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SENATE COMMITTEE SUBSTITUTE FOR
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STATE OF NEW JERSEY
214th LEGISLATURE

ADOPTED JUNE 3, 2010

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

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District 16 (Morris and Somerset)

Senator JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

Co-Sponsored by:

Senator Goodwin

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Local Government Committee on November 8, 2010, with amendments.

(Sponsorship Updated As Of: 6/11/2010)

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.

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHO committee amendments adopted November 8, 2010.

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

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

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

17
18 '【2.(New section) The Council on Affordable Housing
19 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
20 301 et al.) is abolished, and all of its powers, functions, and duties
21 that are not repealed herein are continued in the Department of
22 Community Affairs established pursuant to section 1 of P.L.1966,
23 c.293 (C.52:27D-1), except as herein otherwise provided.
24 Whenever, in any law rule, regulation, order, contract, document,
25 judicial or administrative proceeding, or otherwise, reference is
26 made to the Council on Affordable Housing, the same shall mean
27 and refer to the Department of Community Affairs. All
28 appropriations and other moneys available, and to become
29 available, to the Council on Affordable Housing are hereby
30 continued in the Department of Community Affairs, and shall be
31 available for the objects and purposes for which such moneys are
32 appropriated, subject to any terms, restriction, limitations, or other
33 requirements imposed by State or federal law.

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

36
37 '【3.Section 47 of P.L.1975, c.291 (C.40:55D-60) is amended to
38 read as follows:

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

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

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

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

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

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

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

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

(d) Assist local government in the solution of its problems, to strengthen local self-government;

(e) Study the entire field of local government in New Jersey;

(f) Collect, collate, publish and disseminate information necessary for the effective operation of the department and useful to local government;

(g) Maintain an inventory of data and information and act as a clearing house and referral agency for information on State and Federal services and programs;

(h) Stimulate local programs through publicity, education, guidance and technical assistance concerning Federal and State programs;

(i) Convene meetings of municipal, county or other local officials to discuss ways of cooperating to provide service more efficiently and economically; **[and]**

(j) Maintain and make available on request a list of persons qualified to mediate or arbitrate disputes between local units of government arising from joint service projects or other cooperative activities, and further to prescribe rates of compensation for all such mediation, factfinding or arbitration services; and

(k) Assume the duties of the Council on Affordable Housing that are not repealed by P.L. , c. (pending before the Legislature as this bill) and are transferred to the department pursuant to section 2 of P.L. , c. (C.) and section 18 of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.1973, c.208, s.10)]¹

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

2. The Legislature finds that:

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

b. In the second Mount Laurel ruling, the Supreme Court stated that the determination of the methods for satisfying this constitutional obligation "is better left to the Legislature," that the court has "always preferred legislative to judicial action in their field," and that the judicial role in upholding the Mount Laurel doctrine "could decrease as a result of legislative and executive action." As administered by the Council on Affordable Housing, the "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 Legislatre 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,"

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

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

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

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

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

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

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

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

¹【33.The following sections are repealed:

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

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

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

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

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

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

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

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

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

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 first 35 years of the "Fair Housing
 42 Act's" existence, this complex system of regulation has resulted in
 43 scores of lawsuits and court decisions, and the unnecessary
 44 expenditure of millions of dollars by municipalities, developers, and
 45 the State. In 2010, the system remains tied up with multiple legal
 46 challenges, preventing the creation of housing opportunities within
 47 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 residents

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
37 ¹2. (New section) The Council on Affordable Housing
38 established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-
39 301 et al.) is abolished, and all of its powers, functions, and duties
40 that are not repealed herein are continued in the Department of
41 Community Affairs, established pursuant to section 1 of P.L.1966,
42 c.293 (C.52:27D-1), except as herein otherwise provided.
43 Whenever, in any law, rule, regulation, order, contract, document,
44 judicial or administrative proceeding, or otherwise, reference is
45 made to the Council on Affordable Housing, the same shall mean
46 and refer to the Department of Community Affairs. All
47 appropriations and other moneys available, and to become

1 available, to the Council on Affordable Housing are hereby
2 continued in the Department of Community Affairs, and shall be
3 available for the objects and purposes for which such moneys are
4 appropriated, subject to any terms, restriction, limitations, or other
5 requirements imposed by State or federal law.

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

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

10
11 ¹3. Section 25 of P.L.2004, c.120 (C.13:20-23) is amended to
12 read as follows:

13 ¹25. a. The **【Council on Affordable Housing】** department shall
14 take into consideration the regional master plan prior to making any
15 determination **【regarding the allocation of the prospective fair share**
16 **of the housing need in】** promulgating any regulation specifically
17 concerning, any municipality in the Highlands Region under the
18 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) **【for the**
19 **fair share period subsequent to 1999】**.

20 b. Nothing in this act shall affect protections provided through
21 a grant of substantive certification or a judgment of repose granted
22 prior to the date of enactment of this act.¹
23 (cf: P.L.2004,c.120, s.25)

24
25 ¹4. Section 3 of P.L.1993, c.32 (C.40:55D-40.3) is amended to
26 read as follows:

27 3. a. There is established in, but not of, the department a Site
28 Improvement Advisory Board, to devise statewide site improvement
29 standards pursuant to section 4 of this act. The board shall consist
30 of the commissioner or his designee, who shall be a non-voting
31 member of the board, the Director of the Division of Housing in the
32 Department of Community Affairs, who shall be a voting member
33 of the board, and **【10】** nine other voting members, to be appointed
34 by the commissioner. The other members shall include two
35 professional planners, one of whom serves as a planner for a
36 governmental entity or whose professional experience is
37 predominantly in the public sector and who has worked in the
38 public sector for at least the previous five years and the other of
39 whom serves as a planner in private practice and has particular
40 expertise in private residential development and has been involved
41 in private sector planning for at least the previous five years, and
42 one representative each from:

- 43 (1) The New Jersey Society of Professional Engineers;
44 (2) The New Jersey Society of Municipal Engineers;
45 (3) The New Jersey Association of County Engineers;
46 (4) The New Jersey Federation of Planning Officials;

(5) **【The Council on Affordable Housing】** (Deleted by amendment, P.L. , c.);

(6) The New Jersey Builders' Association;

(7) The New Jersey Institute of Technology;

(8) The New Jersey State League of Municipalities.

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

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

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

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

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

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

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

c. An open space plan showing the proposed land area and general location of parks and any other land area to be set aside for conservation and recreational purposes and a general description of improvements proposed to be made thereon, including a plan for the operation and maintenance of parks and recreational lands;

d. A utility plan indicating the need for and showing the proposed location of sewage and water lines, any drainage facilities necessitated by the physical characteristics of the site, proposed

1 methods for handling solid waste disposal, and a plan for the
2 operation and maintenance of proposed utilities;

3 e. A storm water management plan setting forth the proposed
4 method of controlling and managing storm water on the site;

5 f. An environmental inventory including a general description
6 of the vegetation, soils, topography, geology, surface hydrology,
7 climate and cultural resources of the site, existing man-made
8 structures or features and the probable impact of the development
9 on the environmental attributes of the site;

10 g. A community facility plan indicating the scope and type of
11 supporting community facilities which may include, but not be
12 limited to, educational or cultural facilities, historic sites, libraries,
13 hospitals, firehouses, and police stations;

14 h. A housing plan outlining the number of housing units to be
15 provided and the extent to which any affordable housing
16 **【obligation assigned to the municipality pursuant to P.L.1985,**
17 **c.222 (C.52:27D-301 et al.) will be fulfilled】** will be addressed by
18 the development;

19 i. A local service plan indicating those public services which
20 the applicant proposes to provide and which may include, but not be
21 limited to, water, sewer, cable and solid waste disposal;

22 j. A fiscal report describing the anticipated demand on
23 municipal services to be generated by the planned development and
24 any other financial impacts to be faced by municipalities or school
25 districts as a result of the completion of the planned development.
26 The fiscal report shall also include a detailed projection of property
27 tax revenues which will accrue to the county, municipality and
28 school district according to the timing schedule provided under
29 subsection k. of this section, and following the completion of the
30 planned development in its entirety;

31 k. A proposed timing schedule in the case of a planned
32 development whose construction is contemplated over a period of
33 years, including any terms or conditions which are intended to
34 protect the interests of the public and of the residents who occupy
35 any section of the planned development prior to the completion of
36 the development in its entirety; and

37 l. A municipal development agreement, which shall mean a
38 written agreement between a municipality and a developer relating
39 to the planned development.¹

40 (cf: P.L.1987, c.129, s.4)

41
42 ¹6. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to
43 read as follows:

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

45 "Bonds" means any bonds, notes, interim certificates, debentures
46 or other obligations issued by a municipality, county,

1 redevelopment entity, or housing authority pursuant to P.L.1992,
2 c.79 (C.40A:12A-1 et al.).

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

14 "Development" means the division of a parcel of land into two or
15 more parcels, the construction, reconstruction, conversion,
16 structural alteration, relocation, or enlargement of any building or
17 other structure, or of any mining, excavation or landfill, and any use
18 or change in the use of any building or other structure, or land or
19 extension of use of land, for which permission may be required
20 pursuant to the "Municipal Land Use Law," P.L.1975, c.291
21 (C.40:55D-1 et seq.).

22 "Governing body" means the body exercising general legislative
23 powers in a county or municipality according to the terms and
24 procedural requirements set forth in the form of government
25 adopted by the county or municipality.

26 "Housing authority" means a housing authority created or
27 continued pursuant to this act.

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

42 "Persons of low and moderate income" means persons or
43 families who are, in the case of State assisted projects or programs,
44 so defined by the Council on Affordable Housing in the Department
45 of Community Affairs, or in the case of federally assisted projects
46 or programs, defined as of "low and very low income" by the
47 United States Department of Housing and Urban Development.

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

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

6 "Publicly assisted housing" means privately owned housing
7 which receives public assistance or subsidy, which may be grants or
8 loans for construction, reconstruction, conservation, or
9 rehabilitation of the housing, or receives operational or maintenance
10 subsidies either directly or through rental subsidies to tenants, from
11 a federal, State or local government agency or instrumentality.

12 "Real property" means all lands, including improvements and
13 fixtures thereon, and property of any nature appurtenant thereto or
14 used in connection therewith, and every estate, interest and right,
15 legal or equitable, therein, including terms for years and liens by
16 way of judgment, mortgage or otherwise, and indebtedness secured
17 by such liens.

18 "Redeveloper" means any person, firm, corporation or public
19 body that shall enter into or propose to enter into a contract with a
20 municipality or other redevelopment entity for the redevelopment or
21 rehabilitation of an area in need of redevelopment, or an area in
22 need of rehabilitation, or any part thereof, under the provisions of
23 this act, or for any construction or other work forming part of a
24 redevelopment or rehabilitation project.

25 "Redevelopment" means clearance, replanning, development and
26 redevelopment; the conservation and rehabilitation of any structure
27 or improvement, the construction and provision for construction of
28 residential, commercial, industrial, public or other structures and
29 the grant or dedication of spaces as may be appropriate or necessary
30 in the interest of the general welfare for streets, parks, playgrounds,
31 or other public purposes, including recreational and other facilities
32 incidental or appurtenant thereto, in accordance with a
33 redevelopment plan.

34 "Redevelopment agency" means a redevelopment agency created
35 pursuant to subsection a. of section 11 of P.L.1992, c.79
36 (C.40A:12A-11) or established heretofore pursuant to the
37 "Redevelopment Agencies Law," P.L.1949, c.306 (C.40:55C-1 et
38 al.), repealed by this act, which has been permitted in accordance
39 with the provisions of this act to continue to exercise its
40 redevelopment functions and powers.

41 "Redevelopment area" or "area in need of redevelopment" means
42 an area determined to be in need of redevelopment pursuant to
43 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6)
44 or determined heretofore to be a "blighted area" pursuant to
45 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both
46 determinations as made pursuant to the authority of Article VIII,
47 Section III, paragraph 1 of the Constitution. A redevelopment area

1 may include lands, buildings, or improvements which of themselves
2 are not detrimental to the public health, safety or welfare, but the
3 inclusion of which is found necessary, with or without change in
4 their condition, for the effective redevelopment of the area of which
5 they are a part.

6 "Redevelopment entity" means a municipality or an entity
7 authorized by the governing body of a municipality pursuant to
8 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to
9 implement redevelopment plans and carry out redevelopment
10 projects in an area in need of redevelopment, or in an area in need
11 of rehabilitation, or in both.

12 "Redevelopment plan" means a plan adopted by the governing
13 body of a municipality for the redevelopment or rehabilitation of all
14 or any part of a redevelopment area, or an area in need of
15 rehabilitation, which plan shall be sufficiently complete to indicate
16 its relationship to definite municipal objectives as to appropriate
17 land uses, public transportation and utilities, recreational and
18 municipal facilities, and other public improvements; and to indicate
19 proposed land uses and building requirements in the redevelopment
20 area or area in need of rehabilitation, or both.

21 "Redevelopment project" means any work or undertaking
22 pursuant to a redevelopment plan; such undertaking may include
23 any buildings, land, including demolition, clearance or removal of
24 buildings from land, equipment, facilities, or other real or personal
25 properties which are necessary, convenient, or desirable
26 appurtenances, such as but not limited to streets, sewers, utilities,
27 parks, site preparation, landscaping, and administrative, community,
28 health, recreational, educational, and welfare facilities.

29 "Rehabilitation" means an undertaking, by means of extensive
30 repair, reconstruction or renovation of existing structures, with or
31 without the introduction of new construction or the enlargement of
32 existing structures, in any area that has been determined to be in
33 need of rehabilitation or redevelopment, to eliminate substandard
34 structural or housing conditions and arrest the deterioration of that
35 area.

36 "Rehabilitation area" or "area in need of rehabilitation" means
37 any area determined to be in need of rehabilitation pursuant to
38 section 14 of P.L.1992, c.79 (C.40A:12A-14).¹
39 (cf: P.L.2008, c.46, s.1)

40

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

43 7. a. No redevelopment project shall be undertaken or carried
44 out except in accordance with a redevelopment plan adopted by
45 ordinance of the municipal governing body, upon its finding that the
46 specifically delineated project area is located in an area in need of
47 redevelopment or in an area in need of rehabilitation, or in both,

1 according to criteria set forth in section 5 or section 14 of P.L.1992,
2 c.79 (C.40A:12A-5 or 40A:12A-14), as appropriate.

3 The redevelopment plan shall include an outline for the planning,
4 development, redevelopment, or rehabilitation of the project area
5 sufficient to indicate:

6 (1) Its relationship to definite local objectives as to appropriate
7 land uses, density of population, and improved traffic and public
8 transportation, public utilities, recreational and community facilities
9 and other public improvements.

10 (2) Proposed land uses and building requirements in the project
11 area.

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

17 (4) An identification of any property within the redevelopment
18 area which is proposed to be acquired in accordance with the
19 redevelopment plan.

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

25 (6) As of the date of the adoption of the resolution finding the
26 area to be in need of redevelopment, an inventory of all housing
27 units affordable to low and moderate income households, as defined
28 pursuant to section [4 of P.L.1985, c.222 (C.52:27D-304)] 22 of
29 P.L. , c. (C.) (pending before the Legislature as this bill), that
30 are to be removed as a result of implementation of the
31 redevelopment plan, whether as a result of subsidies or market
32 conditions, listed by affordability level, number of bedrooms, and
33 tenure.

34 (7) A plan for the provision, through new construction or
35 substantial rehabilitation of one comparable, affordable replacement
36 housing unit for each affordable housing unit that has been
37 occupied at any time within the last 18 months, that is subject to
38 affordability controls and that is identified as to be removed as a
39 result of implementation of the redevelopment plan. Displaced
40 residents of housing units provided under any State or federal
41 housing subsidy program, or pursuant to the "Fair Housing Act,"
42 P.L.1985, c.222 (C.52:27D-301 et al.), provided they are deemed to
43 be eligible, shall have first priority for those replacement units
44 provided under the plan; provided that any such replacement unit
45 shall not be [credited against a prospective municipal obligation
46 under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et
47 al.)] counted as qualified units, if the housing unit which is

1 removed had previously been [credited toward satisfying the
2 municipal fair share obligation] counted. To the extent reasonably
3 feasible, replacement housing shall be provided within or in close
4 proximity to the redevelopment area. A municipality shall report
5 annually to the Department of Community Affairs on its progress in
6 implementing the plan for provision of comparable, affordable
7 replacement housing required pursuant to this section.

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

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

28 d. All provisions of the redevelopment plan shall be either
29 substantially consistent with the municipal master plan or designed
30 to effectuate the master plan; but the municipal governing body may
31 adopt a redevelopment plan which is inconsistent with or not
32 designed to effectuate the master plan by affirmative vote of a
33 majority of its full authorized membership with the reasons for so
34 acting set forth in the redevelopment plan.

35 e. Prior to the adoption of a redevelopment plan, or revision or
36 amendment thereto, the planning board shall transmit to the
37 governing body, within 45 days after referral, a report containing its
38 recommendation concerning the redevelopment plan. This report
39 shall include an identification of any provisions in the proposed
40 redevelopment plan which are inconsistent with the master plan and
41 recommendations concerning these inconsistencies and any other
42 matters as the board deems appropriate. The governing body, when
43 considering the adoption of a redevelopment plan or revision or
44 amendment thereof, shall review the report of the planning board
45 and may approve or disapprove or change any recommendation by a
46 vote of a majority of its full authorized membership and shall
47 record in its minutes the reasons for not following the

1 recommendations. Failure of the planning board to transmit its
2 report within the required 45 days shall relieve the governing body
3 from the requirements of this subsection with regard to the pertinent
4 proposed redevelopment plan or revision or amendment thereof.
5 Nothing in this subsection shall diminish the applicability of the
6 provisions of subsection d. of this section with respect to any
7 redevelopment plan or revision or amendment thereof.

8 f. The governing body of a municipality may direct the
9 planning board to prepare a redevelopment plan or an amendment
10 or revision to a redevelopment plan for a designated redevelopment
11 area. After completing the redevelopment plan, the planning board
12 shall transmit the proposed plan to the governing body for its
13 adoption. The governing body, when considering the proposed
14 plan, may amend or revise any portion of the proposed
15 redevelopment plan by an affirmative vote of the majority of its full
16 authorized membership and shall record in its minutes the reasons
17 for each amendment or revision. When a redevelopment plan or
18 amendment to a redevelopment plan is referred to the governing
19 body by the planning board under this subsection, the governing
20 body shall be relieved of the referral requirements of subsection e.
21 of this section.¹

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

23
24 ¹8. Section 16 of P.L.1992, c.79 (C.40A:12A-16) is amended to
25 read as follows:

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

30 (1) Plan, construct, own, and operate housing projects; maintain,
31 reconstruct, improve, alter, or repair any housing project or any part
32 thereof; and for these purposes, receive and accept from the State or
33 federal government, or any other source, funds or other financial
34 assistance;

35 (2) Lease or rent any dwelling house, accommodations, lands,
36 buildings, structures or facilities embraced in any housing project;
37 and pursuant to the provisions of this act, establish and revise the
38 rents and charges therefor;

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

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

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

46 (6) Cooperate with any other municipality, private, county, State
47 or federal entity to provide funds to the municipality or other

1 governmental entity and to homeowners, tenant associations,
2 nonprofit or private developers to acquire, construct, rehabilitate or
3 operate publicly assisted housing, and to provide rent subsidies for
4 persons of low and moderate income, including the elderly,
5 pursuant to applicable State or federal programs;

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

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

13 (9) Provide technical assistance and support to nonprofit
14 organizations and private developers interested in constructing low
15 and moderate income housing;

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

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

22 b. All housing projects, programs and actions undertaken
23 pursuant to this act shall accord with the housing element of the
24 master plan of the municipality within which undertaken, and with
25 [any fair share housing plan filed by the municipality with the
26 Council on Affordable Housing, based upon the council's criteria
27 and guidelines, pursuant to] the "Fair Housing Act," P.L.1985,
28 c.222 (C.52:27D-301 et al.)[, whether or not the municipality has
29 petitioned for substantive certification of the plan].¹
30 (cf: P.L.1992, c.79, s.16)

31
32 ¹9. Section 2 of P.L.1992, c.148 (C.46:15-10.2) is amended to
33 read as follows:

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

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

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

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

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

b. If the requirements of subsection a. of this section are not met on the effective date of an annual appropriations act for the State fiscal year, or if an amendment or supplement to an annual appropriations act for the State fiscal year should violate any of the requirements of subsection a. of this section, the Director of the Division of Budget and Accounting in the Department of the Treasury shall, not later than five days after the enactment of the annual appropriations act, or an amendment or supplement thereto, that violates any of the requirements of subsection a. of this section, certify to the Director of the Division of Taxation that the requirements of subsection a. of this section have not been met.¹ (cf: P.L.2004, c.120, s.62)

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

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

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

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

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

(d) Assist local government in the solution of its problems, to strengthen local self-government;

(e) Study the entire field of local government in New Jersey;

(f) Collect, collate, publish and disseminate information necessary for the effective operation of the department and useful to local government;

(g) Maintain an inventory of data and information and act as a clearing house and referral agency for information on State and Federal services and programs;

1 (h) Stimulate local programs through publicity, education,
2 guidance and technical assistance concerning Federal and State
3 programs;

4 (i) Convene meetings of municipal, county or other local
5 officials to discuss ways of cooperating to provide service more
6 efficiently and economically; **[and]**

7 (j) Maintain and make available on request a list of persons
8 qualified to mediate or arbitrate disputes between local units of
9 government arising from joint service projects or other cooperative
10 activities, and further to prescribe rates of compensation for all such
11 mediation, factfinding or arbitration services; and

12 (k) Assume the duties of the Council on Affordable Housing
13 that are not repealed by P.L. , c. (pending before the Legislature
14 as this bill) and are transferred to the department pursuant to section
15 2 of P.L. , c. (C.) (pending before the Legislature as this
16 bill).¹

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

18
19 ¹11. Section 1 of P.L.1991, c.479 (C52:27D-307.1) is amended
20 to read as follows:

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

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

27 "Commissioner" means the Commissioner of Community
28 Affairs.

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

31 "Department" means the Department of Community Affairs.

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

35 "Project" or "housing project" means any specific work or
36 undertaking for the purpose of providing housing accommodations,
37 whether by new construction or by rehabilitation or adaptation of
38 existing structures, that shall be affordable to persons and families
39 of low or moderate income within the meaning of the "Fair Housing
40 Act," P.L.1985, c.222 (C.52:27D-301 et al.). Such work or
41 undertaking may include the acquisition, construction or
42 rehabilitation of lands, buildings and improvements, and such
43 stores, offices, and social, recreational, communal or other facilities
44 as may be incidental or appurtenant to the housing accommodations
45 that are to be provided.

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

5
6 ¹12. Section 3 of P.L.1991, c.479 (C.52:27D-307.3) is amended
7 to read as follows:

8 3. a. The commissioner shall cause to be developed a system
9 for assigning and designating priority ratings to each project
10 included in the register. Priority ratings shall be based upon the
11 following factors, giving to each factor such weight as the
12 commissioner shall judge to be appropriate:

13 (1) Feasibility. Each project shall be evaluated for its physical
14 and financial feasibility, giving consideration to the capabilities of
15 the proposed sponsor or developer, market conditions and
16 regulatory requirements in the locality for which it is proposed, and
17 the availability of financing in sufficient amount and at reasonable
18 cost.

19 (2) Desirability. Each project shall be evaluated with relation to
20 its probable effect in meeting the affordable housing needs of the
21 housing region in which it is to be located, in accordance with the
22 standards and criteria of the **【council】** Department of Community
23 Affairs. Consideration shall be given to (a) the number of
24 affordable dwelling units that the project would provide, (b) the
25 proportion of affordable units to the total number of units envisaged
26 in the project plan, (c) the distribution of those affordable units as
27 between those affordable to persons and families of low income and
28 those of moderate income, considered in relation to the needs of the
29 housing region, (d) appropriateness of the proposed tenure of the
30 affordable units, whether to be rental or owner-occupied, in relation
31 to the needs of the housing region, and (e) appropriateness of the
32 proposed distribution of units as to family size, in relation to the
33 needs of the housing region.

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

40 b. In developing the system of assigning and designating
41 priorities, and in evaluating individual projects for such assignment
42 and designation in the register, the commissioner shall consult with
43 the executive director of the agency **【and the executive director of**
44 **the council】**. The **【council】** person having control over the project
45 and the agency shall promptly and fully supply the commissioner
46 with all relevant information necessary for the commissioner's

1 timely and complete fulfillment of the requirements of this act.¹
2 (cf: P.L.1991, c.479, s.3)

3
4 ¹13. Section 4 of P.L.1991, c.479 (C.52:27D-307.4) is amended
5 to read as follows:

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

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

32 c. Reports made to the commissioner shall be promptly
33 forwarded [by him], not later than 10 days after their receipt, to the
34 Governor and to the presiding officers of the Houses of the
35 Legislature, who shall cause all members of their respective Houses
36 to be notified of the receipt of those reports and shall make
37 adequate provision for the inspection of the commissioner's reports
38 by members and committees of either House, and for the
39 dissemination of those reports to the public. The reports forwarded
40 by the commissioner shall in each instance indicate the priority
41 rating that has been assigned in the register to the project to which
42 the report relates.¹

43 (cf: P.L.1991, c.479, s.4)

44
45 ¹14. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended
46 to read as follows:

1 10. A municipality's housing element shall be designed to
2 achieve the goal of access to affordable housing to [meet present
3 and prospective] achieve the mix of housing stock described in
4 paragraph (1) of subsection a. of section 23 of P.L. , c. (C.)
5 (pending before the Legislature as this bill), with particular
6 attention to low and moderate income housing, and shall contain at
7 least:

8 a. An inventory of the municipality's housing stock by age,
9 condition, purchase or rental value, occupancy characteristics, and
10 type, including the number of units affordable to low and moderate
11 income households and substandard housing capable of being
12 rehabilitated, and in conducting this inventory the municipality
13 shall have access, on a confidential basis for the sole purpose of
14 conducting the inventory, to all necessary property tax assessment
15 records and information in the assessor's office, including but not
16 limited to the property record cards;

17 b. A projection of the municipality's housing stock, including
18 the probable future construction of low and moderate income
19 housing, for the next ten years, taking into account, but not
20 necessarily limited to, construction permits issued, approvals of
21 applications for development and probable residential development
22 of lands;

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

26 d. An analysis of the existing and probable future employment
27 characteristics of the municipality;

28 e. A determination of the municipality's [present and
29 prospective fair share] resources and need for low and moderate
30 income housing and its capacity to accommodate its [present and
31 prospective] housing needs, including [its fair share for] low and
32 moderate income housing; and

33 f. A consideration of the lands that are most appropriate for
34 construction of low and moderate income housing and of the
35 existing structures most appropriate for conversion to, or
36 rehabilitation for, low and moderate income housing, including a
37 consideration of lands of developers who have expressed a
38 commitment to provide low and moderate income housing.

39 g. An analysis calculating the number of existing substandard
40 housing units in the municipality occupied by low and moderate
41 income families and a plan for rehabilitating at least those units
42 within the next 10 years.¹

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

44
45 ¹15. Section 1 of P.L.2005, c.350 (C.52:27D-311a) is amended to
46 read as follows:

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

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

11
12 ¹16. Section 6 of P.L.2005, c.350 (C.52:27D-311b) is amended
13 to read as follows:

14 6. The [council] department may take such measures as are
15 necessary to assure compliance with the adaptability requirements
16 imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.),
17 including the inspection of those units which are newly constructed
18 and receive housing credit as provided under section 1 of P.L.2005,
19 c.350 (C.52:27D-311a) for adaptability, as part of the monitoring
20 which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).
21 [If any units for which credit was granted in accordance with the
22 provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not
23 to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a
24 et al.), the council may require the municipality to amend its fair
25 share plan within 90 days of receiving notice from the council, to
26 address its fair share obligation pursuant to P.L.1985, c.222
27 (C.52:27D-301 et al.). In the event that the municipality fails to
28 amend its fair share plan within 90 days of receiving such notice,
29 the council may revoke substantive certification.]¹

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

31
32 ¹17. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended
33 to read as follows:

34 20. There is established in the Department of Community
35 Affairs a separate trust fund, to be used for the exclusive purposes
36 as provided in this section, and which shall be known as the "New
37 Jersey Affordable Housing Trust Fund." The fund shall be a non-
38 lapsing, revolving trust fund, and all monies deposited or received
39 for purposes of the fund shall be accounted for separately, by source
40 and amount, and remain in the fund until appropriated for such
41 purposes. The fund shall be the repository of all State funds
42 appropriated for affordable housing purposes, including, but not
43 limited to, the proceeds from the receipts of the additional fee
44 collected pursuant to paragraph (2) of subsection a. of section 3 of
45 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the
46 Statewide non-residential development fees collected pursuant to
47 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or

1 reverting from municipal development trust funds, or other monies
2 as may be dedicated, earmarked, or appropriated by the Legislature
3 for the purposes of the fund. All references in any law, order, rule,
4 regulation, contract, loan, document, or otherwise, to the
5 "Neighborhood Preservation Nonlapsing Revolving Fund" shall
6 mean the "New Jersey Affordable Housing Trust Fund." No less
7 than 13 percent of the total expenditures in any State fiscal year
8 from the New Jersey Affordable Housing Trust Fund shall be used
9 for housing projects reserved for very low income households and
10 special needs housing units. The department shall be permitted to
11 utilize annually up to 7.5 percent of the monies available in the fund
12 for the payment of any necessary administrative costs related to the
13 administration of the "Fair Housing Act," P.L.1985, c.222
14 (C.52:27D-301 et al.), the State Housing Commission, or any costs
15 related to administration of P.L.2008, c.46 (C.52:27D-329.1 et al.).

16 a. [Except as permitted pursuant to subsection g. of this section,
17 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the] The
18 commissioner shall award grants or loans from this fund for
19 housing projects and programs [in municipalities whose housing
20 elements have received substantive certification from the council,]
21 in municipalities receiving State aid pursuant to P.L.1978, c.14
22 (C.52:27D-178 et seq.), and in municipalities subject to a builder's
23 remedy [as defined in section 28 of P.L.1985, c.222 (C.52:27D-
24 328) or in receiving municipalities in cases where the council has
25 approved a regional contribution agreement and a project plan
26 developed by the receiving municipality.

27 Of those monies deposited into the "New Jersey Affordable
28 Housing Trust Fund" that are derived from municipal development
29 fee trust funds, or from available collections of Statewide non-
30 residential development fees, a priority for funding shall be
31 established for projects in municipalities that have petitioned the
32 council for substantive certification]. The commissioner shall
33 prioritize funding for projects that include special needs units when
34 making grants and awards from the "New Jersey Affordable
35 Housing Trust Fund." The commissioner shall assess the housing
36 need in each region of the State and consider the assessment in
37 prioritizing awards from the fund.

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

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

46 c. [For any period which the council may approve, the
47 commissioner may assist affordable housing programs which are

1 not located in municipalities whose housing elements have been
 2 granted substantive certification or which are not in furtherance of a
 3 regional contribution agreement; provided that the affordable
 4 housing program will meet all or part of a municipal low and
 5 moderate income housing obligation.】 (Deleted by amendment,
 6 P.L. , c.) (pending before the Legislature as this bill).

7 d. Amounts deposited in the "New Jersey Affordable Housing
 8 Trust Fund" shall be targeted to 【regions based on the region's
 9 percentage of the State's low and moderate income housing need as
 10 determined by the council】 assist projects in municipalities that are
 11 deemed compliant pursuant to section 24 of P.L. , c. (C.)
 12 (pending before the Legislature as this bill) or pursuant to section
 13 25 of P.L. , c. (C.) (pending before the Legislature as this bill)
 14 and to assist projects in municipalities that are neither compliant
 15 nor deemed compliant pursuant to P.L. , c. (C.) (pending
 16 before the Legislature as this bill). Amounts 【in the fund】
 17 deposited in the "New Jersey Affordable Housing Trust Fund" shall
 18 be applied for the following purposes in designated neighborhoods:

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

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

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

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

29 (5) Grants of assistance to eligible municipalities for costs of
 30 necessary studies, surveys, plans and permits; engineering,
 31 architectural and other technical services; costs of land acquisition
 32 and any buildings thereon; and costs of site preparation, demolition
 33 and infrastructure development for projects undertaken pursuant to
 34 an approved regional contribution agreement;

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

43 (7) Other housing programs for low and moderate income
 44 housing, including, without limitation, (a) infrastructure projects
 45 directly facilitating the construction of low and moderate income
 46 housing not to exceed a reasonable percentage of the construction
 47 costs of the low and moderate income housing to be provided and

1 (b) alteration of dwelling units occupied or to be occupied by
2 households of low or moderate income and the common areas of the
3 premises in which they are located in order to make them accessible
4 to handicapped persons; and

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

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

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

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

46 h. The department and the State Treasurer shall submit the
47 "New Jersey Affordable Housing Trust Fund" for an audit annually

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

15 i. The commissioner may award or grant the amount of any
 16 appropriation deposited in the "New Jersey Affordable Housing
 17 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
 18 320.1) to municipalities pursuant to the provisions of section 39 of
 19 P.L.2009, c.90 (C.40:55D-8.8).

20 j. Not less than 10 percent and not more than 25 percent of the
 21 amount of the additional fees collected pursuant to paragraph (2) of
 22 subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7) and
 23 deposited in the "New Jersey Affordable Housing Trust Fund" shall
 24 be transferred to the "Urban Housing Assistance Fund" in any State
 25 fiscal year.¹
 26 (cf: P.L.2009, c.90, s.38)
 27

28 ¹18. Section 19 of P.L.2008, c.46 (C.52:27D-321.1) is amended
 29 to read as follows:

30 19. a. Notwithstanding any rules of the New Jersey Housing
 31 and Mortgage Finance Agency to the contrary, the allocation of low
 32 income tax credits shall be made by the agency to the full extent
 33 such credits are permitted to be allocated under federal law,
 34 including allocations of 4 percent or 9 percent federal low income
 35 tax credits, and including allocations allowable for partial credits.
 36 The affordable portion of any mixed income or mixed use
 37 development that is part of a [fair share] housing plan [approved
 38 by the council, or] including a development that has received a
 39 court-approved judgment of repose or compliance, including, but
 40 not limited to, a development that has received a density bonus,
 41 shall be permitted to receive allocations of low income tax credits,
 42 provided that the applicant can conclusively demonstrate that the
 43 market rate residential or commercial units are unable to internally
 44 subsidize the affordable units, and the affordable units are
 45 developed contemporaneously with the commercial or market rate
 46 residential units. In adopting the Qualified Allocation Plan pursuant
 47 to 26 U.S.C. s.42, and any rules promulgated thereunder, the agency

1 shall, in issuing the credits, prioritize applications from projects in
 2 municipalities that are deemed compliant pursuant to section 24 of
 3 P.L. , c. (C.) (pending before the Legislature as this bill) or
 4 pursuant to section to section 25 of P.L. , c. (C.) (pending
 5 before the Legislature as this bill), and to assist projects in
 6 municipalities that are neither compliant nor deemed compliant
 7 pursuant to P.L. , c. (C.) (pending before the Legislature as this
 8 bill), and that include at least 10 percent special needs or very low
 9 income units.

10 b. A housing unit financed in whole or in part through the
 11 allocation of federal Low-Income Housing Tax Credits shall be
 12 eligible to be counted as a qualified unit for purposes of
 13 determining whether a municipality is a compliant municipality
 14 pursuant to section 21 of P.L. , c. (C.) (pending before the
 15 Legislature as this bill) if the requirements of federal law pursuant
 16 to 26 U.S.C. s.42 have been met for that unit.¹

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

18
 19 ¹19. Section 13 of P.L.2008, c.46 (C.52:27D-329.7) is amended
 20 to read as follows:

21 13. a. There is established within the Department of Community
 22 Affairs an Urban Housing Assistance Program for the purposes of
 23 assisting certain municipalities in the provision of housing through
 24 the rehabilitation of existing buildings or the construction of
 25 affordable housing.

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

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

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

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

40 c. The Commissioner of Community Affairs shall develop a
 41 strategic five-year plan for the program aimed at developing
 42 strategies to assist municipalities in creating rehabilitation programs
 43 and other programs to produce safe, decent housing within the
 44 municipality.

45 d. The commissioner may award a housing rehabilitation grant
 46 to a municipality that qualifies for aid pursuant to P.L.1978, c.14
 47 (C.52:27D-178 et seq.), or a non-profit corporation in a

municipality that qualifies for such aid, and that has submitted a valid application to the Department of Community Affairs which details the manner in which the municipality will utilize funding in order to meet the municipality's need to rehabilitate or create safe, decent, and affordable housing.

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

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

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

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

b. A developer of a project consisting of newly-constructed residential units being financed in whole or in part with State funds, including, but not limited to, transit villages designated by the Department of Transportation, units constructed on State-owned property, and urban transit hubs as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208), shall be required to reserve at least **[20] 10** percent of the residential units constructed **[for occupancy by] as** low or moderate income **[households] housing**, as those terms are defined in section **[4 of P.L.1985, c.222 (C.52:27D-304)]**

1 2 of P.L. , c. (C.) (pending before the Legislature as this bill),
2 with affordability controls as required under the rules of the
3 **【council, unless the municipality in which the property is located**
4 **has received substantive certification from the council】** department
5 **【and such a reservation is not required under the approved**
6 **affordable housing plan, or the municipality has been given a**
7 **judgment of repose or a judgment of compliance by the court, and**
8 **such a reservation is not required under the approved affordable**
9 **housing plan】** pursuant to P.L. , c. (C.) (pending before the
10 Legislature as this bill).

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

20 (2) The regional planning entities identified in subsection a. of
21 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 council may
28 permit; provided, however, that such provision by such a regional
29 entity may not result in more than a 50 percent change in the fair
30 share obligation of any municipality; provided that this limitation
31 shall not apply to affordable housing units directly attributable to
32 development by the New Jersey Sports and Exposition Authority
33 within the New Jersey Meadowlands District.

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

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

Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et al.), or at any time in the last 10 years has been qualified to receive assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the jurisdiction of any of the regional entities specified in subsection a. of this section.] (Deleted by amendment, P.L. , c.).¹
(cf: P.L.2008, c.46, s.18)

¹21. (New section) To determine whether property has access to sewer for purposes of determining whether the property is developable land as defined in section 22 of P.L. , c. (C.) (pending before the Legislature as this bill), any party may apply to the Department of Environmental Protection for a review or determination of site specific or project specific amendments or revisions to wastewater management plans and water quality management plans when a county or other wastewater management planning agency has not adopted or submitted a wastewater management plan in accordance with the schedule at N.J.A.C.7:15-5.23(a). The Department of Environmental Protection shall review and act upon the amendments or revisions within 90 days of receipt of a complete application for a determination or review.¹

¹22. (New section) As used in P.L. , c. (C.) (pending before the Legislature as this bill):

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

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

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

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

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

1 "Conversion" means the conversion of existing commercial,
2 industrial, or residential structures for low and moderate income
3 housing purposes where at least 10 percent of the housing units are
4 provided for a reasonable income range of low and moderate
5 income households.

6 "Council" means the former Council on Affordable Housing
7 established by section 5 of P.L.1985, c.222, and, following the
8 effective date of P.L. , c. (C.) (pending before the Legislature as
9 this bill), the Department of Community Affairs, pursuant to section
10 2 of P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

16 "Developable land" means any lot or parcel, whether or not the
17 parcel is vacant, or any part of a lot or parcel, having access to
18 sewer service, or that has been determined by the Department of
19 Environmental Protection, pursuant to section 21 of P.L. , c.
20 (C.) (pending before the Legislature as this bill), to be legally able
21 to connect to service, having a slope of less than 15 percent, and
22 that is not:

23 (1) land that is owned by a local government entity that as of the
24 effective date of P.L. , c. (C.) (pending before the Legislature
25 as this bill), has adopted, prior to the institution of a lawsuit seeking
26 a builder's remedy, a resolution authorizing an execution of
27 agreement that the land be utilized for a public purpose other than
28 housing;

29 (2) any land listed on a master plan of a municipality as being
30 dedicated, by easement or otherwise, for purposes of conservation,
31 park lands or open space and which is owned, leased, licensed, or in
32 any manner operated by a county, municipality or tax-exempt,
33 nonprofit organization including a local board of education, or by
34 more than one municipality by joint agreement pursuant to the
35 "Uniform Shared Services and Consolidation Act," P.L.2007, c.63
36 (C.40A:65-1 et seq.), for so long as the entity maintains such
37 ownership, lease, license, or operational control of such land;

38 (3) any vacant contiguous parcels of land in private ownership of
39 a size which would accommodate fewer than five housing units if
40 the economic viability standards of the department were applied
41 pertaining to housing density;

42 (4) historic and architecturally important sites listed on the State
43 Register of Historic Places or National Register of Historic Places
44 prior to the effective date of P.L. , c. (C.) (pending before the
45 Legislature as this bill);

46 (5) agricultural lands when the development rights to these lands
47 have been purchased or restricted by covenant;

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

3 (7) environmentally sensitive lands where development is
4 prohibited by any State or federal agency, including prohibitions
5 pursuant to the "Freshwater Wetlands Protection Act," P.L.1987,
6 c.156 (C.13:9B-1 et seq.), the "Pinelands Protection Act," P.L.1979,
7 c.111 (C.13:18A-1 et seq.), the "Coastal Area Facility Review Act,"
8 P.L.1973, c.185 (C.13:19-1 et seq.), the "Highlands Water
9 Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.),
10 the federal Clean Water Act, 33 U.S.C. ss.1251 et seq., or the
11 "Hackensack Meadowlands Reclamation and Development Act,"
12 P.L.1968, c.404 (C.13:17-1 et seq.).

13 Developable land shall include existing structures that are
14 appropriate for conversion to or rehabilitation for housing,
15 including, but not limited to, structures abandoned or underutilized.

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

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

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

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

45 "Qualified housing units" means the sum of housing units that
46 are very low income housing, low income housing, moderate
47 income housing, mobile home units, public housing units, and units

whose deeds contain sale, resale or transfer price restrictions because the units were financed by federal Low Income Housing Tax Credits, received project-based assistance under the program authorized pursuant to section 8 of the United States Housing Act of 1937 as added by the Housing and Community Development Act of 1974, Pub.L.93-383 (42U.S.C. s. 1437f), or received financing from funds received pursuant to a Regional Contribution Agreement; provided, that any qualified units shall be adaptable, as required by section 1 of P.L.2005, c.350 (C.52:27D-311a).

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

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

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

"Rehabilitation project" means a "gut rehabilitation" project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode, N.J.A.C.5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

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

"Supportive and special needs housing" means homes for persons with developmental disabilities and mental illness that are designed as permanent housing, and licensed or regulated by the New Jersey Department of Human Services; permanent supportive housing; and permanent supportive shared living housing. This term does not

1 include housing restricted to occupancy by persons under 18 years
2 of age.

3 "Very low income housing" means housing affordable according
4 to federal Department of Housing and Urban Development or other
5 recognized standards for home ownership and rental costs and
6 occupied or reserved for occupancy by households with a gross
7 household income equal to 30 percent or less of the median gross
8 household income for households of the same size within the
9 housing region in which the housing is located.¹

10
11 ¹23. (New section) a. A municipality shall meet its compliance
12 threshold if it demonstrates that:

13 (1) 10 percent of its total current housing stock is qualified
14 housing units; or

15 (2) at least 25, but less than 50, percent of the children enrolled
16 in schools in the municipality in October of the preceding year were
17 eligible for free or reduced price meals under the federal School
18 Lunch Program.

19 b. For purposes of counting towards a compliance threshold
20 determined pursuant to (1) in 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; and

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

27 c. Each permanent supportive housing unit that receives a
28 certificate of occupancy following the effective date of P.L. , c.
29 (C.) (pending before the Legislature as this bill), shall be
30 counted as two units of qualified housing in the municipality in
31 which the unit is located. Each new unit of housing for persons with
32 developmental disabilities or mental illness, designed as permanent
33 housing, and regulated by the New Jersey Department of Human
34 Services, shall be counted as one and one-quarter unit of qualified
35 housing in the municipality in which the unit is located. Each new
36 bedroom in permanent supportive shared living housing created
37 following the effective date of P.L. , c. (C.) (pending before the
38 Legislature as this bill), shall be counted as one and one-quarter
39 unit of qualified housing in the municipality in which the unit is
40 located. The total added additional units counted pursuant to this
41 subsection shall not exceed 25 percent of the number of housing
42 units affordable to low- and moderate-income people counted to
43 determine that a municipality is a compliant municipality.

44 d. A municipality that is a compliant municipality pursuant to
45 this section shall remain a compliant municipality as long as the
46 requirements of this section are met, and the affordability controls
47 on any required qualified housing units remain in effect. At the time

1 the municipality files a resolution, pursuant to subsection e. of this
2 section, the Department shall review affordability controls in effect
3 for qualified units, where relevant, for compliance with the
4 requirements of P.L. , c. (C.) (pending before the Legislature as
5 this bill).

6 e. To demonstrate that it has met the compliance threshold, a
7 municipal governing body shall adopt a resolution containing an
8 analysis of data demonstrating that it met its threshold. Each
9 municipality adopting a resolution pursuant to this section shall file
10 the resolution and other relevant information with the Department
11 in an electronic format.

12 f. Any municipality demonstrating that it has met the
13 compliance threshold pursuant to this section shall submit an
14 analysis calculating the number of existing substandard housing
15 units in the municipality occupied by low and moderate income
16 families, and a plan for rehabilitating at least that number of units
17 within the next 10 years.

18 g. The department shall make any ordinances or housing
19 element filed by a municipality available on the website established
20 pursuant to section 30 of P.L. , c. (C.) (pending before the
21 Legislature as this bill).

22 h. Upon receipt of a municipality's filing, the Commissioner of
23 Community Affairs will undertake a review of the municipality's
24 filing, for the sole purpose of determining whether the filing
25 accurately and completely represents the required composition of
26 the municipal housing stock and ordinances in conformance with
27 the requirements of this section.

28 For purposes of this section, a municipality may rely upon a
29 determination of the number of children enrolled in schools in the
30 municipality in October of the preceding year that are eligible for
31 free or reduced price meals under the federal School Lunch
32 Program need for a period of up to 10 years.¹

33
34 ¹24. (New section) a. Notwithstanding the provisions of section
35 23 of P.L. , c. (C.) (pending before the Legislature as this
36 bill) a municipality may be deemed to be a compliant municipality
37 if it adopts an ordinance providing that at least 20 percent of its
38 developable property is zoned for use as housing affordable to,
39 according to federal Department of Housing and Urban
40 Development or other recognized standards for home ownership
41 and rental costs, and occupied by, or reserved for occupancy by,
42 households with a gross household income equal to or less than 150
43 percent of the median gross household income for households of the
44 same size within the housing region in which the housing is located,
45 and zoning permitting minimum presumptive densities as follows:

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

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

7 When developable land in a municipality is subject to a federal
8 or State law or regulation that permits development, but restrict the
9 gross average density of a parcel or portion of a parcel to a density
10 below that specified by this subsection, a municipality shall comply
11 with this section by zoning for the greatest average density allowed
12 by law.

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

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

25 d. Upon receipt of a municipality's filing, the Commissioner of
26 Community Affairs will undertake a review of the municipality's
27 filing, for the sole purpose of determining whether the filing
28 accurately and completely represents the required composition of
29 the municipal housing stock and ordinances in conformance with
30 the requirements of this section.¹

31
32 ¹25. (New section) a. Notwithstanding the provisions of section
33 23 of P.L. , c. (C.) (pending before the Legislature as this
34 bill) a municipality may be deemed to be a compliant municipality
35 if it adopts and files a housing element, prepared pursuant to section
36 10 of P.L.1985, c.222 (C.52:27D-310), with the department.

37 b. The housing element may provide for the qualified units
38 described in paragraph (1) of subsection a. of section 23 of P.L. ,
39 c. (C.) (pending before the Legislature as this bill) by means
40 of any technique approved by the department, including, but not
41 limited to, inclusionary zoning, and the creation of opportunities for
42 affordable housing through development including, but not limited
43 to, new construction, rehabilitation, and redevelopment. The
44 housing element shall take into consideration any weighted
45 counting authorized by subsection c. of section 23 of P.L. , c.
46 (C.) (pending before the Legislature as this bill). The

1 department shall approve at least the following techniques for
2 providing opportunities for affordable housing:

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

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

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

12 (4) Assisting a municipally-sponsored 100 percent affordable
13 development;

14 (5) Permitting construction of Elder Cottage Housing
15 Opportunity units;

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

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

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

25 c. The governing body of a municipality seeking to be deemed
26 compliant pursuant to this section shall, by ordinance, require a
27 professional planner or consultant regularly employed or retained
28 by the planning board or zoning board of adjustment for the
29 municipality to certify to the accuracy and veracity of the element.

30 d. Prior to filing the plan with the department, the county
31 planning board by resolution shall adopt the housing element. In
32 adopting the housing element or any amendment thereto the board
33 shall hold at least one public hearing for presentation and review of
34 the housing element. Notice of the time and place of the meeting
35 shall be given by one publication in a newspaper of general
36 circulation in the county and by the transmission by delivery or by
37 certified mail, at least 20 days prior to such hearing. The
38 department shall provide any technical assistance required by the
39 county planning board.

40 e. The municipality shall act in good faith in complying with
41 the requirements of this section, including preparation of the
42 housing element. To continue being deemed compliant pursuant to
43 this section, the municipality shall submit interim status updates
44 demonstrating that the municipality is affirmatively complying with
45 the requirements of this section.

1 f. Any housing element filed pursuant to this section shall
2 identify, with specificity, the site of any qualified units that shall be
3 built and are relied upon to meet the compliance threshold.¹
4

5 ¹26. (New section) a. Any municipality in which 50 percent or
6 more of the children enrolled in schools in the municipality in
7 October of the preceding year were eligible for free or reduced price
8 meals under the federal School Lunch Program shall be compliant
9 pursuant to P.L. , c. (C.) upon filing an analysis calculating the
10 number of existing substandard housing units in the municipality
11 occupied by low and moderate income families, and a plan for
12 rehabilitating at least those units within the next 10 years.

13 b. Nothing in this section shall be construed to prohibit a
14 municipality from adopting an ordinance requiring that units
15 proposed as part of a residential development project be set aside
16 for low- or moderate-income households, or establishing an
17 affordable housing trust fund and adopting corresponding fee
18 ordinances, pursuant to paragraph (2) of subsection b. of section 28
19 of P.L. , c. (C.) (pending before the Legislature as this bill) and
20 section 8 of P.L.2008, c.46 (C.52:27D-329.2).

21 For purposes of this section, a municipality may rely upon a
22 determination of the number of children enrolled in schools in the
23 municipality in October of the preceding year that are eligible for
24 free or reduced price meals under the federal School Lunch
25 Program need for a period of up to 10 years.¹
26

27 ¹27. (New section) a. In a municipality that is not a compliant
28 municipality pursuant to section 23 of P.L. , c. (C.) (pending
29 before the Legislature as this bill), or deemed compliant pursuant to
30 section 24 of P.L. , c. (C.) (pending before the Legislature as
31 this bill) or pursuant to section 25 of P.L. , c. (C.) (pending
32 before the Legislature as this bill), a developer requesting a
33 variance or other relief pursuant to subsection d. of section 57 of
34 P.L.1975, c.291 (C.40:55D-70) for a proposed development, in
35 which at least 20 percent of any dwelling units are set aside for
36 housing affordable to low income and moderate income households,
37 shall be required to make only a showing that the variance or other
38 relief can be granted without substantial detriment to the public
39 good. A development proposed pursuant to this subsection shall be
40 deemed to be inherently beneficial.

41 b. The provisions of this section shall only apply to
42 applications under the "Municipal Land Use Law," P.L.1975, c.210
43 (C.40:55D-1 et seq.) concerning lots or parcels within a
44 municipality's developable property.¹
45

46 ¹28. (New section) a. Every municipality of the State, except
47 municipalities described in section 26 of P.L. , c. (C.) (pending

1 before the Legislature as this bill) shall require that no less than 10
2 percent of the residential housing units proposed as part of any new
3 residential development project resulting in 10 or more units be
4 reserved for occupancy as low income or moderate income housing.

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

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

29 (3) The municipality may waive, by resolution or ordinance of
30 the governing body, the requirement of this section that an
31 individual development include a set-aside of qualified units,
32 provided that, at the time the municipality and developer enter into
33 and execute any developer's agreement that proposes 10 or more
34 units, the developer's agreement contains provisions identifying one
35 or more rehabilitation projects that will result in creation of a
36 number of qualified housing units elsewhere in the municipality that
37 is no less than the number that would have been required in the
38 development pursuant to subsection a. of this section.

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

1 d. For any new residential development project resulting in the
2 production of fewer than 10 units, the developer shall pay a
3 residential development fee of one and one-half percent of the
4 equalized assessed value of the project at completion, or a
5 municipality shall require that five percent of residential housing
6 units proposed as part of that project be reserved for occupancy as
7 low-income or moderate- income housing. For the purposes of this
8 reservation, one special needs housing unit shall count as two
9 housing units.

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

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

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

26 h. Half of the units reserved for low-income or moderate-
27 income housing pursuant to this section shall be reserved for low-
28 income housing and half the units shall be reserved for moderate-
29 income housing. If an odd number of affordable units is being
30 constructed, rehabilitated or developed pursuant to this section, the
31 higher number of units may be determined by the municipality.

32 i. A municipality shall not impose any additional financial or
33 other obligation related to affordable housing on a developer that
34 has complied with the provisions of this section.¹

35
36 ¹29. (New section) The Department of Community Affairs,
37 Department of Environmental Protection, and the Department
38 Transportation shall promulgate regulations to provide that a
39 municipality that has filed with the Department of Community
40 Affairs as a compliant municipality, a municipality deemed
41 compliant pursuant to section 24 of P.L. , c. (C.) (pending
42 before the Legislature as this bill) or pursuant to section 25 of
43 P.L. , c. (C.) (pending before the Legislature as this bill), shall
44 receive preference with respect to discretionary grant programs
45 administered by those departments for which municipal
46 governments are eligible, and shall prioritize and expedite
47 applications from developments included in a housing element

1 prepared and filed pursuant to P.L. , c. (C.) (pending before
2 the Legislature as this bill).¹

3
4 ¹30. (New section) a. The department shall design, establish,
5 and maintain a searchable Internet website accessible to the general
6 public for no charge. This website shall contain data and
7 information concerning affordable housing in each municipality of
8 the State. The department may consult with the Division of
9 Information Technology in the Department of the Treasury in order
10 to develop the Internet website.

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

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

17 (2) the number of additional housing units created in the
18 municipality that are qualified very low income, low income or
19 moderate income housing and an itemized listing of these units,
20 whether they are restricted to seniors or people with special needs,
21 and the income levels served;

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

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

29 (5) Housing elements and amendments to municipal housing
30 elements required to be posted pursuant to P.L. , c. (C.)
31 (pending before the Legislature as this bill).

32 c. Each municipality shall annually report the information
33 described in subsection b. of this section to the department. The
34 department shall ensure that the information is available to the
35 public on the website within seven business days of receipt. To
36 facilitate this process, the department may choose to create a system
37 in which municipalities may directly enter this information in the
38 internet website established pursuant to this section.¹

39
40 ¹31. (New section) a. Nothing in P.L. , c. (C.) (pending
41 before the Legislature as this bill) shall require a municipality to
42 raise or expend municipal revenues in order to provide a realistic
43 opportunity for low and moderate income housing.

44 b. Notwithstanding any law or rule to the contrary, a
45 municipality shall not alter the zoning of any development site
46 during the period that the site is subject to a judgment of repose, or
47 was, by court order, mediation settlement, or settlement in

1 exclusionary zoning litigation, designated or reserved for purposes
2 of affordable housing.

3 c. Except as provided in subsection b., for any litigation
4 involving exclusionary zoning instituted prior to the effective date
5 of P.L. , c. (C.) (pending before the Legislature as this bill),
6 jurisdiction may remain with the court, which shall take judicial
7 notice of the statutory intent stated hereunder.

8 d. No exclusionary zoning action naming a municipality as a
9 defendant shall be filed for 365 days following the effective date of
10 this act.¹

11
12 ¹32. Section 34 of P.L.2008, c.46 (C.40:55D-8.3) is amended to
13 read as follows:

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

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

21 "Commissioner" means the Commissioner of Community
22 Affairs.

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

25 "Developer" means the legal or beneficial owner or owners of a
26 lot or of any land proposed to be included in a proposed
27 development, including the holder of an option or contract to
28 purchase, or other person having an enforceable proprietary interest
29 in such land.

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

35 "Mixed use development" means any development which
36 includes both a non-residential development component and a
37 residential development component, and shall include developments
38 for which (1) there is a common developer for both the residential
39 development component and the non-residential development
40 component, provided that for purposes of this definition, multiple
41 persons and entities may be considered a common developer if there
42 is a contractual relationship among them obligating each entity to
43 develop at least a portion of the residential or non-residential
44 development, or both, or otherwise to contribute resources to the
45 development; and (2) the residential and non-residential
46 developments are located on the same lot or adjoining lots,

1 including but not limited to lots separated by a street, a river, or
2 another geographical feature.

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

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

18 "Relating to the provision of housing" shall be liberally
19 construed to include the construction, maintenance, or operation of
20 housing, including but not limited to the provision of services to
21 such housing and the funding of any of the above.

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

27 "Treasurer" means the Treasurer of the State of New Jersey.¹
28 (cf: P.L.2008 c.46, s.34)

29

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

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

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

38 (2) A fee equal to two and one-half percent of the increase in
39 equalized assessed value, of the additions to existing structures to
40 be used for non-residential purposes[.]; provided, that the fee shall
41 be imposed as described in this section and phased in pursuant to
42 section 34 of P.L. , c. (C.) (pending before the Legislature as
43 this bill).

44 b. All non-residential construction of buildings or structures on
45 property used by churches, synagogues, mosques, and other houses
46 of worship, and property used for educational purposes, which is
47 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the

1 imposition of a non-residential development fee pursuant to this
2 section, provided that the property continues to maintain its tax
3 exempt status under that statute for a period of at least three years
4 from the date of issuance of the certificate of occupancy. In
5 addition, the following shall be exempt from the imposition of a
6 non-residential development fee:

7 (1) parking lots and parking structures, regardless of whether the
8 parking lot or parking structure is constructed in conjunction with a
9 non-residential development, such as an office building, or whether
10 the parking lot is developed as an independent non-residential
11 development;

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

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

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

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

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

30 A **[developer of a]** non-residential development exempted from
31 the non-residential development fee pursuant to this section shall be
32 subject to **[it]** the fee at such time the basis for the exemption set
33 forth in this subsection no longer applies, and the owner of the
34 property at that time shall make the payment of the non-residential
35 development fee**[, in that event,]** within three years after that event
36 or after the issuance of the final certificate of occupancy of the non-
37 residential development, whichever is later.

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

46 If a property which was exempted from the collection of a non-
47 residential development fee thereafter ceases to be exempt from

1 property taxation, the owner of the property shall remit the fees
2 required pursuant to this section within 45 days of the termination
3 of the property tax exemption. Unpaid non-residential development
4 fees under these circumstances may be enforceable by the
5 municipality as a lien against the real property of the owner.

6 c. [(1) Unless authorized to pay directly to the municipality in
7 which the non-residential construction is occurring in accordance
8 with paragraph (2) of this subsection, developers shall pay non-
9 residential development fees imposed pursuant to P.L.2008, c.46
10 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with
11 subsection g. of this section in a manner and on such forms as
12 required by the Treasurer, provided that a certified proof concerning
13 the payment shall be furnished by the Treasurer, to the
14 municipality.

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

22 d. The payment of non-residential development fees required
23 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1
24 through C.40:55D-8.7) shall be made prior to the issuance of a
25 certificate of occupancy for such development. A final certificate
26 of occupancy shall not be issued for any non-residential
27 development until such time as the fee imposed pursuant to this
28 section has been paid by the developer. A non-residential developer
29 may deposit with the appropriate entity the development fees as
30 calculated by the municipality under protest, and the local code
31 enforcement official shall thereafter issue the certificate of
32 occupancy provided that the construction is otherwise eligible for a
33 certificate of occupancy.

34 e. The construction official responsible for the issuance of a
35 building permit shall notify the local tax assessor of the issuance of
36 the first building permit for a development which may be subject to
37 a non-residential development fee. Within 90 days of receipt of that
38 notice, the municipal tax assessor, based on the plans filed, shall
39 provide an estimate of the equalized assessed value of the non-
40 residential development. The construction official responsible for
41 the issuance of a final certificate of occupancy shall notify the local
42 assessor of any and all requests for the scheduling of a final
43 inspection on property which may be subject to a non-residential
44 development fee. Within 10 business days of a request for the
45 scheduling of a final inspection, the municipal assessor shall
46 confirm or modify the previously estimated equalized assessed
47 value of the improvements of the non-residential development in

1 accordance with the regulations adopted by the Treasurer pursuant
2 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential
3 development fee pursuant to sections 32 through 38 of P.L.2008,
4 c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the
5 developer of the amount of the non-residential development fee.
6 Should the municipality fail to determine or notify the developer of
7 the amount of the non-residential development fee within 10
8 business days of the request for final inspection, the developer may
9 estimate the amount due and pay that estimated amount consistent
10 with the dispute process set forth in subsection b. of section 37 of
11 P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-
12 residential development fee, provided the developer is in full
13 compliance with all other applicable laws, the municipality shall
14 issue a final certificate of occupancy for the subject property.
15 Failure of the municipality to comply with the timeframes or
16 procedures set forth in this subsection may subject it to penalties to
17 be imposed by the commissioner; any penalties so imposed shall be
18 deposited into the "New Jersey Affordable Housing Trust Fund"
19 established pursuant to section 20 of P.L.1985, c.222 as amended
20 by section 17 of P.L.2008, c.46 (C.52:27D-320).

21 A developer of a mixed use development shall be required to pay
22 the Statewide non-residential development fee relating to the non-
23 residential development component of a mixed use development
24 subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.).
25 Non-residential construction which is connected with the relocation
26 of the facilities of a for-profit hospital shall be subject to the fee
27 authorized to be imposed under this section to the extent of the
28 increase in equalized assessed valuation in accordance with
29 regulations to be promulgated by the Director of the Division of
30 Taxation, Department of the Treasury.

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

42 g. [The Treasurer shall credit to the "Urban Housing Assistance
43 Fund," established pursuant to section 13 of P.L.2008, c.46
44 (C.52:27D-329.7) annually from the receipts of the fees authorized
45 to be imposed pursuant to this section an amount equal to \$20
46 million; all receipts in excess of this amount shall be deposited into
47 the "New Jersey Affordable Housing Trust Fund," established

pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of that fund.】 (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill).

h. The fee imposed pursuant to the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), shall be collected by the municipality in which the non-residential development is located, pursuant to this section. Each amount collected shall be deposited and shall be accounted for separately, by payer and date of deposit. A municipality shall deposit 80 percent of all non-residential development fees collected into a trust fund dedicated to those purposes as set forth in section 34 of P.L. , c. (C.) (pending before the Legislature as this bill). The remaining 20 percent shall be transferred to the State Treasurer for deposit into the "Urban Housing Assistance Fund" pursuant to section 13 of P.L. 2008, c. 46 (C.52:27D-329.7).

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

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

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

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

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

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

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

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

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

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

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

38. a. Except as expressly provided in P.L.2008, c.46 (C.52:27D-329.1 et al.) including subsection b. of this section, any provision of a local ordinance which imposes a fee for the development of affordable housing upon a developer of non-residential property, including any and all development fee ordinances adopted in accordance with any regulations of the **[Council on Affordable Housing]** commissioner, or any provision of an ordinance which imposes an obligation relating to the provision of housing affordable to low and moderate income households, or payment in-lieu of building as a condition of non-residential development, shall be void and of no effect. A provision

1 of an ordinance which imposes a development fee which is not
2 prohibited by any provision of P.L.2008, c.46 (C.52:27D-329.1 et
3 al.) shall not be invalidated by this section.

4 b. No affordable housing obligation shall be imposed concerning
5 a mixed use development that would result in an affordable housing
6 obligation greater than that which would have been imposed if the
7 residential portion of the mixed use development had been
8 developed independently of the non-residential portion of the mixed
9 use development.

10 c. Whenever the developer of a non-residential development
11 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or
12 committed itself to make a financial or other contribution relating to
13 the provision of housing affordable to low and moderate income
14 households, the non-residential development fee authorized
15 pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied
16 through the investment obligations made pursuant to P.L.1977,
17 c.110 (C.5:12-1 et seq.).¹
18 (cf: P.L.2008, c.46, s.38)

19
20 ¹37. Section 8 of P.L.2008, c.46 (C.52:27D-329.2) is amended
21 to read as follows:

22 8. a. **【The council may authorize a municipality that has**
23 **petitioned for substantive certification, or that has been so**
24 **authorized by a court of competent jurisdiction, and which that has**
25 **adopted a municipal development fee】** A municipality may adopt an
26 ordinance to impose and collect 【development】 fees from
27 developers of residential property, in accordance with paragraph (2)
28 of subsection b. of section 28 of P.L. , c. (C.) and rules
29 promulgated by the 【council】 department. Each amount collected
30 shall be deposited and shall be accounted for separately, by payer
31 and date of deposit.

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

1 b. A municipality shall deposit all fees collected, whether or not
2 such collections were derived from fees imposed upon non-
3 residential or residential construction into a trust fund dedicated to
4 those purposes as required under this section, and such additional
5 purposes as may be approved by the **【council】** department. Within
6 one year of the effective date of P.L. , c. (C.) (pending before
7 the Legislature as this bill), any municipality with funds remaining
8 in a municipal development trust fund and collected pursuant to the
9 "Statewide Non-Residential Development Fee Act," P.L.2008, c.46
10 P.L.2008, c.46 prior to the enactment date of P.L. , c. (C.)
11 (pending before the Legislature as this bill) shall develop and
12 submit to the department a spending plan for those funds.

13 c. (1) A municipality may only spend development fees for an
14 activity approved by the **【council】** department to address the
15 municipal **【fair share】** affordable housing obligation.

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

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

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

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

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

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

45 d. The **【council】** department shall establish a time by which all
46 development fees collected within a calendar year shall be

1 expended; provided, however, that all fees shall be committed for
2 expenditure within four years from the date of collection. A
3 municipality that fails to commit to expend the balance required in
4 the development fee trust fund by the time set forth in this section
5 shall be required by the [council] department to transfer the
6 remaining unspent balance at the end of the four-year period to the
7 "New Jersey Affordable Housing Trust Fund," established pursuant
8 to section 20 of P.L.1985, c.222 (C.52:27D-320), as amended by
9 P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in the [housing
10 region of the] transferring municipality for the authorized purposes
11 of that fund.

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

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

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

23
24 ¹38. (New section) It shall be the duty of the Department of
25 Community Affairs to administer the "Fair Housing Act," P.L.1985,
26 c.222 (C.52:27D-301 et al.) and to assist municipalities in
27 implementing the provisions of the act. When appropriate, the
28 Commissioner Pursuant to the "Administrative Procedure Act,"
29 P.L.1968, c.410 (C.52:14B-1 et seq.), the Department of
30 Community Affairs may promulgate any rules and regulations
31 necessary to effectuate the purposes of P.L. , c. (C.) (pending
32 before the Legislature as this bill), including:

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

36 b. Affirmative marketing requirements for affordable units,
37 whether or not developed pursuant to section 28 of P.L. ,
38 c. (C.) (pending before the Legislature as this bill);

39 c. Guidelines concerning the crediting and counting of qualified
40 units;

41 d. Guidelines concerning the application of covenants or other
42 affordability controls for affordable units; and

43 e. Guidelines for zoning to assure the economic viability of a
44 project.¹

45
46 ¹39. (New section) The provisions of P.L. , c. (C.)
47 (pending before the Legislature as this bill) shall be severable, and

1 if any of its provisions shall be held to be unconstitutional, the
 2 decision of the court shall not affect the validity of the remaining
 3 provisions of P.L. , c. (C.) (pending before the Legislature as
 4 this bill).¹

5
 6 ¹40. (New section) Within two years of the effective date of
 7 P.L. , c. (C.) (pending before the Legislature as this bill), the
 8 Department of Community Affairs shall report to the Legislature
 9 assessing and evaluating the progress and results of affordable
 10 housing efforts in New Jersey following the enactment of P.L. , c.
 11 (C.) (pending before the Legislature as this bill). The report shall
 12 be forwarded to the Assembly Housing and Local Government
 13 Committee or its successor.¹

14
 15 ¹41. The following sections are repealed:

16 Section 14 of P.L.2009, c.82 (C.45:22A-46.16);
 17 Section 5 of P.L.1985 c.222 (C.52:27D-304);
 18 Section 5 of P.L.1985 c.222 (C.52:27D-305);
 19 Section 6 of P.L.1985, c.222 (C.52:27D-306);
 20 Section 7 of P.L.1985, c.222 (C.52:27D-307);
 21 Section 6 of P.L.2001, c.435 (C.52:27D-307.6);
 22 Section 8 of P.L.1985, c.222 (C.52:27D-308);
 23 Section 9 of P.L.1985, c.222 (C.52:27D-309);
 24 Section 1 of P.L.1995, c.231 (C.52:27D-310.1);
 25 Section 2 of P.L.1995, c.231 (C.52:27D-310.2);
 26 Section 11 of P.L.1985, c.222 (C.52:27D-311);
 27 Section 40 of P.L.2009, c.90 (C. 52:27D-311.3);
 28 Section 13 of P.L.1985 c.222 (C.52:27D-313);
 29 Section 2 of P.L.1989, c.142 (C.52:27D-313.1);
 30 Section 14 of P.L.1985 c.222 (C.52:27D-314);
 31 Section 15 of P.L.1985 c.222 (C.52:27D-315);
 32 Section 16 of P.L.1985, c.222 (C.52:27D-316);
 33 Section 17 of P.L.1985, c.222 (C.52:27D-317);
 34 Section 18 of P.L.1985, c.222 (C.52:27D-318);
 35 Section 19 of P.L.1985 c.222 (C.52:27D-319);
 36 Section 22 of P.L.1985, c.222 (C.52:27D-322);
 37 Section 28 of P.L.1985, c.222 (C.52:27D-328);
 38 Section 7 of P.L.2008, c.46 (C.52:27D-329.1);
 39 Section 9 of P.L.2008, c.46 (C.52:27D-329.3);
 40 Section 12 of P.L.2008, c.46 (C.52:27D-329.6);
 41 Section 14 of P.L.2008, c.46 (C.52:27D-329.8);
 42 Section 21 of P.L.2008, c.46 (C.52:27D-329.10);
 43 Section 22 of P.L.2008, c.46 (C.52:27D-329.11);
 44 Section 23 of P.L.2008, c.46 (C.52:27D-329.12);
 45 Section 24 of P.L.2008, c.46 (C.52:27D-329.13);
 46 Section 25 of P.L.2008, c.46 (C.52:27D-329.14);
 47 Section 26 of P.L.2008, c.46 (C.52:27D-329.15);

1 Section 27 of P.L.2008, c.46 (C.52:27D-329.16)
2 Section 28 of P.L.2008, c.46 (C.52:27D-329.17)
3 Section 29 of P.L.2008, c.46 (C.52:27D-329.18); and
4 Section 30 of P.L.2008, c.46 (C.52:27D-329.19).¹

5

6 ¹42. This act shall take effect on the first day of the fourth month
7 next following enactment.¹

WITHDRAWN