share]** affordable housing
7 obligation.

8 (2) Municipal development trust funds shall not be expended to
9 reimburse municipalities for activities which occurred prior to the
10 authorization of adoption of a municipal ordinance authorizing²
11 a municipality to collect development fees.

12 (3) A municipality shall may² set aside a portion of not
13 more than 30 percent of its² development fee trust fund for the
14 purpose of providing affordability assistance to low and moderate
15 income households in affordable units **[included in a municipal fair**
16 **share plan, in accordance with rules of the council]**.

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

22 (b) Affordability assistance to households earning 30 percent or
23 less of median income may include buying down the cost of low
24 income units **[in a municipal fair share plan]** to make them
25 affordable to households earning 30 percent or less of median
26 income. The use of development fees in this manner shall not
27 entitle a municipality to bonus credits except as may be provided by
28 the rules of the² **[council]** department.²

29 (4) A municipality may contract with a private or public entity
30 to administer any part of its housing element and **[fair share]**
31 affordable housing plan, including the requirement for any²
32 affordability assistance, or any other² program or activity for
33 which the municipality expends development fee proceeds, in
34 accordance with rules of the **[council]** department.

35 (5) Not more than 20 percent of the revenues collected from
36 development fees and expended for housing programs or activities²
37 shall be expended on administration, in accordance with rules of the
38 **[council]** department.

39 d. The² **[council]** department shall establish a time by
40 which all (1) All² development fees collected within a calendar
41 year shall be expended; provided, however, that all fees by a
42 municipality² shall be committed for expenditure within four
43 two² years from the date of collection and disbursed within three
44 years of collection, provided however, that where a project or
45 activity requires the disbursement of funds through a series of

1 payments through a schedule, this requirement shall be satisfied if
2 the initial payment is made within three years². ²[A municipality
3 that fails to expend the balance required in the development fee
4 trust fund by the time set forth in this section shall be required by
5 the]² [council] ²[department to transfer the remaining unspent
6 balance at the end of the four-year period to the "New Jersey
7 Affordable Housing Trust Fund," established pursuant to section 20
8 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46
9 (C.52:27D-329.1 et al.), to be used in the]² [housing region of the]
10 ²[transferring municipality for the authorized purposes of that
11 fund.]

12 (2) For purposes of this section, "committed" shall mean that the
13 funds have been allocated to a specific activity authorized by
14 subsection c. of this section subject to a legally binding agreement
15 ensuring that the funds will be used for that purpose by a date
16 certain specified in the agreement, and "disbursed" shall mean that
17 the funds have been transferred from the municipality to the entity
18 responsible for the production, preservation or improvement of the
19 housing specified in the agreement. Within one year of the
20 effective date of P.L. , c. (C.) (pending before the
21 Legislature as this bill), any municipality with funds remaining in a
22 municipal development trust fund collected prior to the effective
23 date of P.L. , c. (C.) (pending before the Legislature as this
24 bill) shall commit to expend those funds and within two years of the
25 effective date of P.L. , c. (C.) (pending before the
26 Legislature as this bill), shall disburse those funds.

27 (3) Any funds that are not committed or disbursed as required by
28 this section automatically shall be deemed excess funds. The
29 department shall provide notice of availability of any excess funds
30 within five (5) business days of the funds being deemed excess
31 funds, on the department's Internet website pursuant to section 28 of
32 P.L. , c. (C.) (pending before the Legislature as this bill).²

33 e. Notwithstanding any provision of this section, or regulations
34 of the [council] department, a municipality shall not collect a
35 development fee from a developer whenever that developer is
36 providing for the construction of ²the required number of qualified²
37 affordable units, either on-site or elsewhere within the municipality.

38 [This section shall not apply to the collection of a Statewide
39 development fee imposed upon non-residential development
40 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1
41 et seq.) by the State Treasurer, when such collection is not
42 authorized to be retained by a municipality.]¹

43 ²f. Any county that has established or establishes at any time a
44 homelessness trust fund pursuant to P.L.2009, c.123 or serves as an
45 urban county for purposes of administering federal Community
46 Development Block Grant funds or Home Investment Partnerships

1 funds may, through resolution of the governing body of the county,
2 elect to receive the excess funds as described in paragraph (3) of
3 subsection d. of this section from all municipalities in the county.
4 The funds shall be kept in a segregated account. In all counties
5 other than counties that make the election described in this
6 subsection, the excess funds shall be placed in a segregated account
7 by the municipality.

8 g. Any not-for-profit or for-profit organization may make an
9 application to a county that has elected to receive excess funds
10 pursuant to subsection f. of this section to develop qualified housing
11 units using those excess funds for a portion or all development
12 costs. The organization shall include in its request a detailed plan
13 describing how the funds will be spent, how they will benefit low or
14 moderate income households, and how the entity is qualified to use
15 the funds.

16 h. ³[A county administering excess funds shall review and
17 approve projects based on the procedures and guidelines described
18 in subsection f. of this section. Any county electing to receive
19 excess funds shall adopt and disseminate written guidelines,
20 priorities and application procedures to govern the use and
21 distribution of those funds in municipalities that are deemed
22 compliant or neither compliant nor deemed compliant. These
23 guidelines, priorities, and procedures shall be posted on the
24 department's Internet website pursuant to section 28 of P.L. , c.
25 (C.) (pending before the Legislature as this bill).]³

26 (1) Any not-for-profit or for-profit organization may make an
27 application to a county that has elected to receive excess funds
28 pursuant to subsection f. of this section to develop qualified housing
29 units using those excess funds for a portion or all development
30 costs. The organization shall include in its request a detailed plan
31 describing how the funds will be spent, how they will benefit low or
32 moderate income households, and how the entity is qualified to use
33 the funds.

34 (2) (a) Any county electing to receive excess funds shall adopt
35 and disseminate written guidelines, priorities and application
36 procedures to govern the use and distribution of those funds in
37 municipalities that are deemed compliant or neither compliant nor
38 deemed compliant. These guidelines, priorities, and procedures
39 shall be posted on the department's Internet website pursuant to
40 section 28 of P.L. , c. (C.) (pending before the Legislature
41 as this bill).

42 (b) These guidelines shall preference funds for not-for-profit
43 organizations seeking to create qualified housing units within the
44 municipality, taking into consideration the provision of social
45 services, a demonstrated history of working in the community, the
46 inclusion of qualified very low income units in the project, and an

1 ongoing commitment and involvement in maintaining the standards
2 of the housing.

3 (3) In a municipality that is located in any county that has not
4 elected to administer excess funds pursuant to subsection f. of this
5 section, any not-for-profit or for-profit organization may submit a
6 request for funds to the department within 30 days of the funds
7 being deemed excess funds to the municipal governing body. The
8 department shall decide among all received applications within 60
9 days of the end of the time period for submission of applications.
10 In making its determination, the department shall preference funds
11 for non-for-profit organizations identified in the municipality's
12 housing element for municipalities that are deemed compliant. For
13 all other municipalities, the department shall preference not-for-
14 profits seeking to create qualified housing units within the
15 municipality, taking into consideration the provision of social
16 services, a demonstrated history of working in the community, the
17 inclusion of qualified very low income units in the project, and an
18 ongoing commitment and involvement in maintaining the standards
19 of the housing.

20 The department may award the funds to help develop qualified
21 housing units contained in a housing element adopted elsewhere in
22 the county, provided that no such funds may be used in
23 municipalities described in section 24 of P.L. , c. (C.)
24 (pending before the Legislature as this bill). An entity making an
25 application under this section may also make an application
26 pursuant to the process described in section 27 of P.L. , c. (C.)
27 (pending before the Legislature as this bill) in any municipality for
28 which that process is otherwise permitted pursuant to P.L. , c.
29 (C.) (pending before the Legislature as this bill).²
30 (cf: P.L.2008, c.46, s.8)

31
32 ²[^{138.}] 32.² (New section) It shall be the duty of the
33 Department of Community Affairs to administer the "Fair Housing
34 Act," P.L.1985, c.222 (C:52:27D-301 et al.) and to assist
35 municipalities in implementing the provisions of the act. When
36 appropriate, the Commissioner ²[Pursuant] of Community Affairs
37 pursuant² to the "Administrative Procedure Act," P.L.1968, c.410
38 (C.52:14B-1 et seq.), the Department of Community Affairs may
39 promulgate any rules and regulations necessary to effectuate the
40 purposes of P.L. , c. (C.) (pending before the Legislature as this
41 bill), including:

42 a. Guidelines or model language for covenants or other devices
43 to maintain the affordability of affordable units developed pursuant
44 to P.L. , c. (C.) (pending before the Legislature as this bill);

45 b. Affirmative marketing requirements for affordable units,
46 whether or not developed pursuant to ²[section 28 of]² P.L. , c.
47 (C.) (pending before the Legislature as this bill) ³, which shall

1 include but not be limited to requirements for marketing on the
2 Internet website established pursuant to section 28 of P.L. , c.
3 (C.) (pending before the Legislature as this bill)³ ; ³and³

4 c. ²[Guidelines concerning the crediting and counting of
5 qualified units;

6 d.]² Guidelines concerning the application of covenants or other
7 affordability controls for affordable units ²[; and

8 e. Guidelines for zoning to assure the economic viability of a
9 project]² ;¹

10
11 ²33. Section 39 of P.L.2008, c.46 (C.40:55D-8.8) is amended to
12 read as follows:

13 39. The provisions of this section shall apply only to those
14 developments for which a fee was imposed pursuant to sections 32
15 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7),
16 known as the "Statewide Non-residential Development Fee Act."

17 a. A developer of a property that received preliminary site plan
18 approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46),
19 or final approval, pursuant to section 38 of P.L.1975, c.291
20 (C.40:55D-50) prior to July 17, 2008 and that was subject to the
21 payment of a nonresidential development fee prior to the enactment
22 of P.L.2009, c.90 (C.52:27D-489a et al.), shall be entitled to a
23 return of any moneys paid that represent the difference between
24 moneys committed prior to July 17, 2008 and monies paid on or
25 after that date.

26 b. A developer of a non-residential project that, prior to July
27 17, 2008, has been referred to a planning board by the State, a
28 governing body, or other public agency for review pursuant to
29 section 22 of P.L.1975, c.291 (C. 40:55D-31) and that was subject
30 to the payment of a nonresidential development fee prior to the
31 enactment of P.L.2009, c.90 (C.52:27D-489a et al.), shall be
32 entitled to a return of any moneys paid that represent the difference
33 between monies committed prior to July 17, 2008 and moneys paid
34 on or after that date.

35 c. If moneys are required to be returned under subsection a., b.
36 or d. of this section, a claim shall be submitted, in writing, to the
37 same entity to which the moneys were paid, within 120 days of the
38 effective date of P.L.2009, c.90 (C.52:27D-489a et al.). The entity
39 to whom the funds were paid shall promptly review all requests for
40 returns, and the fees paid shall be returned to the claimant within 30
41 days of receipt of the claim for return.

42 d. (1) A developer of a non-residential project that paid a fee
43 imposed pursuant to sections 32 through 38 of P.L.2008, c.46
44 (C.40:55D-8.1 through C.40:55D-8.7), subsequent to July 17, 2008
45 but prior to the effective date of P.L.2009, c.90 (C.52:27D-489a et
46 al.), shall be entitled to the return of those monies paid, provided
47 that the provisions of section 37 of P.L.2008, c.46 (C.40:55D-8.6),

1 as amended by P.L.2009, c.90 do not permit the imposition of a fee
2 upon the developer of that non-residential property.

3 (2) A developer of a non-residential project that was subject to
4 the payment of a nonresidential development fee subsequent to July
5 1, 2010, shall be entitled to a return of any moneys paid in the same
6 manner as set forth in subsection c. of this section.

7 e. Notwithstanding the provisions of subsections a., b., c., and
8 d. of this section, if, on the effective date of P.L.2009, c.90
9 (C.52:27D-489a et al.), a municipality that has returned all or a
10 portion of non-residential fees in accordance with subsection a. or
11 b. of this section shall be reimbursed from the funds available
12 through the appropriation made into the "New Jersey Affordable
13 Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90
14 (C.52:27D-320.1) within 30 days of the municipality providing
15 written notice to the Council on Affordable Housing.²

16 (cf: P.L.2009, c.90, s.39)

17

18 ²[¹39.] 34.² (New section) The provisions of P.L. , c.
19 (C.) (pending before the Legislature as this bill) shall be
20 severable, and if any of its provisions shall be held to be
21 unconstitutional, the decision of the court shall not affect the
22 validity of the remaining provisions of P.L. , c. (C.) (pending
23 before the Legislature as this bill).¹

24

25 ²[¹40.] 35.² (New section) Within two years of the effective
26 date of P.L. , c. (C.) (pending before the Legislature as this
27 bill), the Department of Community Affairs shall report to the
28 Legislature assessing and evaluating the progress and results of
29 affordable housing efforts in New Jersey following the enactment of
30 P.L. , c. (C.) (pending before the Legislature as this bill). The
31 report shall be forwarded to the Assembly Housing and Local
32 Government Committee or its successor.¹

33

34 ²[¹41.] 36.² The following sections are repealed:

35 ²Section 32 of P.L.2008, c.46 (C.40:55D-8.1);

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

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

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

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

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

41 Section 38 of P.L.2008, c.46 (C.40:55D-8.7);²

42 Section 14 of P.L.2009, c.82 (C.45:22A-46.16);

43 Section 5 of P.L.1985 c.222 (C.52:27D-304);

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

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

46 Section 7 of P.L.1985, c.222 (C.52:27D-307);

47 ²Section 1 of P.L.1991, c.479 (C.52:27D-307.1);

1 Section 2 of P.L.1991, c.479 (C.52:27D-307.2);
2 Section 3 of P.L.1991, c.479 (C.52:27D-307.3);
3 Section 4 of P.L.1991, c.479 (C.52:27D-307.4);
4 Section 5 of P.L.1991, c.479 (C.52:27D-307.5);²
5 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);
6 Section 8 of P.L.1985, c.222 (C.52:27D-308);
7 Section 9 of P.L.1985, c.222 (C.52:27D-309);
8 Section 1 of P.L.1995, c.231 (C.52:27D-310.1);
9 Section 2 of P.L.1995, c.231 (C.52:27D-310.2);
10 Section 11 of P.L.1985, c.222 (C.52:27D-311);
11 Section 40 of P.L.2009, c.90 (C. 52:27D-311.3);
12 Section 13 of P.L.1985 c.222 (C.52:27D-313);
13 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);
14 Section 14 of P.L.1985 c.222 (C.52:27D-314);
15 Section 15 of P.L.1985 c.222 (C.52:27D-315);
16 Section 16 of P.L.1985, c.222 (C.52:27D-316);
17 Section 17 of P.L.1985, c.222 (C.52:27D-317);
18 Section 18 of P.L.1985, c.222 (C.52:27D-318);
19 Section 19 of P.L.1985 c.222 (C.52:27D-319);
20 Section 22 of P.L.1985, c.222 (C.52:27D-322);
21 Section 28 of P.L.1985, c.222 (C.52:27D-328);
22 Section 7 of P.L.2008, c.46 (C.52:27D-329.1);
23 Section 9 of P.L.2008, c.46 (C.52:27D-329.3);
24 Section 12 of P.L.2008, c.46 (C.52:27D-329.6);
25 Section 14 of P.L.2008, c.46 (C.52:27D-329.8);
26 Section 21 of P.L.2008, c.46 (C.52:27D-329.10);
27 Section 22 of P.L.2008, c.46 (C.52:27D-329.11);
28 Section 23 of P.L.2008, c.46 (C.52:27D-329.12);
29 Section 24 of P.L.2008, c.46 (C.52:27D-329.13);
30 Section 25 of P.L.2008, c.46 (C.52:27D-329.14);
31 Section 26 of P.L.2008, c.46 (C.52:27D-329.15);
32 Section 27 of P.L.2008, c.46 (C.52:27D-329.16) ^{2,2}
33 Section 28 of P.L.2008, c.46 (C.52:27D-329.17) ^{2,2}
34 Section 29 of P.L.2008, c.46 (C.52:27D-329.18); and
35 Section 30 of P.L.2008, c.46 (C.52:27D-329.19).¹

36
37 ²[¹42.] 37.² ²[This] Section 30 of this act shall take effect
38 immediately and the remainder of this² act shall take effect on the
39 first day of the fourth month next following enactment.¹