

SENATE, No. 1761

STATE OF NEW JERSEY

INTRODUCED DECEMBER 19, 1996

By Senators SCHLUTER, PALAIA, Connors, Bennett,  
Kyrillos, McNamara and Casey

1 AN ACT concerning the provision of affordable housing in the State,  
2 supplementing and amending P.L.1985, c.222 (52:27D-301 et al),  
3 and supplementing P.L.1990, c.61 (C.54:4-8.57 et seq.) and chapter  
4 2 of Title 40A of the New Jersey Statutes.

5

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

8

9 1. (New section) Sections 1 through 11 of P.L. , c. (pending  
10 before the Legislature as this bill) shall be known and may be cited as  
11 the "Fair Housing Act II."

12

13 2. (New section) The Legislature finds and declares:

14 a. It is both appropriate and timely for the Legislature to review,  
15 more than a decade following the enactment of the "Fair Housing  
16 Act," P.L.1985, c.222 (C.52:27D-301 et al.), the impact of that law  
17 upon land development in the State and its success in meeting the  
18 goals enumerated by the New Jersey Supreme Court in the Mount  
19 Laurel cases.

20 b. Pursuant to regulations promulgated by the Council on  
21 Affordable Housing, regional housing need has been allocated to rural  
22 areas, inducing growth in rural municipalities, in conflict with the  
23 State Development and Redevelopment Plan. As a result, rural  
24 communities no longer have the necessary control over land use  
25 policies and development patterns to enable them to maintain open  
26 space and to preserve farmland and environmentally sensitive areas.

27 c. Municipalities often have unique needs, such as providing  
28 adequate housing for a large senior citizen population, preserving open  
29 space, or providing for infrastructure needs in a rapidly developing  
30 area, which shape both the determination of a realistic fair share  
31 housing goal and the ability to meet that fair share goal. Therefore, it  
32 is appropriate that the Legislature direct a new process for determining  
33 municipal fair share in accordance with municipal needs and abilities

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

**Matter underlined thus is new matter.**

1 and in concert with other Statewide policy goals.

2 d. There is a need, therefore, to revise current law to provide a  
3 coordinated approach based on sound land use planning to promote  
4 the protection of farmland and environmentally sensitive areas, to  
5 encourage development in accordance with the State Development and  
6 Redevelopment Plan, to allow municipalities to meet their unique  
7 housing needs and to provide realistic affordable housing opportunities  
8 for all citizens of the State.

9

10 3. (New section) a. Any municipality, including a municipality  
11 which has not submitted a housing element and fair share plan for  
12 substantive certification by the council prior to the effective date of  
13 P.L. , c. (C. ) (pending before the Legislature as this bill), may  
14 submit an affordable housing plan to the council in accordance with  
15 the provisions and purposes of P.L. , c. (C. )(pending before  
16 the Legislature as this bill).

17 (1) In the case of a municipality which has submitted a housing  
18 element or fair share plan applicable during the period set forth in  
19 section 4 of P.L. , c. (C. )(pending before the Legislature as this  
20 bill), this affordable housing plan may include a modification of the  
21 municipality's determination of its present and prospective fair share  
22 of housing need, a description of any specific planning goals of the  
23 municipality, such as land preservation or development or satisfying  
24 the housing needs of a specific segment of the population within the  
25 region such as senior citizens, and shall describe the methods  
26 anticipated to be employed by the municipality in reaching these goals.

27 (2) In the case of a municipality which has not submitted a housing  
28 element or fair share plan applicable during the period set forth in  
29 section 4 of P.L. , c. (C. )(pending before the Legislature as this  
30 bill), this affordable housing plan may include a determination of the  
31 municipality's present and prospective fair share of housing need, a  
32 description of any specific planning goals of the municipality, such as  
33 land preservation or development or satisfying the housing needs of a  
34 specific segment of the population within the region such as senior  
35 citizens, and shall describe the methods anticipated to be employed by  
36 the municipality in reaching these goals. Submission of an affordable  
37 housing plan pursuant to this paragraph shall be accompanied by a  
38 duly adopted resolution of participation, which shall serve to notify  
39 the council of the municipality's intent to submit its fair share housing  
40 plan to the council pursuant to section 9 of P.L.1985, c.222  
41 (C.52:27D-309).

42 The methods employed by the municipality in reaching its affordable  
43 housing goals may include inclusionary zoning the provision of,  
44 accessory apartments, units in community residences for the  
45 developmentally disabled, housing rehabilitation, regional contribution  
46 agreements, buying down or writing down proposals, or any other

1 methods which shall be approved by the council pursuant to P.L. ,  
2 c. (C. )(pending before the Legislature as this bill). Plans shall be  
3 accompanied by documentation of any official action taken by the  
4 municipality, and any correspondence from those local or State  
5 agencies which may have been consulted. Municipalities may submit  
6 their plans in conjunction with other municipalities which have  
7 common or complimentary goals.

8 b. Any affordable housing plan submitted to the council pursuant  
9 to subsection a. of this section shall be reviewed by the council within  
10 90 days of its submission. The council may request more detailed  
11 information regarding a plan submitted, and shall meet with members  
12 of the municipal governing body or the planning board, as appropriate,  
13 to discuss and negotiate the details of the plan. Within 270 days of the  
14 submission of the plan, the council shall adjust the fair share housing  
15 obligation of the municipality determined by the council pursuant to  
16 regulation in accordance with the negotiated plan, if the council  
17 determines that the plan will provide a reasonable opportunity for  
18 affordable housing goals to be met in accordance with the purposes of  
19 P.L. , c. (C. ) (pending before the Legislature as this bill). Any  
20 adjustment made by the council in the fair share housing obligation of  
21 any municipality pursuant to this section shall not be reallocated to any  
22 other municipality in the region or in the State.

23 (1) The council may request a municipality seeking to preserve  
24 land to submit detailed plans regarding any proposed purchase of  
25 agricultural or environmentally sensitive lands, development rights, or  
26 any proposed transfer of development rights, including a map of  
27 properties for which purchase or development rights are sought or will  
28 be sought during the current housing cycle.

29 (2) The council may request a municipality seeking to encourage  
30 growth and development to submit detailed plans setting forth the  
31 proposed land uses, anticipated extent and intensity of development  
32 and redevelopment including the construction or rehabilitation of  
33 housing, commercial or industrial development or redevelopment and  
34 the infrastructure necessary to support that development, including but  
35 not limited to, wastewater treatment facilities, roads, schools, and  
36 transportation facilities.

37 c. In order to maintain approval of its housing element and fair  
38 share plan for any housing cycle which commences after the effective  
39 date of P.L. , c. (C. )(now pending before the Legislature as this  
40 bill), a municipality shall submit a new affordable housing plan in  
41 accordance with P.L. , c. (C. )(now pending before the  
42 Legislature as this bill).

43  
44 4. (New section) Notwithstanding any provisions of P.L.1985,  
45 c.222 (C.52:27D-301 et al.) or rule or regulation adopted pursuant  
46 thereto to the contrary, any estimate of present and prospective need

1 for low and moderate income housing which is applicable on the  
2 effective date of this act shall cover the period commencing in 1997  
3 and expiring on December 31, 2001. Thereafter, each estimate of  
4 present and prospective need for the purposes of the "Fair Housing  
5 Act," P.L.1985, c.222 (C.52:270-301 et al.) shall cover a period of  
6 10 years.

7

8 5. (New section) Notwithstanding any law to the contrary, a  
9 municipality shall not be eligible for any State discretionary grants or  
10 funds unless it has submitted an affordable housing plan in accordance  
11 with the provisions of P.L. , c. (C. )(pending before the  
12 Legislature as this bill). These funds shall include, but not be limited  
13 to, transportation funds, historic preservation funds, Green Acres open  
14 space funds, wastewater treatment trust funds, and farmland  
15 preservation funds.

16

17 6. (New section) A municipality may propose to meet a portion of  
18 its fair share housing obligation through writing down or buying down  
19 the cost of previously owned market rate units and offering those units  
20 in sound condition at affordable prices to low and moderate income  
21 households, in accordance with regulations promulgated by the  
22 council.

23

24 7. (New section) a. A municipality may authorize, by ordinance,  
25 a homestead property tax rebate pursuant to the "Homestead Property  
26 Tax Rebate Act of 1990," P.L.1990, c.61 (C.54:4-8.57 et seq.), or  
27 this section, for low-income senior citizens or disabled residents who  
28 are eligible for deductions pursuant to P.L.1963, c.172 (C.54:4-8.40).  
29 Any property tax rebate so authorized shall be in addition to any  
30 rebate for which such a resident may otherwise be eligible under  
31 P.L.1990, c.61 (C.54:4-8.57 et seq.), and shall be authorized only if  
32 the dwelling house which is subject to the property tax rebate is  
33 included in the municipality's fair share housing plan and is recognized  
34 by the council as fulfilling a portion of the municipality's fair share  
35 housing obligation in accordance with regulations promulgated by the  
36 council.

37 b. Notwithstanding the provisions of section 6 of P.L.1990, c.61  
38 (C.54:4-8.62), applicants for a property tax rebate pursuant to this  
39 section shall apply to the municipality, and shall meet all requirements,  
40 including eligibility, as shall be established by the council. The rebate  
41 shall be allowed in accordance with those regulations.

42

43 8. (New section) A municipality may propose to meet a portion of  
44 its fair share housing obligation through the offering of a homestead  
45 property tax rebate pursuant to section 7 of P.L. , c. (C. )(now  
46 pending before the Legislature as this bill) in accordance with

1 regulations which shall be promulgated by the Council on Affordable  
2 Housing pursuant to the "Administrative Procedure Act," P.L.1968,  
3 c.410 (C.52:14B-1 et seq.).

4  
5 9. (New section) Notwithstanding any law or regulation to the  
6 contrary, a municipality may set aside a limited portion of housing  
7 units to fulfill its fair share housing obligation for occupancy by  
8 persons who work in the municipality; provided, however, that this set  
9 aside may not exceed 25 percent of the municipality's total obligation.

10  
11 10. (New section) Notwithstanding the provisions of N.J.S.40A:2-  
12 22, or any other law to the contrary, a municipality shall determine the  
13 period of usefulness of any project or undertaking involving the  
14 construction of low and moderate income housing in order to fulfill a  
15 fair share housing obligation pursuant to P.L.1985, c.222 (C.52:27D-  
16 301 et al.) or the "Fair Housing Act II," P.L. , c. (C. ) (now  
17 pending before the Legislature as this bill) computed from the date of  
18 any bonds issued to fund the construction thereof, which period shall  
19 be no greater than 20 years. This period of usefulness shall apply  
20 regardless of whether the housing is constructed by a municipality or  
21 provided as part of a regional contribution agreement pursuant to  
22 P.L.1985, c.222 (C.52:27D-301 et al.).

23  
24 11. (New section) Any limitation by the council on the number of  
25 affordable housing units which may be restricted to occupancy by  
26 senior citizens shall be waived upon documentation by a municipality  
27 that the need for housing in the municipality for low and moderate  
28 income households comprised of senior citizens exceeds the limitation  
29 set by the council.

30  
31 12. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to  
32 read as follows:

33 4. As used in this act:

34 a. "Council" means the Council on Affordable Housing established  
35 in this act, which shall have primary jurisdiction for the administration  
36 of housing obligations in accordance with sound regional planning  
37 considerations in this State.

38 b. "Housing region" means a geographic area of not less than two  
39 nor more than four contiguous, whole counties which exhibit  
40 significant social, economic and income similarities, and which  
41 constitute to the greatest extent practicable the primary metropolitan  
42 statistical areas as last defined by the United States Census Bureau  
43 prior to the effective date of this act.

44 c. "Low income housing" means housing affordable according to  
45 federal Department of Housing and Urban Development or other  
46 recognized standards for home ownership and rental costs and

1 occupied or reserved for occupancy by households with a gross  
2 household income equal to 50% or less of the median gross household  
3 income for households of the same size within the [housing region]  
4 county in which the housing is located.

5 d. "Moderate income housing" means housing affordable according  
6 to federal Department of Housing and Urban Development or other  
7 recognized standards for home ownership and rental costs and  
8 occupied or reserved for occupancy by households with a gross  
9 household income equal to more than 50% but less than 80% of the  
10 median gross household income for households of the same size within  
11 the [housing region] county in which the housing is located.

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

15 f. "Inclusionary development" means a residential housing  
16 development in which a substantial percentage of the housing units are  
17 provided for a reasonable income range of low and moderate income  
18 households.

19 g. "Conversion" means the conversion of existing commercial,  
20 industrial, or residential structures for low and moderate income  
21 housing purposes where a substantial percentage of the housing units  
22 are provided for a reasonable income range of low and moderate  
23 income households.

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

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

29 j. "Prospective need" means a projection of housing needs based on  
30 development and growth which [is reasonably likely to occur] has  
31 recently occurred in a region or a municipality, as the case may be, as  
32 a result of actual determination of public and private entities. In  
33 determining prospective need, consideration shall be given to historic  
34 population data and indices of growth pursuant to regulations  
35 promulgated by the council, including, but not limited to, housing  
36 stock, the availability of jobs, the existence of infrastructure, approvals  
37 of development applications, real property transfers and economic  
38 projections prepared by the State Planning Commission established by  
39 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).  
40 Regional or municipal per capita or median income shall not be a  
41 factor in determining prospective need.

42 k. "Affordable housing plan" shall mean a plan submitted to the  
43 council in accordance with the provisions of P.L. , c. (C. )  
44 (pending before the Legislature as this bill).

45 (cf: P.L.1985, c.222, s.4)

1       13. Section 5 of P.L.1985, c.222 (C.52:27D-305) is amended to  
2 read as follows:

3       5. a. There is established in, but not of, the Department of  
4 Community Affairs a Council on Affordable Housing to consist of [11]  
5 13 members appointed by the Governor with the advice and consent  
6 of the Senate, of whom [four]five shall be elected officials  
7 representing the interests of local government, at least one of whom  
8 shall be representative of an urban municipality having a population in  
9 excess of 40,000 persons and a population density in excess of 3,000  
10 persons per square mile, at least one of whom shall be representative  
11 of a municipality having a population of 40,000 persons or less and a  
12 population density of 3,000 persons per square mile or less, at least  
13 one of whom shall be representative of a rural municipality, and no  
14 more than one of whom may be a representative of the interests of  
15 county government; three shall represent the interests of households  
16 in need of low and moderate housing, one of whom shall represent the  
17 interests of the nonprofit builders of low and moderate income  
18 housing, and shall have an expertise in land use practices and housing  
19 issues, one of whom shall be the Commissioner of Community Affairs,  
20 ex officio, or his or her designee, who shall serve as chairperson and  
21 one of whom shall be the executive director of the agency, serving ex  
22 officio; one shall represent the interests of the for-profit builders of  
23 market rate homes, and shall have an expertise in land use practices  
24 and housing issues; and [three]four shall represent the public interest.  
25 Not more than [six]seven of the [11] 13 shall be members of the same  
26 political party. The membership shall be balanced to the greatest extent  
27 practicable among the various [housing regions] counties of the State.

28       b. The members shall serve for terms of [six]10 years, except that  
29 of the members first appointed, two shall serve for terms of four years,  
30 three for terms of five years, and three for terms of six years. Both  
31 members appointed pursuant to subsection a. of this section, as  
32 amended by P.L. c. (C. ) (now pending before the Legislature as  
33 this bill) shall be appointed for a term of 10 years. All members shall  
34 serve until their respective successors are appointed and shall have  
35 qualified. Notwithstanding the above, a member appointed to  
36 represent the interests of local government shall serve only such length  
37 of the term for which appointed as the member continues to hold  
38 elected local office, except that the term of a member so appointed  
39 shall not become vacant until 60 days after the member ceases to hold  
40 that elected office. Vacancies shall be filled in the same manner as the  
41 original appointments, but for the remainders of the unexpired terms  
42 only.

43       c. The members, excluding the executive director of the agency and  
44 the Commissioner of Community Affairs, shall be compensated at the  
45 rate of \$150.00 for each six-hour day, or prorated portion thereof for  
46 more or less than six hours, spent in attendance at meetings and

1 consultations and all members shall be eligible for reimbursement for  
2 necessary expenses incurred in connection with the discharge of their  
3 duties.

4 d. The Governor shall nominate the members within 30 days of the  
5 effective date of this act and shall designate a member to serve as  
6 chairman throughout the member's term of office and until his  
7 successor shall have been appointed and qualified.

8 e. Any member may be removed from office for misconduct in  
9 office, willful neglect of duty, or other conduct evidencing unfitness  
10 for the office, or for incompetence. A proceeding for removal may be  
11 instituted by the Attorney General in the Superior Court. A member  
12 or employee of the council shall automatically forfeit his office or  
13 employment upon conviction of any crime. Any member or employee  
14 of the council shall be subject to the duty to appear and testify and to  
15 removal from his office or employment in accordance with the  
16 provisions of P.L.1970, c.72 (C.2A:81-17.2a et seq.).

17 (cf: P.L.1995, c.83, s.1)

18

19 14. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to  
20 read as follows:

21 7. It shall be the duty of the council, seven months after the  
22 confirmation of the last member initially appointed to the council, or  
23 January 1, 1986, whichever is earlier, and from time to time thereafter,  
24 to:

25 a. Determine housing regions of the State;

26 b. Estimate the present and prospective need for low and moderate  
27 income housing at the State and regional levels;

28 c. Adopt criteria and guidelines for:

29 (1) Municipal determination of its present and prospective fair  
30 share of the housing need in a given region. Municipal fair share shall  
31 be determined after crediting on a one-to-one basis each current unit  
32 of low and moderate income housing of adequate standard, including  
33 any such housing constructed or acquired as part of a housing program  
34 specifically intended to provide housing for low and moderate income  
35 households. Notwithstanding any other law to the contrary, a  
36 municipality shall be entitled to a credit for a unit if it demonstrates  
37 that (a) the municipality issued a certificate of occupancy for the unit,  
38 which was either newly constructed or rehabilitated between April 1,  
39 1980 and December 15, 1986; (b) a construction code official certifies,  
40 based upon a visual exterior survey, that the unit is in compliance with  
41 pertinent construction code standards with respect to structural  
42 elements, roofing, siding, doors and windows; (c) the household  
43 occupying the unit certifies in writing, under penalty of perjury, that  
44 it receives no greater income than that established pursuant to section  
45 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for moderate income  
46 housing; and (d) the unit for which credit is sought is affordable to low

1 and moderate income households under the standards established by  
2 the council at the time of filing of the petition for substantive  
3 certification. It shall be sufficient if the certification required in  
4 subparagraph (c) is signed by one member of the household. A  
5 certification submitted pursuant to this paragraph shall be reviewable  
6 only by the council or its staff and shall not be a public record;

7 Nothing in P.L.1995, c.81 shall affect the validity of substantive  
8 certification granted by the council prior to November 21, 1994, or to  
9 a judgment of compliance entered by any court of competent  
10 jurisdiction prior to that date. Additionally, any municipality that  
11 received substantive certification or a judgment of compliance prior to  
12 November 21, 1994 and filed a motion prior to November 21, 1994 to  
13 amend substantive certification or a judgment of compliance for the  
14 purpose of obtaining credits, shall be entitled to a determination of its  
15 right to credits pursuant to the standards established by the Legislature  
16 prior to P.L.1995, c.81. Any municipality that filed a motion prior to  
17 November 21, 1994 for the purpose of obtaining credits, which motion  
18 was supported by the results of a completed survey performed  
19 pursuant to council rules, shall be entitled to a determination of its  
20 right to credits pursuant to the standards established by the Legislature  
21 prior to P.L.1995, c.81;

22 (2) Municipal adjustment of the present and prospective fair share  
23 based upon available vacant and developable land, infrastructure  
24 considerations or environmental or historic preservation factors and  
25 [adjustments] decreases in the fair share shall be made whenever:

26 (a) The preservation of historically or important architecture and  
27 sites and their environs or environmentally sensitive lands may be  
28 jeopardized,

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

31 (c) Adequate land for recreational, conservation or agricultural and  
32 farmland preservation purposes would not be provided in accordance  
33 with the plan filed pursuant to P.L. , c (C. )(now pending before  
34 the Legislature as this bill),

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

36 (e) The area considered by the council to be developable, if  
37 developed, would result in a pattern of development [is]contrary to  
38 the planning designations in the State Development and  
39 Redevelopment Plan prepared pursuant to sections 1 through 12 of  
40 P.L.1985, c.398 (C.52:18A-196 et seq.),

41 (f) Vacant and developable land is not available in the municipality,  
42 or the data relied upon by the council in determining available vacant  
43 land is demonstrated by the municipality not to be reliable. [and]

44 (g) Adequate public facilities and infrastructure capacities are not  
45 available, or would result in costs prohibitive to the public if provided;  
46 [and]or

1 (3) (Deleted by amendment, P.L.1993, c.31);

2 d. Provide population and household projections for the State and  
3 housing regions;

4 e. In its discretion, place a limit, based on a percentage of existing  
5 housing stock in a municipality and any other criteria including  
6 employment opportunities which the council deems appropriate, upon  
7 the aggregate number of units which may be allocated to a  
8 municipality as its fair share of the region's present and prospective  
9 need for low and moderate income housing. No municipality shall be  
10 required to address a fair share beyond 1,000 units within [~~six~~] 10  
11 years from the grant of substantive certification, unless it is  
12 demonstrated, following objection by an interested party and an  
13 evidentiary hearing, based upon the facts and circumstances of the  
14 affected municipality that it is likely that the municipality through its  
15 zoning powers could create a realistic opportunity for more than 1,000  
16 low and moderate income units within that [~~six-year~~] 10-year period.  
17 For the purposes of this section, the facts and circumstances which  
18 shall determine whether a municipality's fair share shall exceed 1,000  
19 units, as provided above, shall be a finding that the municipality has  
20 issued more than 5,000 certificates of occupancy for residential units  
21 in the [~~six-year~~] 10-year period preceding the petition for substantive  
22 certification in connection with which the objection was filed.

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

32 In carrying out the above duties, including, but not limited to,  
33 present and prospective need estimations the council shall give  
34 appropriate weight to pertinent research studies, government reports,  
35 decisions of other branches of government, implementation of the  
36 State Development and Redevelopment Plan prepared pursuant to  
37 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and  
38 public comment. To assist the council, the State Planning Commission  
39 established under that act shall provide the council annually with  
40 economic growth, development and decline projections for each  
41 housing region for the next [~~six~~] 10 years. The council shall develop  
42 procedures for periodically adjusting regional need based upon the low  
43 and moderate income housing that is provided in the region through  
44 any federal, State, municipal or private housing program.

45 (cf: P.L.1995, c.344, s.1)

46

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

3       10. A municipality's housing element shall be designed to achieve  
4 the goal of access to affordable housing to meet present and  
5 prospective housing needs, with particular attention to low and  
6 moderate income housing, and shall contain at least:

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

16       b. A projection of the municipality's housing stock, including the  
17 probable future construction of low and moderate income housing, for  
18 the next ~~[six]~~10 years, taking into account, but not necessarily limited  
19 to, construction permits issued, approvals of applications for  
20 development and probable residential development of lands;

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

24       d. An analysis of the existing and probable future employment  
25 characteristics of the municipality;

26       e. A determination of the municipality's present and prospective  
27 fair share for low and moderate income housing and its capacity to  
28 accommodate its present and prospective housing needs, including its  
29 fair share for low and moderate income housing; and

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

36 (cf: P.L.1985, c.222, s.10)

37

38       16. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to  
39 read as follows:

40       11. a. In adopting its housing element, the municipality may  
41 provide for its fair share of low and moderate income housing by  
42 means of any technique or combination of techniques which provide  
43 a realistic opportunity for the provision of the fair share. The housing  
44 element shall contain an analysis demonstrating that it will provide  
45 such a realistic opportunity, and the municipality shall establish that its  
46 land use and other relevant ordinances have been revised to

1 incorporate the provisions for low and moderate income housing. In  
2 preparing the housing element, the municipality shall consider the  
3 following techniques for providing low and moderate income housing  
4 within the municipality, as well as such other techniques as may be  
5 published by the council or proposed by the municipality:

6 (1) Rezoning for densities necessary to assure the economic  
7 viability of any inclusionary developments, either through mandatory  
8 set-asides or density bonuses, as may be necessary to meet all or part  
9 of the municipality's fair share;

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

12 (3) Determination of measures that the municipality will take to  
13 assure that low and moderate income units remain affordable to low  
14 and moderate income households for an appropriate period of not less  
15 than [six]10 years;

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

19 (5) Donation or use of municipally owned land or land condemned  
20 by the municipality for purposes of providing low and moderate  
21 income housing;

22 (6) Tax abatements for purposes of providing low and moderate  
23 income housing;

24 (7) Utilization of funds obtained from any State or federal subsidy  
25 toward the construction of low and moderate income housing; and

26 (8) Utilization of municipally generated funds toward the  
27 construction of low and moderate income housing.

28 b. The municipality may provide for a phasing schedule for the  
29 achievement of its fair share of low and moderate income housing  
30 which is not inconsistent with section 23 of this act.

31 c. The municipality may propose that a portion of its fair share be  
32 met through a regional contribution agreement. The housing element  
33 shall demonstrate, however, the manner in which that portion will be  
34 provided within the municipality if the regional contribution agreement  
35 is not entered into. The municipality shall provide a statement of its  
36 reasons for the proposal.

37 d. Nothing in this act shall require a municipality to raise or expend  
38 municipal revenues in order to provide low and moderate income  
39 housing.

40 e. When a municipality's housing element includes the provision of  
41 rental housing units in a community residence for the developmentally  
42 disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2),  
43 which will be affordable to persons of low and moderate income, and  
44 for which adequate measures to retain such affordability pursuant to  
45 paragraph (3) of subsection a. of this section are included in the  
46 housing element, those housing units shall be fully credited as

1 permitted under the rules of the council towards the fulfillment of the  
2 municipality's fair share of low and moderate income housing.  
3 (cf: P.L.1995, c.344, s.2)

4

5 17. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to  
6 read as follows:

7 12. a. A municipality may propose the transfer of up to 50% of its  
8 fair share to another municipality within its housing region , or within  
9 an adjacent region, by means of a contractual agreement into which  
10 two municipalities voluntarily enter. A municipality may also propose  
11 a transfer by contracting with the agency or another governmental  
12 entity designated by the council if the council determines that the  
13 municipality has exhausted all possibilities within its housing region or  
14 adjacent regions. A municipality proposing to transfer to another  
15 municipality, whether directly or by means of a contract with the  
16 agency or another governmental entity designated by the council, shall  
17 provide the council with the housing element and statement required  
18 under subsection c. of section 11 of P.L.1985, c.222 (C.52:27D-311),  
19 and shall request the council to determine a match with a municipality  
20 filing a statement of intent pursuant to subsection e. of this section.  
21 Except as provided in subsection b. of this section, the agreement may  
22 be entered into upon obtaining substantive certification under section  
23 14 of P.L.1985, c.222 (C.52:27D-314), or anytime thereafter. The  
24 regional contribution agreement entered into shall specify how the  
25 housing shall be provided by the second municipality, hereinafter the  
26 receiving municipality, and the amount of contributions to be made by  
27 the first municipality, hereinafter the sending municipality.

28 b. A municipality which is a defendant in an exclusionary zoning  
29 suit and which has not obtained substantive certification pursuant to  
30 this act may request the court to be permitted to fulfill a portion of its  
31 fair share by entering into a regional contribution agreement. If the  
32 court believes the request to be reasonable, the court shall request the  
33 council to review the proposed agreement and to determine a match  
34 with a receiving municipality or municipalities pursuant to this section.  
35 The court may establish time limitations for the council's review, and  
36 shall retain jurisdiction over the matter during the period of council  
37 review. If the court determines that the agreement provides a realistic  
38 opportunity for the provision of low and moderate income housing  
39 within the housing region, it shall provide the sending municipality a  
40 credit against its fair share for housing to be provided through the  
41 agreement in the manner provided in this section.

42 The agreement shall be entered into prior to the entry of a final  
43 judgment in the litigation. In cases in which a final judgment was  
44 entered prior to the date this act takes effect and in which an appeal is  
45 pending, a municipality may request consideration of a regional

1 contribution agreement; provided that it is entered into within  
2 120 days after this act takes effect. In a case in which a final judgment  
3 has been entered, the court shall consider whether or not the  
4 agreement constitutes an expeditious means of providing part of the  
5 fair share.

6 c. Regional contribution agreements shall be approved by the  
7 council, after review by the county planning board or agency of the  
8 county in which the receiving municipality is located. The council  
9 shall determine whether or not the agreement provides a realistic  
10 opportunity for the provision of low and moderate income housing  
11 within convenient access to employment opportunities. The council  
12 shall refer the agreement to the county planning board or agency which  
13 shall review whether or not the transfer agreement is in accordance  
14 with sound, comprehensive regional planning. In its review, the  
15 county planning board or agency shall consider the master plan and  
16 zoning ordinance of the sending and receiving municipalities, its own  
17 county master plan, and the State development and redevelopment  
18 plan. In the event that there is no county planning board or agency in  
19 the county in which the receiving municipality is located, the council  
20 shall also determine whether or not the agreement is in accordance  
21 with sound, comprehensive regional planning. After it has been  
22 determined that the agreement provides a realistic opportunity for low  
23 and moderate income housing within convenient access to employment  
24 opportunities, and that the agreement is consistent with sound,  
25 comprehensive regional planning, the council shall approve the  
26 regional contribution agreement by resolution. All determinations of  
27 a county planning board or agency shall be in writing and shall be  
28 made within such time limits as the council may prescribe, beyond  
29 which the council shall make those determinations and no fee shall be  
30 paid to the county planning board or agency pursuant to this  
31 subsection.

32 d. In approving a regional contribution agreement, the council shall  
33 set forth in its resolution a schedule of the contributions to be  
34 appropriated annually by the sending municipality. A copy of the  
35 adopted resolution shall be filed promptly with the Director of the  
36 Division of Local Government Services in the Department of  
37 Community Affairs, and the director shall thereafter not approve an  
38 annual budget of a sending municipality if it does not include  
39 appropriations necessary to meet the terms of the resolution. Amounts  
40 appropriated by a sending municipality for a regional contribution  
41 agreement pursuant to this section are exempt from the limitations or  
42 increases in final appropriations imposed under P.L.1976, c.68  
43 (C.40A:4-45.1 et seq.).

44 e. The council shall maintain current lists of municipalities which  
45 have stated an intent to enter into regional contribution agreements as  
46 receiving municipalities, and shall establish procedures for filing

1 statements of intent with the council. No receiving municipality shall  
2 be required to accept a greater number of low and moderate income  
3 units through an agreement than it has expressed a willingness to  
4 accept in its statement, but the number stated shall not be less than a  
5 reasonable minimum number of units, not to exceed 100, as established  
6 by the council. The council shall require a project plan from a  
7 receiving municipality prior to the entering into of the agreement, and  
8 shall submit the project plan to the agency for its review as to the  
9 feasibility of the plan prior to the council's approval of the agreement.  
10 The agency may recommend and the council may approve as part of  
11 the project plan a provision that the time limitations for contractual  
12 guarantees or resale controls for low and moderate income units  
13 included in the project shall be less than 30 years, if it is determined  
14 that modification is necessary to assure the economic viability of the  
15 project.

16 f. The council shall establish guidelines for the duration and  
17 amount of contributions in regional contribution agreements. In doing  
18 so, the council shall give substantial consideration to the average of:  
19 (1) the median amount required to rehabilitate a low and moderate  
20 income unit up to code enforcement standards; (2) the average internal  
21 subsidization required for a developer to provide a low income  
22 housing unit in an inclusionary development; (3) the average internal  
23 subsidization required for a developer to provide a moderate income  
24 housing unit in an inclusionary development. Contributions may be  
25 prorated in municipal appropriations occurring over a period not to  
26 exceed six years and may include an amount agreed upon to  
27 compensate or partially compensate the receiving municipality for  
28 infrastructure or other costs generated to the receiving municipality by  
29 the development. Appropriations shall be made and paid directly to  
30 the receiving municipality or municipalities or to the agency or other  
31 governmental entity designated by the council, as the case may be.

32 g. The council shall require receiving municipalities to file annual  
33 reports with the agency setting forth the progress in implementing a  
34 project funded under a regional contribution agreement, and the  
35 agency shall provide the council with its evaluation of each report.  
36 The council shall take such actions as may be necessary to enforce a  
37 regional contribution agreement with respect to the timely  
38 implementation of the project by the receiving municipality.

39 (cf: P.L.1995, c.83, s.2)

40

41 18. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to  
42 read as follows:

43 13. a. A municipality which has filed a housing element may, at  
44 any time during a two-year period following the filing of the housing  
45 element, petition the council for a substantive certification of its  
46 element and ordinances or institute an action for declaratory judgment

1 granting it [six-year]ten year repose in the Superior Court. The  
2 municipality shall publish notice of its petition in a newspaper of  
3 general circulation within the municipality and county and shall make  
4 available to the public information on the element and ordinances in  
5 accordance with such procedures as the council shall establish. The  
6 council shall also establish a procedure for providing public notice of  
7 each petition which it receives.

8 b. Notwithstanding the provisions of subsection a. of this section,  
9 a municipality which filed a housing element prior to the effective date  
10 of this 1990 amendatory act, shall be permitted to petition for  
11 substantive certification at any time within two years following that  
12 filing, or within one year following the effective date of this 1990  
13 amendatory act, whichever shall result in permitting the municipality  
14 the longer period of time within which to petition.

15 (cf: P.L.1990, c.121, s.1)

16  
17 19. Nothing in P.L. , c. (C. ) (pending before the Legislature  
18 as this bill) shall be construed to require an increase in the fair share  
19 housing obligation of any municipality that submitted a housing  
20 element or fair share plan for substantive certification by the council  
21 prior to the effective date of P.L. , c. (pending before the Legislature  
22 as this bill).

23  
24 20. This act shall take effect immediately.

## 25 26 27 STATEMENT

28  
29 This bill, entitled the "Fair Housing Act II," modifies and  
30 supplements the original "Fair Housing Act," P.L.1985, c.222  
31 (C.52:27D-301 et al.) for several purposes. One purpose is to provide  
32 a method for local governments to preserve open space and farmland  
33 under the "Fair Housing Act," a concept that was embraced by the  
34 New Jersey Supreme Court in its Mount Laurel decisions, but was not  
35 provided for in the legislative response to those cases. Another  
36 purpose of the bill is to coordinate State development policy by  
37 requiring that affordable housing efforts be made in conjunction with  
38 the provisions of the State Development and Redevelopment Plan.

39 Municipalities may submit to the Council on Affordable Housing  
40 (COAH) an affordable housing plan, in which the municipality will  
41 calculate its proposed housing obligation, along with goals which the  
42 municipality may have, such as preservation or development, and the  
43 proposed methods to meet those goals. Joint municipal plans with  
44 common or complimentary goals may be submitted. After a  
45 negotiation process, COAH would adjust the housing obligation  
46 assigned to a municipality based on the new plan. The bill directs that

1 any adjustment made in a municipal fair share number pursuant to the  
2 bill shall not be reallocated to another municipality. Municipalities not  
3 submitting plans to COAH under the bill would not be eligible for any  
4 State discretionary funds or grants.

5 COAH is directed to approve more flexible methods by which a  
6 municipality may meet its housing obligation, such as a special  
7 property tax rebate for low income senior citizens and disabled  
8 residents. In addition, the term for bonds is directed to be as long as  
9 20 years, which is intended to override the court's decision in *AQN*  
10 *Associates, Inc. v. Township of Florence* which determined that the  
11 term be for only six years. The longer bonding term will help some  
12 municipalities in financing affordable housing projects. COAH is  
13 required to waive any limitation on the number of affordable housing  
14 units that may be restricted for senior citizen occupancy if a  
15 municipality can demonstrate that it has a greater need than that limit  
16 would allow. In addition, regional contribution agreements would be  
17 permitted between municipalities in adjacent regions.

18 Under the bill, the current housing cycle would be extended to  
19 December 31, 2001. After that date, the cycle would be 10 years  
20 instead of the current six year cycle. The bill also adds two additional  
21 members to the Council on Affordable Housing. One member would  
22 be an elected representative of a rural community, and the other would  
23 be a public member, bringing the total number of members to 13.

24 The prospective need portion of fair share under the bill's provisions  
25 would be based on recently occurring development, and may no longer  
26 be based on municipal or regional income levels. This change will  
27 allow an adjustment of the fair share for those municipalities which  
28 have submitted an affordable housing plan which seeks to preserve  
29 farmland, open space and environmentally sensitive areas, and will help  
30 assure that development occurs in accordance with the provisions of  
31 the State Development and Redevelopment Plan.

32

33

34

35

36 Designated the "Fair Housing Act II."