

**SENATE, No. 2364**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED APRIL 5, 2018

**Sponsored by:**

**Senator ANTHONY M. BUCCO**  
**District 25 (Morris and Somerset)**  
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**SYNOPSIS**

Prohibits residential development fees on reconstruction after natural disasters.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 10/25/2019)**

1 AN ACT concerning residential development fees on reconstruction  
2 following natural disasters and amending P.L.2008, c.46.

3

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

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

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

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

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

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

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

43 (3) A municipality shall set aside a portion of its development  
44 fee trust fund for the purpose of providing affordability assistance  
45 to low and moderate income households in affordable units

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

**Matter underlined thus is new matter.**

1 included in a municipal fair share plan, in accordance with rules of  
2 the council.

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

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

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

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

22 d. The council shall establish a time by which all development  
23 fees collected within a calendar year shall be expended; provided,  
24 however, that all fees shall be committed for expenditure within  
25 four years from the date of collection. A municipality that fails to  
26 commit to expend the balance required in the development fee trust  
27 fund by the time set forth in this section shall be required by the  
28 council to transfer the remaining unspent balance at the end of the  
29 four-year period to the "New Jersey Affordable Housing Trust  
30 Fund," established pursuant to section 20 of P.L.1985, c.222  
31 (C.52:27D-320), as amended by P.L.2008, c.46 (C.52:27D-329.1 et  
32 al.), to be used in the housing region of the transferring  
33 municipality for the authorized purposes of that fund.

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

39 f. Notwithstanding subsection a. of this section, a development  
40 fee shall not be imposed on a residential property for reconstruction  
41 resulting from a fire, flood, or other natural disaster or force  
42 majeure event unless the reconstruction increases the property's  
43 market value to a level above 200 percent of its pre-disaster market  
44 value. If such reconstruction does increase value to that extent,  
45 then a development fee may be charged only on all value that  
46 exceeds the 200 percent level. This development fee restriction  
47 shall apply even if the reconstruction does not physically resemble  
48 the previous structure.

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

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

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8 2. This act shall take effect immediately.

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#### STATEMENT

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13 This bill prevents municipalities from imposing residential  
14 development fees on homes being reconstructed after natural  
15 disasters or other force majeure events.

16 To avoid a development fee, the reconstruction would not have  
17 to physically resemble the previous structure. Due to changes in  
18 zoning and construction norms, reconstructing a building to match  
19 its predecessor is sometimes impossible. However, if  
20 reconstruction makes the redevelopment so much more substantial  
21 than the previous structure that the property's value increases to a  
22 level beyond 200 percent of its pre-disaster value, then a  
23 municipality may place a development fee on all value added above  
24 the 200 percent level. This bill also does not prohibit municipalities  
25 from placing a development fee on an entire reconstruction project  
26 that increases the number of dwelling units on a property.