

[First Reprint]

ASSEMBLY, No. 2950

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED MAY 14, 2012

Sponsored by:

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

Assemblyman ALBERT COUTINHO

District 29 (Essex)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Hunterdon and Mercer)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Co-Sponsored by:

Senators Stack, Singer, Weinberg, Turner, Buono, Greenstein, Ruiz and Gordon

SYNOPSIS

Extends time municipalities have to commit fees and payments-in-lieu of constructing affordable units to six years.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Local Government Committee on June 7, 2012, with amendments.

(Sponsorship Updated As Of: 6/29/2012)

1 AN ACT concerning affordable housing development fees and
2 payments-in-lieu of constructing affordable units and amending
3 P.L.1985, c.222 and P.L.2008, c.46.

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

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

10 4. As used in this act:

11 a. "Council" means the Council on Affordable Housing
12 established **[in this act]** by section 5 of P.L.1985, c.222 (C.52:27D-
13 305) **'[, or its successor]'**¹, which shall have primary jurisdiction
14 for the administration of housing obligations in accordance with
15 sound regional planning considerations in this State.

16 b. "Housing region" means a geographic area of not less than
17 two 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 c. "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% 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 d. "Moderate income housing" means housing affordable
30 according to federal Department of Housing and Urban
31 Development or other recognized standards for home ownership
32 and rental costs and occupied or reserved for occupancy by
33 households with a gross household income equal to more than 50%
34 but less than 80% of the median gross household income for
35 households of the same size within the housing region in which the
36 housing is located.

37 e. "Resolution of participation" means a resolution adopted by a
38 municipality in which the municipality chooses to prepare a fair
39 share plan and housing element in accordance with this act.

40 f. "Inclusionary development" means a residential housing
41 development in which a substantial percentage of the housing units
42 are provided for a reasonable income range of low and moderate
43 income households.

44 g. "Conversion" means the conversion of existing commercial,

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:

¹Assembly AHO committee amendments adopted June 7, 2012.

1 industrial, or residential structures for low and moderate income
2 housing purposes where a substantial percentage of the housing
3 units are provided for a reasonable income range of low and
4 moderate income households.

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

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

11 j. "Prospective need" means a projection of housing needs based
12 on development and growth which is reasonably likely to occur in a
13 region or a municipality, as the case may be, as a result of actual
14 determination of public and private entities. In determining
15 prospective need, consideration shall be given to approvals of
16 development applications, real property transfers and economic
17 projections prepared by the State Planning Commission established
18 by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

19 k. "Disabled person" means a person with a physical disability,
20 infirmity, malformation or disfigurement which is caused by bodily
21 injury, birth defect, aging or illness including epilepsy and other
22 seizure disorders, and which shall include, but not be limited to, any
23 degree of paralysis, amputation, lack of physical coordination,
24 blindness or visual impediment, deafness or hearing impediment,
25 muteness or speech impediment or physical reliance on a service or
26 guide dog, wheelchair, or other remedial appliance or device.

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

33 m. "Very low income housing" means housing affordable
34 according to federal Department of Housing and Urban
35 Development or other recognized standards for home ownership
36 and rental costs and occupied or reserved for occupancy by
37 households with a gross household income equal to 30% or less of
38 the median gross household income for households of the same size
39 within the housing region in which the housing is located.

40 n. "Eligible county" '[shall mean] means' any county that has
41 established or establishes at any time subsequent to the effective
42 date of P.L. , c. (C.) (pending before the Legislature as this
43 bill) a "County Homelessness Trust Fund" pursuant to section 5 of
44 P.L.2009, c.123 (C.52:27D-287e), or that serves as an "urban
45 county" pursuant to section 102(a)(6) of the "Housing and
46 Community Development Act of 1974," Pub.L.93-383 (42 U.S.C.
47 s.5302(a)(6)) for the purposes of undertaking community

1 development and housing assistance activities.

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

3

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

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

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

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

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

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

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

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

1 (b) Affordability assistance to households earning 30 percent or
2 less of median income may include buying down the cost of low
3 income units in a municipal fair share plan to make them affordable
4 to households earning 30 percent or less of median income. The use
5 of development fees in this manner shall not entitle a municipality
6 to bonus credits except as may be provided by the rules of the
7 council.

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

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

16 d. The council shall establish a time by which all development
17 fees collected within a calendar year shall be expended; provided,
18 however, that all fees shall be committed for expenditure within
19 ~~four~~ six years from the date of collection. A municipality that
20 fails to commit to expend the balance required in the development
21 fee trust fund by the time set forth in this section shall be required
22 by the council to transfer the remaining unspent balance at the end
23 of the ~~four-year~~ six-year period to its county government if its
24 county is an eligible county, and otherwise to the "New Jersey
25 Affordable Housing Trust Fund," established pursuant to section 20
26 of P.L.1985, c.222 (C.52:27D-320), as amended by P.L.2008, c.46
27 (C.52:27D-329.1 et al.), to be used in the housing region of the
28 transferring municipality for the authorized purposes of that fund.
29 Any eligible county receiving funds under this ~~section~~
30 subsection ¹ shall deposit all funds collected into a trust fund
31 dedicated to those purposes, and accounted for separately from any
32 other revenue collected by the county, as is required of
33 municipalities under this section, shall adopt written procedures and
34 funding guidelines by which qualified ~~entities, as defined~~
35 pursuant to section 3 of P.L.2003, c.295 (C.2A:42-116),
36 applicants ¹ may apply to use such funds to build, rehabilitate or
37 preserve housing for low and moderate income households, and
38 shall expeditiously distribute those funds to qualified ~~entities~~
39 applicants ¹.

40 e. Notwithstanding any provision of this section, or regulations
41 of the council, a municipality shall not collect a development fee
42 from a developer whenever that developer is providing for the
43 construction of affordable units, either on-site or elsewhere within
44 the municipality.

45 This section shall not apply to the collection of a Statewide
46 development fee imposed upon non-residential development
47 pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1

1 et seq.) by the State Treasurer, when such collection is not
2 authorized to be retained by a municipality.

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

4

5 3. Section 9 of P.L.2008, c.46 (C.52:27D-329.3) is amended to
6 read as follows:

7 9. a. The council may authorize a municipality that has
8 petitioned for substantive certification to impose and collect
9 payments-in-lieu of constructing affordable units on site upon the
10 construction of residential development, which payments may be
11 imposed and collected as provided pursuant to the rules of the
12 council. Payment-in-lieu fees shall be deposited into a trust fund,
13 and accounted for separately from any other fees collected by a
14 municipality. Whenever a payment-in-lieu is charged by a
15 municipality pursuant to this subsection, a development fee
16 authorized pursuant to section 8 of P.L.2008, c.46 (C.52:27D-
17 329.2) shall not be charged in connection with the same
18 development.

19 b. A municipality shall commit to expend collections from
20 payments-in-lieu imposed pursuant to subsection a. of this section
21 within ~~four~~ six years of the date of collection. The council may
22 extend this deadline if the municipality submits sufficient proof of
23 building or other permits, or other efforts concerning land
24 acquisition or project development. The council shall provide such
25 administrative assistance as may be required to aid in the
26 construction of affordable housing units. A municipality that fails
27 to commit to expend the amounts collected pursuant to this section
28 within the timeframes established shall be required to transfer any
29 unexpended revenue collected pursuant to subsection a. of this
30 section to its county government if its county is an eligible county,
31 and otherwise to the "New Jersey Affordable Housing Trust Fund,"
32 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
33 320), to be used within the same housing region for the authorized
34 purposes of that fund, in accordance with regulations promulgated
35 by the council. Any eligible county receiving funds under this
36 '[section] subsection' shall deposit all funds collected into a trust
37 fund dedicated to those purposes, and accounted for separately from
38 any other revenue collected by the county, as is required of
39 municipalities under this section, shall adopt written procedures and
40 funding guidelines by which qualified '[entities, as defined
41 pursuant to section 3 of P.L.2003, c.295 (C.2A:42-116),]
42 applicants' may apply to use such funds to build, rehabilitate or
43 preserve housing for low and moderate income households, and
44 shall expeditiously distribute those funds to qualified '[entities]
45 applicants'.

46 (cf: P.L.2008, c.46, s.9)

- 1 4. This act shall take effect immediately.