

SENATE, No. 3649

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 19, 2021

Sponsored by:

Senator HOLLY T. SCHEPISI

District 39 (Bergen and Passaic)

SYNOPSIS

Requires COAH to administer affordable housing obligations of municipalities based on Statewide obligation.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT requiring COAH to administer the affordable housing
2 obligations of municipalities based on a statewide obligation and
3 amending and repealing various parts of the statutory law.
4

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

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

10 2. The Legislature finds that:

11 a. The New Jersey Supreme Court, through its rulings in South
12 Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975)
13 and South Burlington County NAACP v. Mount Laurel, 92 N.J. 158
14 (1983), has determined that every municipality in a growth area has
15 a constitutional obligation to provide through its land use
16 regulations a realistic opportunity for a fair share of its region's
17 present and prospective needs for housing for low and moderate
18 income families.

19 b. In the second Mount Laurel ruling, the Supreme Court stated
20 that the determination of the methods for satisfying this
21 constitutional obligation "is better left to the Legislature," that the
22 court has "always preferred legislative to judicial action in their
23 field," and that the judicial role in upholding the Mount Laurel
24 doctrine "could decrease as a result of legislative and executive
25 action."

26 c. The interest of all citizens, including low and moderate
27 income families in need of affordable housing, and the needs of the
28 workforce, would be best served by a comprehensive planning and
29 implementation response to this constitutional obligation.

30 d. There are a number of essential ingredients to a
31 comprehensive planning and implementation response, including
32 the establishment of reasonable fair share housing guidelines and
33 standards, the **initial** determination of fair share by officials at the
34 **municipal** State level **and the** , municipal preparation of a
35 municipal housing element, State review of the **local fair share**
36 study and **housing element** and formation of a plan to achieve the
37 municipal fair share, and continuous State funding for low and
38 moderate income housing to replace the federal housing subsidy
39 programs which have been almost completely eliminated.

40 e. The State can maximize the number of low and moderate
41 income units provided in New Jersey by allowing its municipalities
42 to adopt appropriate phasing schedules for meeting their fair share,
43 so long as the municipalities permit a timely achievement of an
44 appropriate fair share of the **regional** need for low and moderate

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 income housing as required by the Mt. Laurel I and II opinions and
2 other relevant court decisions.

3 f. The State can also maximize the number of low and
4 moderate income units by creating new affordable housing and by
5 rehabilitating existing, but substandard, housing in the State.
6 Because the Legislature has determined, pursuant to P.L.2008, c.46
7 (C.52:27D-329.1 et al.), that it is no longer appropriate or in
8 harmony with the Mount Laurel doctrine to permit the transfer of
9 the fair share obligations among municipalities within a housing
10 region, it is necessary and appropriate to create a new program to
11 create new affordable housing and to foster the rehabilitation of
12 existing, but substandard, housing.

13 g. Since the urban areas are vitally important to the State,
14 construction, conversion and rehabilitation of housing in our urban
15 centers should be encouraged. However, the provision of housing
16 in urban areas must be balanced with the need to provide housing
17 throughout the State for the free mobility of citizens.

18 h. The Supreme Court of New Jersey in its Mount Laurel
19 decisions demands that municipal land use regulations affirmatively
20 afford a reasonable opportunity for a variety and choice of housing
21 including low and moderate cost housing, to meet the needs of
22 people desiring to live there. While provision for the actual
23 construction of that housing by municipalities is not required, they
24 are encouraged but not mandated to expend their own resources to
25 help provide low and moderate income housing.

26 i. Certain amendments to the enabling act of the Council on
27 Affordable Housing are necessary to provide guidance to the
28 council to ensure consistency with the legislative intent, while at the
29 same time clarifying the limitations of the council in its rulemaking.
30 Although the court has remarked in several decisions that the
31 Legislature has granted the council considerable deference in its
32 rulemaking, the Legislature retains its power and obligation to
33 clarify and amend the enabling act from which the council derives
34 its rulemaking power, from time to time, in order to better guide the
35 council.

36 j. The Legislature finds that the use of regional contribution
37 agreements, which permits municipalities to transfer a certain
38 portion of their fair share housing obligation outside of the
39 municipal borders, should no longer be utilized as a mechanism for
40 the creation of affordable housing by the council.

41 (cf: P.L.2008, c.46, s.4)

42

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

45 4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):

46 a. "Council" means the Council on Affordable Housing
47 established in P.L.1985, c.222 (C.52:27D-301 et al.), which shall
48 have primary jurisdiction for the administration of housing

- 1 obligations in accordance with sound regional planning
2 considerations in this State, and any successor body, temporary or
3 otherwise, that obtains such primary jurisdiction.
- 4 b. "Housing region" means a geographic area of not less than
5 two nor more than four contiguous, whole counties which exhibit
6 significant social, economic and income similarities, and which
7 constitute to the greatest extent practicable the primary metropolitan
8 statistical areas as last defined by the United States Census Bureau
9 prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.).
- 10 c. "Low income housing" means housing affordable according
11 to federal Department of Housing and Urban Development or other
12 recognized standards for home ownership and rental costs and
13 occupied or reserved for occupancy by households with a gross
14 household income equal to 50 percent or less of the median gross
15 household income for households of the same size within the
16 housing region in which the housing is located.
- 17 d. "Moderate income housing" means housing affordable
18 according to federal Department of Housing and Urban
19 Development or other recognized standards for home ownership
20 and rental costs and occupied or reserved for occupancy by
21 households with a gross household income equal to more than
22 **【50%】** 50 percent but less than 80 percent of the median gross
23 household income for households of the same size within the
24 housing region in which the housing is located.
- 25 e. **【**"Resolution of participation" means a resolution adopted by
26 a municipality in which the municipality chooses to prepare a fair
27 share plan and housing element in accordance with P.L.1985, c.222
28 (C.52:27D-301 et al.).**】** (Deleted by amendment, P.L. , c.)
29 (pending before the Legislature as this bill)
- 30 f. "Inclusionary development" means a residential housing
31 development in which a substantial percentage of the housing units
32 are provided for a reasonable income range of low and moderate
33 income households.
- 34 g. "Conversion" means the conversion of existing commercial,
35 industrial, or residential structures for low and moderate income
36 housing purposes where a substantial percentage of the housing
37 units are provided for a reasonable income range of low and
38 moderate income households.
- 39 h. "Development" means any development for which
40 permission may be required pursuant to the "Municipal Land Use
41 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 42 i. "Agency" means the New Jersey Housing and Mortgage
43 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
44 seq.).
- 45 j. "Prospective need" means a projection of housing needs
46 based on development and growth which is reasonably likely to
47 occur in **【a region or】** a municipality, as the case may be, as a result
48 of actual determination of public and private entities. In

1 determining prospective need, consideration shall be given to
2 approvals of development applications, real property transfers and
3 economic projections prepared by the State Planning Commission
4 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-
5 196 et seq.).

6 k. "Person with a disability" means a person with a physical
7 disability, infirmity, malformation, or disfigurement which is
8 caused by bodily injury, birth defect, aging, or illness including
9 epilepsy and other seizure disorders, and which shall include, but
10 not be limited to, any degree of paralysis, amputation, lack of
11 physical coordination, blindness or visual impairment, deafness or
12 hearing impairment, the inability to speak or a speech impairment,
13 or physical reliance on a service animal, wheelchair, or other
14 remedial appliance or device.

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

21 m. "Very low income housing" means housing affordable
22 according to federal Department of Housing and Urban
23 Development or other recognized standards for home ownership
24 and rental costs and occupied or reserved for occupancy by
25 households with a gross household income equal to 30 percent or
26 less of the median gross household income for households of the
27 same size within the housing region in which the housing is located.
28 (cf: P.L.2017, c.131, s.199)

29

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

32 7. It shall be the duty of the council, **【seven months after the**
33 **confirmation of the last member initially appointed to the council,**
34 **or January 1, 1986, whichever is earlier】** on or before the first day
35 of the seventh month after the effective date of P.L. _____,
36 c. (pending before the Legislature as this bill), and from time to
37 time thereafter, to:

38 a. **【Determine housing regions of the State;】** (Deleted by
39 amendment, P.L. _____, c. _____) (pending before the Legislature as this
40 bill)

41 b. Estimate the present and prospective need for low and
42 moderate income housing at the State **【and regional levels】** level;

43 c. Adopt criteria and guidelines for municipal housing
44 elements and determine;

45 (1) **【Municipal determination of its】** Which municipalities will
46 be allocated a portion of the present and prospective Statewide low
47 and moderate income housing need and determine the fair share of

1 the Statewide housing need to be fulfilled in **【a given region】** each
2 such municipality, which shall be computed for a 10-year period.

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

27 Nothing in P.L.1995, c.81 shall affect the validity of substantive
28 certification granted by the council prior to November 21, 1994, or
29 of a judgment of compliance entered by any court of competent
30 jurisdiction prior to that date. Additionally, any municipality that
31 received substantive certification or a judgment of compliance prior
32 to November 21, 1994 and filed a motion prior to November 21,
33 1994 to amend substantive certification or a judgment of
34 compliance for the purpose of obtaining credits, shall be entitled to
35 a determination of its right to credits pursuant to the standards
36 established by the Legislature prior to P.L.1995, c.81. Any
37 municipality that filed a motion prior to November 21, 1994 for the
38 purpose of obtaining credits, which motion was supported by the
39 results of a completed survey performed pursuant to council rules,
40 shall be entitled to a determination of its right to credits pursuant to
41 the standards established by the Legislature prior to P.L.1995, c.81;

42 (2) Municipal adjustment of the present and prospective fair
43 share based upon available vacant and developable land,
44 infrastructure considerations or environmental or historic
45 preservation factors and adjustments shall be made whenever:

46 (a) The preservation of historically or important architecture and
47 sites and their environs or environmentally sensitive lands may be
48 jeopardized,

- 1 (b) The established pattern of development in the community
2 would be drastically altered,
- 3 (c) Adequate land for recreational, conservation or agricultural
4 and farmland preservation purposes would not be provided,
- 5 (d) Adequate open space would not be provided,
- 6 (e) The pattern of development is contrary to the planning
7 designations in the State Development and Redevelopment Plan
8 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
9 (C.52:18A-196 et seq.),
- 10 (f) Vacant and developable land is not available in the
11 municipality, and
- 12 (g) Adequate public facilities and infrastructure capacities are
13 not available, or would result in costs prohibitive to the public if
14 provided~~【.】~~ ;
- 15 (3) (Deleted by amendment, P.L.1993, c.31)~~【.】~~
- 16 d. Provide population and household projections for the State
17 ~~【and housing regions】~~; and
- 18 e. In its discretion, place a limit, based on a percentage of
19 existing housing stock in a municipality and any other criteria
20 including employment opportunities which the council deems
21 appropriate, upon the aggregate number of units which may be
22 allocated to a municipality as its fair share of the ~~【region's】~~ State's
23 present and prospective need for low and moderate income housing.
24 No municipality shall be required to address a fair share of housing
25 units affordable to households with a gross household income of
26 less than 80% of the median gross household income beyond 1,000
27 units within ten years from the grant of substantive certification,
28 unless it is demonstrated, following objection by an interested party
29 and an evidentiary hearing, based upon the facts and circumstances
30 of the affected municipality that it is likely that the municipality
31 through its zoning powers could create a realistic opportunity for
32 more than 1,000 low and moderate income units within that ten-
33 year period. For the purposes of this section, the facts and
34 circumstances which shall determine whether a municipality's fair
35 share shall exceed 1,000 units, as provided above, shall be a finding
36 that the municipality has issued more than 5,000 certificates of
37 occupancy for residential units in the ten-year period preceding the
38 petition for substantive certification in connection with which the
39 objection was filed.
- 40 For the purpose of crediting low and moderate income housing
41 units in order to arrive at a determination of present and prospective
42 fair share, as set forth in paragraph (1) of subsection c. of this
43 section, housing units comprised in a community residence for the
44 developmentally disabled, as defined in section 2 of P.L.1977,
45 c.448 (C.30:11B-2), shall be fully credited pursuant to rules
46 promulgated or to be promulgated by the council, to the extent that
47 the units are affordable to persons of low and moderate income and
48 are available to the general public.

1 The council **【**, with respect to any municipality seeking
2 substantive certification,**】** shall require that a minimum percentage
3 of housing units in any residential development resulting from a
4 zoning change made to a previously non-residentially-zoned
5 property, where the change in zoning precedes or follows the
6 application for residential development by no more than 24 months,
7 be reserved for occupancy by low or moderate income households,
8 which percentage shall be determined by the council based on
9 economic feasibility with consideration for the proposed density of
10 development.

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

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

33

34 4. Section 9 of P.L.1985, c.222 (C.52:27D-309) is amended to
35 read as follows:

36 9. a. **【**Within four months after the effective date of this act,
37 each municipality which so elects shall, by a duly adopted
38 resolution of participation, notify the council of its intent to submit
39 to the council its fair share housing plan.**】** Within five months after
40 the council's adoption of **【its criteria and guidelines】** the present
41 and prospective fair share of the Statewide housing need in a
42 municipality, the municipality shall prepare and file with the
43 council a housing element**【**,**】** based on the council's criteria and
44 guidelines**【**,**】** and any fair share housing ordinance introduced and
45 given first reading and second reading in a hearing pursuant to
46 R.S.40:49-2 which implements the housing element**】**.

1 b. **【A municipality which does not notify the council of its**
2 participation within four months may do so at any time thereafter.
3 In any exclusionary zoning litigation instituted against such a
4 municipality, however, there shall be no exhaustion of
5 administrative remedy requirements pursuant to section 16 of this
6 act unless the municipality also files its fair share plan and housing
7 element with the council prior to the institution of the litigation.】
8 (Deleted by amendment, P.L. , c.) (pending before the
9 Legislature as this bill)
10 (cf: P.L.1985, c.222, s.9)

11
12 5. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to
13 read as follows:

14 10. A municipality's housing element shall be designed to assist
15 the council in determining how to achieve the goal of providing
16 access to affordable housing to meet the municipality's fair share of
17 the Statewide present and prospective housing needs in the
18 municipality, with particular attention to low and moderate income
19 housing, and shall contain at least:

20 a. An inventory of the municipality's housing stock by age,
21 condition, purchase or rental value, occupancy characteristics, and
22 type, including the number of units affordable to low and moderate
23 income households and substandard housing capable of being
24 rehabilitated, and in conducting this inventory the municipality
25 shall have access, on a confidential basis for the sole purpose of
26 conducting the inventory, to all necessary property tax assessment
27 records and information in the assessor's office, including but not
28 limited to the property record cards;

29 b. A projection of the municipality's housing stock, including
30 the probable future construction of low and moderate income
31 housing, for the next ten years, taking into account, but not
32 necessarily limited to, construction permits issued, approvals of
33 applications for development and probable residential development
34 of lands; and

35 c. **【An analysis of the municipality's demographic**
36 **characteristics, including but not necessarily limited to, household**
37 **size, income level and age;】** (Deleted by amendment, P.L. , c.)
38 (pending before the Legislature as this bill)

39 d. **【An analysis of the existing and probable future employment**
40 **characteristics of the municipality;】** (Deleted by amendment,
41 P.L. , c.) (pending before the Legislature as this bill)

42 e. **【A determination of the municipality's present and**
43 **prospective fair share for low and moderate income housing and its**
44 **capacity to accommodate its present and prospective housing needs,**
45 **including its fair share for low and moderate income housing; and】**
46 (Deleted by amendment, P.L. , c.) (pending before the
47 Legislature as this bill)

1 f. A consideration of the lands that are most appropriate for
2 construction of low and moderate income housing and of the
3 existing structures most appropriate for conversion to, or
4 rehabilitation for, low and moderate income housing, including a
5 consideration of lands of developers who have expressed a
6 commitment to provide low and moderate income housing.
7 (cf: P.L.2001, c.435, s.2)

8
9 6. Section 13 of P.L.1985, c.222 (C.52:27D-313) is amended to
10 read as follows:

11 13. a. **【A】** After a municipality **【which】** has filed a housing
12 element **【may, at any time during a two-year period following the**
13 **filing of the housing element】**, **【petition】** the council **【for a**
14 **substantive certification of its element and ordinances or institute an**
15 **action for declaratory judgment granting it repose in the Superior**
16 **Court, but in no event】** shall issue a grant of substantive
17 certification **【extend beyond a】** for the 10-year period starting on
18 the date the municipality files its housing element with the council.
19 The municipality shall **【publish notice of its petition in a newspaper**
20 **of general circulation within the municipality and county and shall】**
21 **make available to the public information on the element 【and**
22 **ordinances】** in accordance with such procedures as the council shall
23 establish. **【The council shall also establish a procedure for**
24 **providing public notice of each petition which it receives.】**

25 b. **【Notwithstanding the provisions of subsection a. of this**
26 **section, a municipality which filed a housing element prior to the**
27 **effective date of P.L.1990, c.121, shall be permitted to petition for**
28 **substantive certification at any time within two years following that**
29 **filing, or within one year following the effective date of P.L.1990,**
30 **c.121, whichever shall result in permitting the municipality the**
31 **longer period of time within which to petition.】**

32 The Council shall establish procedures for a realistic opportunity
33 review at the midpoint of the certification period and shall provide
34 for notice to the public.

35 (cf: P.L.2001, c.435, s.5)

36
37 7. Section 14 of P.L.1985, c.222 (C.52:27D-314) is amended to
38 read as follows:

39 14. **【Unless an objection to the substantive certification is filed**
40 **with the council by any person within 45 days of the publication of**
41 **the notice of the municipality's petition, the council shall review the**
42 **petition and shall issue a substantive certification if it shall find**
43 **that:**

44 a. The municipality's fair share plan is consistent with the rules
45 and criteria adopted by the council and not inconsistent with
46 achievement of the low and moderate income housing needs of the

1 region as adjusted pursuant to the council's criteria and guidelines
 2 adopted pursuant to subsection c. of section 7 of this act; and

3 b. The combination of the elimination of unnecessary housing
 4 cost-generating features from the municipal land use ordinances and
 5 regulations, and the affirmative measures in the housing element
 6 and implementation plan make the achievement of the
 7 municipality's fair share of low and moderate income housing
 8 realistically possible after allowing for the implementation of any
 9 regional contribution agreement approved by the council.

10 In conducting its review, the council may meet with the
 11 municipality and may deny the petition or condition its certification
 12 upon changes in the element or ordinances. Any denial or
 13 conditions for approval shall be in writing and shall set forth the
 14 reasons for the denial or conditions. If, within 60 days of the
 15 council's denial or conditional approval, the municipality refiles its
 16 petition with changes satisfactory to the council, the council shall
 17 issue a substantive certification.】

18 Once substantive certification is granted, the council shall review
 19 the housing element and develop a fair share plan for the
 20 municipality to satisfy the municipality's fair share obligation.
 21 Upon completion of the fair share plan, the council shall publish
 22 notice of the plan on its Internet website and shall submit a copy to
 23 the clerk of the municipality. A municipality shall 【have 45 days in
 24 which to】 adopt its fair share housing ordinance based on the fair
 25 share plan approved by the council within 45 days of the
 26 publication of the notice of the fair share plan, unless the plan is
 27 subject to mediation pursuant to section 15 of P.L.1985, c.222
 28 (C.52:27D-315), in which case the municipality shall adopt the
 29 ordinance within 45 days of the resolution of the mediation.
 30 (cf: P.L.1985, c.222, s.14)

31
 32 8. Section 15 of P.L.1985, c.222 (C.52:27D-315) is amended to
 33 read as follows:

34 15. a. The council shall engage in a mediation and review
 35 process 【in the following situations: (1)】 if an objection to the
 36 【municipality's petition for substantive certification】 council's fair
 37 share plan for a municipality is filed with the council within 【the
 38 time specified in section 14 of this act; or (2) if a request for
 39 mediation and review is made pursuant to section 16 of this act】 45
 40 days of the publication of the notice of the fair share plan.

41 b. In cases in which an objection is filed to 【substantive
 42 certification】 the council's fair share plan for a municipality, the
 43 council shall meet with the municipality and the objectors and
 44 attempt to mediate a resolution of the dispute. If the mediation is
 45 successful, the council shall issue a 【substantive certification if it
 46 finds that the criteria of section 14 of this act have been met】
 47 revised fair share plan.

1 c. If the mediation efforts are unsuccessful, the matter shall be
2 transferred to the Office of Administrative Law as a contested case
3 as defined in the "Administrative Procedure Act," P.L. 1968, c. 410
4 (C. 52:14B-1 et seq.).

5 The Office of Administrative Law shall expedite its hearing
6 process as much as practicable by promptly assigning an
7 administrative law judge to the matter; promptly scheduling an
8 evidentiary hearing; expeditiously conducting and concluding the
9 evidentiary hearing; limiting the time allotted for briefs, proposed
10 findings of fact, conclusions of law, forms of order or other
11 disposition, or other supplemental material; and the prompt
12 preparation of the initial decision. A written transcript of all oral
13 testimony and copies of all exhibits introduced into evidence shall
14 be submitted to the council by the Office of Administrative Law
15 simultaneously with a copy of the initial decision. The evidentiary
16 hearings shall be concluded and the initial decision issued no later
17 than 90 days after the transmittal of the matter as a contested case to
18 the Office of Administrative Law by the council, unless the time is
19 extended by the Director of the Office of Administrative Law for
20 good cause shown.

21 (cf: P.L.1985, c.222, s.15)

22
23 9. Section 17 of P.L.1985, c.222 (C.52:27D-317) is amended to
24 read as follows:

25 17. a. **【In any】** An exclusionary zoning 【case】 suit shall not be
26 filed against a municipality which has a substantive certification
27 **【and in which there is a requirement to exhaust the review and**
28 **mediation process pursuant to section 16 of this act】** . In any such
29 case filed against the council with respect to a particular
30 municipality, there shall be a presumption of validity attaching to
31 the **【housing element and ordinances implementing the housing**
32 **element】** fair share plan approved by the council. To rebut the
33 presumption of validity, the complainant shall have the burden of
34 proof to demonstrate by clear and convincing evidence that the
35 **【housing element and ordinances implementing the housing**
36 **element do】** plan does not provide a realistic opportunity for the
37 provision of the municipality's fair share of low and moderate
38 income housing after allowing for the implementation of any
39 regional contribution agreement approved by the council.

40 b. There shall be a presumption of validity attaching to any
41 regional contribution agreement approved by the council. To rebut
42 the presumption of validity, the complainant shall have the burden
43 of proof to demonstrate by clear and convincing evidence that the
44 agreement does not provide for a realistic opportunity for the
45 provision of low and moderate income housing **【within the housing**
46 **region】**.

1 c. The **【council shall be made a party to】** applicable
2 municipality may join any exclusionary zoning suit against the
3 council with respect to a municipality which receives substantive
4 certification**【**, and shall be empowered to present to the court its
5 reasons for granting substantive certification**】**.
6 (cf P.L.1985, c.222, s.17)
7

8 10. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to
9 read as follows:

10 20. There is established in the Department of Community
11 Affairs a separate trust fund, to be used for the exclusive purposes
12 as provided in this section, and which shall be known as the "New
13 Jersey Affordable Housing Trust Fund." The fund shall be a non-
14 lapsing, revolving trust fund, and all monies deposited or received
15 for purposes of the fund shall be accounted for separately, by source
16 and amount, and remain in the fund until appropriated for such
17 purposes. The fund shall be the repository of all State funds
18 appropriated for affordable housing purposes, including, but not
19 limited to, the proceeds from the receipts of the additional fee
20 collected pursuant to paragraph (2) of subsection a. of section 3 of
21 P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the
22 Statewide non-residential development fees collected pursuant to
23 section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or
24 reverting from municipal development trust funds, or other monies
25 as may be dedicated, earmarked, or appropriated by the Legislature
26 for the purposes of the fund. All references in any law, order, rule,
27 regulation, contract, loan, document, or otherwise, to the
28 "Neighborhood Preservation Nonlapsing Revolving Fund" shall
29 mean the "New Jersey Affordable Housing Trust Fund." The
30 department shall be permitted to utilize annually up to 7.5 percent
31 of the monies available in the fund for the payment of any
32 necessary administrative costs related to the administration of the
33 "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any
34 costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et
35 al.).

36 a. Except as permitted pursuant to subsection g. of this section,
37 and by section 41 of P.L.2009, c.90 (C.52:27D-320.1), the
38 commissioner shall award grants or loans from this fund for
39 housing projects and programs in municipalities whose housing
40 elements have received substantive certification from the council, in
41 municipalities receiving State aid pursuant to P.L.1978, c.14
42 (C.52:27D-178 et seq.), in municipalities subject to a builder's
43 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328)
44 or in receiving municipalities in cases where the council has
45 approved a regional contribution agreement and a project plan
46 developed by the receiving municipality.

47 **【Of those monies deposited into the "New Jersey Affordable**
48 **Housing Trust Fund" that are derived from municipal development**

1 fee trust funds, or from available collections of Statewide non-
2 residential development fees, a priority for funding shall be
3 established for projects in municipalities that have petitioned the
4 council for substantive certification.

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

8 b. The commissioner shall establish rules and regulations
9 governing the qualifications of applicants, the application
10 procedures, and the criteria for awarding grants and loans and the
11 standards for establishing the amount, terms and conditions of each
12 grant or loan.

13 c. 【For any period which the council may approve, the
14 commissioner may assist affordable housing programs which are
15 not located in municipalities whose housing elements have been
16 granted substantive certification or which are not in furtherance of a
17 regional contribution agreement; provided that the affordable
18 housing program will meet all or part of a municipal low and
19 moderate income housing obligation.】 (Deleted by amendment,
20 P.L. , c.) (pending before the Legislature as this bill)

21 d. 【Amounts deposited in the "New Jersey Affordable Housing
22 Trust Fund" shall be targeted to regions based on the region's
23 percentage of the State's low and moderate income housing need as
24 determined by the council.】 Amounts in the fund shall be applied
25 for the following purposes in designated neighborhoods:

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

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

30 (3) Conversion of non-residential space to residential purposes;
31 provided a substantial percentage of the resulting housing units are
32 to be occupied by low and moderate income households;

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

36 (5) Grants of assistance to eligible municipalities for costs of
37 necessary studies, surveys, plans and permits; engineering,
38 architectural and other technical services; costs of land acquisition
39 and any buildings thereon; and costs of site preparation, demolition
40 and infrastructure development for projects undertaken pursuant to
41 an approved regional contribution agreement;

42 (6) Assistance to a local housing authority, nonprofit or limited
43 dividend housing corporation or association or a qualified entity
44 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for
45 rehabilitation or restoration of housing units which it administers
46 which: (a) are unusable or in a serious state of disrepair; (b) can be
47 restored in an economically feasible and sound manner; and (c) can

1 be retained in a safe, decent and sanitary manner, upon completion
2 of rehabilitation or restoration; and

3 (7) Other housing programs for low and moderate income
4 housing, including, without limitation, (a) infrastructure projects
5 directly facilitating the construction of low and moderate income
6 housing not to exceed a reasonable percentage of the construction
7 costs of the low and moderate income housing to be provided and
8 (b) alteration of dwelling units occupied or to be occupied by
9 households of low or moderate income and the common areas of the
10 premises in which they are located in order to make them accessible
11 to persons with disabilities.

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

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

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

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

17 i. The commissioner may award or grant the amount of any
18 appropriation deposited in the "New Jersey Affordable Housing
19 Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-
20 320.1) to municipalities pursuant to the provisions of section 39 of
21 P.L.2009, c.90 (C.40:55D-8.8).

22 (cf: P.L.2017, c.131, s.200)

23
24 11. Section 26 of P.L.1985, c.222 (C.52:27D-326) is amended to
25 read as follows:

26 26. Within 12 months after the effective date of **【this act】**
27 P.L.1985, c.222 (C.52:27D-301 et al.) and every year thereafter, the
28 agency and the council shall report separately to the Governor and
29 the Legislature on the effect of **【this act】** P.L.1985, c.222
30 (C.52:27D-301 et al.) in promoting the provision of low and
31 moderate income housing in the **【several housing regions of this】**
32 State. The reports may include recommendations for any revisions
33 or changes in **【this act】** P.L.1985, c.222 (C.52:27D-301 et al.)
34 which the agency and the council believe necessary to more nearly
35 effectuate this end.

36 **【Within 36 months after the effective date of this act, the council**
37 **shall report to the Governor and the Legislature concerning the**
38 **actions necessary to be taken at the State, regional, county and**
39 **municipal levels to provide for the implementation and**
40 **administration of this act on a regional basis, including any**
41 **revisions or changes in the law necessary to accomplish that end.**
42 **The council may include in the report any recommendations or**
43 **considerations it may wish to provide regarding the advisability of**
44 **implementing and administering this act on a regional basis.】**

45 (cf: P.L.1985, c.222, s.26)

1 12. Section 33 of P.L.2008, c.46 (C.40:55D-8.2) is amended to
2 read as follows:

3 33. The Legislature finds and declares:

4 a. The collection of development fees from builders of
5 residential and non-residential properties has been authorized by the
6 court through the powers delegated to the Council on Affordable
7 Housing established pursuant to the "Fair Housing Act," P.L.1985,
8 c.222 (C.52:27D-301 et al.).

9 b. New Jersey's land resources are becoming more scarce,
10 while its redevelopment needs are increasing. In order to balance
11 the needs of developing and redeveloping communities, a
12 reasonable method of providing for the housing needs of low and
13 moderate income and middle income households, without
14 mandating the inclusion of housing in every non-residential project,
15 must be established.

16 c. A Statewide non-residential development fee program which
17 permits municipalities under the council's jurisdiction to retain
18 these fees for use in the municipality will provide a fair and
19 balanced funding method to address the State's affordable housing
20 needs], while providing an incentive to all municipalities to seek
21 substantive certification from the council].

22 d. Whereas pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),
23 organizations are directed to invest in the Casino Reinvestment
24 Development Authority to ensure that the development of housing
25 for families of low and moderate income shall be provided. The
26 Casino Reinvestment Development Authority, in consultation with
27 the council, shall work to effectuate the purpose and intent of
28 P.L.1985, c.222 (C.52:27D-301 et al.).

29 e. The "Statewide Non-Residential Development Fee Act,"
30 sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through
31 C.40:55D-8.7), prohibits municipalities from imposing their own
32 fees to fund affordable housing on non-residential development, and
33 P.L.2009, c.90 (C.52:27D-489a et al.) is not intended to alter this
34 underlying policy.

35 f. The negative impact of a State policy that over-relies on a
36 municipal fee structure and of State programs that require a
37 municipality to impose fees and charges on developers must be
38 balanced against any public good expected from such regulation. It
39 is undisputable that the charging of fees at high levels dissuades
40 commerce from locating within a State or municipality or locality
41 and halts non-residential and residential development, and these ill
42 effects directly increase the overall costs of housing, and could
43 impede the constitutional obligation to provide for a realistic
44 opportunity for housing for families at all income levels.

45 (cf: P.L.2009, c.90, s.36)

46

47 13. The following sections are repealed:

48 Section 16 of P.L.1985, c.222 (C.52:27D-316);

1 Section 18 of P.L.1985, c.222 (C.52:27D-318);
2 Section 28 of P.L.1985, c.222 (C.52:27D-328); and
3 Section 31 of P.L.1985, c.222 (C.52:27D-329).

4
5 14. This act shall take effect immediately.

6
7
8 STATEMENT

9
10 This bill would require that affordable housing obligations be
11 calculated and administered at the State level. Affordable housing
12 is an issue of Statewide concern and importance. It is also a highly
13 complex issue that requires technical expertise, often ends up in
14 litigation, and is expensive to administer. This bill would eliminate
15 the current municipality-to-municipality patchwork approach to
16 affordable housing. The bill would centralize administration of this
17 issue in the State agency with the necessary Statewide policy
18 perspective and technical expertise, and which can serve as a cost-
19 effective, fair forum to address this issue – the Council on
20 Affordable Housing (the “council”).

21 Currently, affordable housing need is calculated at the regional
22 level and fair share plans are created by municipalities. Under the
23 bill, the council would calculate the affordable housing need of the
24 entire State. The council would then select which municipalities
25 will have a role to play in fulfilling this Statewide need and will
26 assign them a fair share of this obligation. Such municipality would
27 then submit a housing element that provides basic information on
28 the current housing stock and properties suited for affordable
29 housing development that could satisfy the municipal fair share.
30 After receipt of the housing element, the bill requires the council to
31 grant the municipality a substantive certification that shields it from
32 exclusionary zoning suits. The council would next draft a fair share
33 plan for the municipality that directs the municipality on how to
34 satisfy its fair share obligation. The municipality would be required
35 to adopt a fair share ordinance effectuating that fair share plan.

36 The council would be required to engage in a mediation process
37 if an objection is made to its fair share plan for a municipality. Any
38 exclusionary zoning suit to a fair share plan for a municipality
39 would have to be brought against the council, with the municipality
40 having the option to be a party in the litigation.