

# ASSEMBLY, No. 1872

## STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblywoman HOLLY T. SCHEPISI**

**District 39 (Bergen and Passaic)**

**Co-Sponsored by:**

**Assemblywoman N.Munoz, Assemblymen McGuckin, DiMaio, Clifton, Rooney, Assemblywoman B.DeCroce, Assemblymen Space, Bramnick, Wirths, Thomson, S.Kean and Auth**

**SYNOPSIS**

Establishes additional factors for municipal adjustment used in calculating fair share affordable housing obligations; provides population-based cap for these obligations.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



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1 AN ACT concerning municipal fair share affordable housing  
2 obligations and amending P.L.1985, c.222.

3

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

6

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

9 4. As used in **[this act]** P.L.1985, c.222 (C.52:27D-301 et al.):

10 a. "Council" means the Council on Affordable Housing  
11 established in **[this act]** P.L.1985, c.222 (C.52:27D-301 et al.),  
12 which shall have primary jurisdiction for the administration of  
13 housing obligations in accordance with sound regional planning  
14 considerations in this State, and any successor body, temporary or  
15 otherwise, that obtains such primary jurisdiction.

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  
23 to 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  
38 a municipality in which the municipality chooses to prepare a fair  
39 share plan and housing element in accordance with **[this act]**  
40 P.L.1985, c.222 (C.52:27D-301 et al.).

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

**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.

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- 1 g. "Conversion" means the conversion of existing commercial,  
2 industrial, or residential structures for low and moderate income  
3 housing purposes where a substantial percentage of the housing  
4 units are provided for a reasonable income range of low and  
5 moderate income households.
- 6 h. "Development" means any development for which  
7 permission may be required pursuant to the "Municipal Land Use  
8 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 9 i. "Agency" means the New Jersey Housing and Mortgage  
10 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et  
11 seq.).
- 12 j. "Prospective need" means a projection of housing needs  
13 based on development and growth which is reasonably likely to  
14 occur in a region or a municipality, as the case may be, as a result  
15 of actual determination of public and private entities. In  
16 determining prospective need, consideration shall be given to  
17 approvals of development applications, real property transfers and  
18 economic projections prepared by the State Planning Commission  
19 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-  
20 196 et seq.).
- 21 k. "Disabled person" means a person with a physical disability,  
22 infirmity, malformation or disfigurement which is caused by bodily  
23 injury, birth defect, aging or illness including epilepsy and other  
24 seizure disorders, and which shall include, but not be limited to, any  
25 degree of paralysis, amputation, lack of physical coordination,  
26 blindness or visual impediment, deafness or hearing impediment,  
27 muteness or speech impediment or physical reliance on a service or  
28 guide dog, wheelchair, or other remedial appliance or device.
- 29 l. "Adaptable" means constructed in compliance with the  
30 technical design standards of the barrier free subcode adopted by  
31 the Commissioner of Community Affairs pursuant to the "State  
32 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119  
33 et seq.) and in accordance with the provisions of section 5 of  
34 P.L.2005, c.350 (C.52:27D-123.15).
- 35 m. "Very low income housing" means housing affordable  
36 according to federal Department of Housing and Urban  
37 Development or other recognized standards for home ownership  
38 and rental costs and occupied or reserved for occupancy by  
39 households with a gross household income equal to 30% or less of  
40 the median gross household income for households of the same size  
41 within the housing region in which the housing is located.  
42 (cf: P.L.2008, c.46, s.5)
- 43
- 44 2. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to  
45 read as follows:
- 46 7. It shall be the duty of the council, seven months after the  
47 confirmation of the last member initially appointed to the council,

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1 or January 1, 1986, whichever is earlier, and from time to time  
2 thereafter, to:

- 3 a. Determine housing regions of the State;
- 4 b. Estimate the present and prospective need for low and  
5 moderate income housing at the State and regional levels;
- 6 c. Adopt criteria and guidelines for:
  - 7 (1) Municipal determination of its present and prospective fair  
8 share of the housing need in a given region which shall be  
9 computed for a 10-year period.

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

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

1 (2) Municipal adjustment of the present and prospective fair  
2 share based upon population, available vacant and developable land,  
3 infrastructure considerations **【or】** including, but not limited to,  
4 water supply and sewerage capacities, school class size and school  
5 service considerations, public safety service considerations, public  
6 transportation and traffic considerations, and environmental or  
7 historic preservation factors **【and】** , which adjustments shall be  
8 made whenever:

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

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

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

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

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

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

23 (g) Adequate public facilities and infrastructure capacities,  
24 including, but not limited to, water supply and sewerage capacities,  
25 are not available, or would result in **【costs prohibitive】** significant  
26 costs to the public if provided【.】.

27 (h) Maintaining approximately the same school class sizes  
28 would result in significant costs to the public,

29 (i) Adequate school facilities, resources, and equipment are not  
30 available, or would result in significant costs to the public if  
31 provided,

32 (j) Adequate public safety facilities, resources, and equipment  
33 are not available, or would result in significant costs to the public if  
34 provided,

35 (k) Adequate public transportation facilities, resources, and  
36 equipment are not available, or would result in significant costs to  
37 the public if provided, and

38 (l) Present traffic conditions would be substantially disrupted;

39 (3) (Deleted by amendment, P.L.1993, c.31)**【.】**

40 d. Provide population and household projections for the State  
41 and housing regions; and

42 e. In its discretion, place a limit, based on a percentage of  
43 existing housing stock in a municipality and any other criteria  
44 including employment opportunities which the council deems  
45 appropriate, upon the aggregate number of units which may be  
46 allocated to a municipality as its fair share of the region's present  
47 and prospective need for low and moderate income housing. An

1 allocation of units to a municipality as its fair share shall not exceed  
2 an amount that would result in an increase of the municipal  
3 population by more than five percent in any 10-year period. For the  
4 purposes of this limit, each unit of affordable housing shall be  
5 deemed to be occupied by four residents, except that units of  
6 housing for seniors shall be deemed to be occupied by two  
7 residents. No municipality shall be required to address a fair share  
8 of housing units affordable to households with a gross household  
9 income of less than **【80%】** 80 percent of the median gross  
10 household income beyond the lesser of: (1) the number of units that  
11 represent housing for five percent of a municipality's population; or  
12 (2) 1,000 units within 【ten】 10 years from the grant of substantive  
13 certification, unless it is demonstrated, following objection by an  
14 interested party and an evidentiary hearing, based upon the facts  
15 and circumstances of the affected municipality that it is likely that  
16 the municipality through its zoning powers could create a realistic  
17 opportunity for more than : (1) the number of low and moderate  
18 income units that would represent housing for a five percent  
19 increase of the municipal population; or (2) 1,000 low and moderate  
20 income units in a municipality where 1,000 units would represent  
21 housing for less than five percent of the municipal population,  
22 within that **【ten-year】** 10-year period. For the purposes of this  
23 section, the facts and circumstances which shall determine whether  
24 a municipality's fair share shall exceed 1,000 units, as provided  
25 above, shall be a finding that the municipality has issued more than  
26 5,000 certificates of occupancy for residential units in the **【ten-**  
27 **year】** 10-year period preceding the petition for substantive  
28 certification in connection with which the objection was filed.

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

38 The council, with respect to any municipality seeking substantive  
39 certification, shall require that a minimum percentage of housing  
40 units in any residential development resulting from a zoning change  
41 made to a previously non-residentially-zoned property, where the  
42 change in zoning precedes or follows the application for residential  
43 development by no more than 24 months, be reserved for occupancy  
44 by low or moderate income households, which percentage shall be  
45 determined by the council based on economic feasibility with  
46 consideration for the proposed density of development.

1 In carrying out the above duties, including, but not limited to,  
2 present and prospective need estimations the council shall give  
3 appropriate weight to pertinent research studies, government  
4 reports, decisions of other branches of government, implementation  
5 of the State Development and Redevelopment Plan prepared  
6 pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196  
7 et seq.) and public comment. To assist the council, the State  
8 Planning Commission established under that act shall provide the  
9 council annually with economic growth, development and decline  
10 projections for each housing region for the next ~~ten~~ 10 years.  
11 The council shall develop procedures for periodically adjusting  
12 regional need based upon the low and moderate income housing  
13 that is provided in the region through any federal, State, municipal  
14 or private housing program.

15 No housing unit subject to the provisions of section 5 of  
16 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the  
17 barrier free subcode adopted by the Commissioner of Community  
18 Affairs pursuant to the "State Uniform Construction Code Act,"  
19 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for  
20 inclusion in the municipal fair share plan certified by the council  
21 unless the unit complies with the requirements set forth thereunder.  
22 (cf: P.L.2008, c.46, s.6)

23

24 3. This act shall take effect immediately.

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#### STATEMENT

28

29 This bill would establish additional specific factors to be used in  
30 calculating the municipal adjustment for a municipality's fair share  
31 affordable housing obligation. The bill also caps the number of  
32 units a municipality may have allocated as its affordable housing  
33 obligation with regard to the size of the municipal population.

34 The additional factors to be used in calculating the municipal  
35 adjustment are as follows:

- 36 (a) population of the municipality;
- 37 (b) water supply and sewerage capacity in the municipality;
- 38 (c) school class sizes and school services in the municipality;
- 39 (d) public safety services in the municipality; and
- 40 (e) public transportation and traffic in the municipality.

41 The bill requires a municipal adjustment if maintaining  
42 approximately the same school class sizes would be a significant  
43 cost or if adequate school, public safety, and public transportation  
44 resources are not available or would be a significant cost to provide.  
45 A municipal adjustment would also have to be made if present  
46 traffic conditions would be substantially disrupted.

47 The additional municipal adjustment factors required by the bill  
48 would require a more holistic examination of the actual state of

1 affairs in a municipality, as well as of the potential impacts of  
2 additional development, in calculating its fair share affordable  
3 housing obligation. This will help ensure that reasonable numbers  
4 are arrived at that will not be disruptive to the quality of life and  
5 provision of local government services in a municipality.

6 The bill's population cap would protect those municipalities that  
7 may face dramatic municipal population increases if mandated to  
8 add a large amount of additional affordable housing. Current law  
9 provides that no municipality shall be required to address a fair  
10 share of affordable housing units beyond 1,000 low and moderate  
11 income units within 10 years from the grant of substantive  
12 certification; except that a municipality may be allocated more than  
13 1,000 units, if based upon an evidentiary hearing, it is found likely  
14 that the municipality through its zoning powers could create a  
15 realistic opportunity for more than 1,000 low and moderate income  
16 units within that 10-year period. In order to prevent the disparate  
17 impact such a potentially large affordable housing mandate can  
18 create for municipalities with small populations, this bill provides  
19 that an allocation of units to a municipality as its fair share shall not  
20 exceed an amount that would result in an increase of the municipal  
21 population by more than five percent.