

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 500

STATE OF NEW JERSEY
213th LEGISLATURE

ADOPTED JUNE 12, 2008

Sponsored by:

Assemblyman JOSEPH J. ROBERTS, JR.

District 5 (Camden and Gloucester)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblywoman MILA M. JASEY

District 27 (Essex)

SYNOPSIS

Revises laws concerning the provision of affordable housing.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly State Government Committee.



1 AN ACT concerning affordable housing, revising and supplementing
2 various parts of the statutory law.

3

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

6

7 1. Section 3 of P.L.1992, c.79 (C.40A:12A-3) is amended to
8 read as follows:

9 3. As used in this act:

10 “Bonds” means any bonds, notes, interim certificates, debentures
11 or other obligations issued by a municipality, county,
12 redevelopment entity, or housing authority pursuant to **[this act]**
13 P.L.1992, c.79 (C.40A:12A-1 et al.).

14 “Comparable, affordable replacement housing” means newly-
15 constructed or substantially rehabilitated housing to be offered to a
16 household being displaced as a result of a redevelopment project,
17 that is affordable to that household based on its income under the
18 guidelines established by the Council on Affordable Housing in the
19 Department of Community Affairs for maximum affordable sales
20 prices or maximum fair market rents, and that is comparable to the
21 household’s dwelling in the redevelopment area with respect to the
22 size and amenities of the dwelling unit, the quality of the
23 neighborhood, and the level of public services and facilities offered
24 by the municipality in which the redevelopment area is located.

25 “Development” means the division of a parcel of land into two or
26 more parcels, the construction, reconstruction, conversion,
27 structural alteration, relocation, or enlargement of any building or
28 other structure, or of any mining, excavation or landfill, and any use
29 or change in the use of any building or other structure, or land or
30 extension of use of land, for which permission may be required
31 pursuant to the “Municipal Land Use Law,” P.L.1975, c.291
32 (C.40:55D-1 et seq.).

33 “Governing body” means the body exercising general legislative
34 powers in a county or municipality according to the terms and
35 procedural requirements set forth in the form of government
36 adopted by the county or municipality.

37 “Housing authority” means a housing authority created or
38 continued pursuant to this act.

39 “Housing project” means a project, or distinct portion of a
40 project, which is designed and intended to provide decent, safe and
41 sanitary dwellings, apartments or other living accommodations for
42 persons of low and moderate income; such work or undertaking
43 may include buildings, land, equipment, facilities and other real or
44 personal property for necessary, convenient or desirable
45 appurtenances, streets, sewers, water service, parks, site

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 preparation, gardening, administrative, community, health,
2 recreational, educational, welfare or other purposes. The term
3 “housing project” also may be applied to the planning of the
4 buildings and improvements, the acquisition of property, the
5 demolition of existing structures, the construction, reconstruction,
6 alteration and repair of the improvements and all other work in
7 connection therewith.

8 “Persons of low and moderate income” means persons or
9 families who are, in the case of State assisted projects or programs,
10 so defined by the Council on Affordable Housing in the Department
11 of Community Affairs, or in the case of federally assisted projects
12 or programs, defined as of “low and very low income” by the
13 United States Department of Housing and Urban Development.

14 “Public body” means the State or any county, municipality,
15 school district, authority or other political subdivision of the State.

16 “Public housing” means any housing for persons of low and
17 moderate income owned by a municipality, county, the State or the
18 federal government, or any agency or instrumentality thereof.

19 “Publicly assisted housing” means privately owned housing
20 which receives public assistance or subsidy, which may be grants or
21 loans for construction, reconstruction, conservation, or
22 rehabilitation of the housing, or receives operational or maintenance
23 subsidies either directly or through rental subsidies to tenants, from
24 a federal, State or local government agency or instrumentality.

25 “Real property” means all lands, including improvements and
26 fixtures thereon, and property of any nature appurtenant thereto or
27 used in connection therewith, and every estate, interest and right,
28 legal or equitable, therein, including terms for years and liens by
29 way of judgment, mortgage or otherwise, and indebtedness secured
30 by such liens.

31 “Redeveloper” means any person, firm, corporation or public
32 body that shall enter into or propose to enter into a contract with a
33 municipality or other redevelopment entity for the redevelopment or
34 rehabilitation of an area in need of redevelopment, or an area in
35 need of rehabilitation, or any part thereof, under the provisions of
36 this act, or for any construction or other work forming part of a
37 redevelopment or rehabilitation project.

38 “Redevelopment” means clearance, replanning, development and
39 redevelopment; the conservation and rehabilitation of any structure
40 or improvement, the construction and provision for construction of
41 residential, commercial, industrial, public or other structures and
42 the grant or dedication of spaces as may be appropriate or necessary
43 in the interest of the general welfare for streets, parks, playgrounds,
44 or other public purposes, including recreational and other facilities
45 incidental or appurtenant thereto, in accordance with a
46 redevelopment plan.

47 “Redevelopment agency” means a redevelopment agency created
48 pursuant to subsection a. of section 11 of P.L.1992, c.79

1 (C.40A:12A-11) or established heretofore pursuant to the
2 “Redevelopment Agencies Law,” P.L.1949, c.306 (C.40:55C-1 et
3 seq.), repealed by this act, which has been permitted in accordance
4 with the provisions of this act to continue to exercise its
5 redevelopment functions and powers.

6 “Redevelopment area” or “area in need of redevelopment” means
7 an area determined to be in need of redevelopment pursuant to
8 sections 5 and 6 of P.L.1992, c.79 (C.40A:12A-5 and 40A:12A-6)
9 or determined heretofore to be a “blighted area” pursuant to
10 P.L.1949, c.187 (C.40:55-21.1 et seq.) repealed by this act, both
11 determinations as made pursuant to the authority of Article VIII,
12 Section III, paragraph 1 of the Constitution. A redevelopment area
13 may include lands, buildings, or improvements which of themselves
14 are not detrimental to the public health, safety or welfare, but the
15 inclusion of which is found necessary, with or without change in
16 their condition, for the effective redevelopment of the area of which
17 they are a part.

18 “Redevelopment entity” means a municipality or an entity
19 authorized by the governing body of a municipality pursuant to
20 subsection c. of section 4 of P.L.1992, c.79 (C.40A:12A-4) to
21 implement redevelopment plans and carry out redevelopment
22 projects in an area in need of redevelopment, or in an area in need
23 of rehabilitation, or in both.

24 “Redevelopment plan” means a plan adopted by the governing
25 body of a municipality for the redevelopment or rehabilitation of all
26 or any part of a redevelopment area, or an area in need of
27 rehabilitation, which plan shall be sufficiently complete to indicate
28 its relationship to definite municipal objectives as to appropriate
29 land uses, public transportation and utilities, recreational and
30 municipal facilities, and other public improvements; and to indicate
31 proposed land uses and building requirements in the redevelopment
32 area or area in need of rehabilitation, or both.

33 “Redevelopment project” means any work or undertaking
34 pursuant to a redevelopment plan; such undertaking may include
35 any buildings, land, including demolition, clearance or removal of
36 buildings from land, equipment, facilities, or other real or personal
37 properties which are necessary, convenient, or desirable
38 appurtenances, such as but not limited to streets, sewers, utilities,
39 parks, site preparation, landscaping, and administrative, community,
40 health, recreational, educational, and welfare facilities.

41 “Rehabilitation” means an undertaking, by means of extensive
42 repair, reconstruction or renovation of existing structures, with or
43 without the introduction of new construction or the enlargement of
44 existing structures, in any area that has been determined to be in
45 need of rehabilitation or redevelopment, to eliminate substandard
46 structural or housing conditions and arrest the deterioration of that
47 area.

1 “Rehabilitation area” or “area in need of rehabilitation” means
2 any area determined to be in need of rehabilitation pursuant to
3 section 14 of P.L.1992, c.79 (C.40A:12A-14).

4 (cf: P.L.1992, c.79, s.3)

5
6 2. Section 7 of P.L.1992, c.79 (C.40A:12A-7) is amended to
7 read as follows:

8 7. a. No redevelopment project shall be undertaken or carried
9 out except in accordance with a redevelopment plan adopted by
10 ordinance of the municipal governing body, upon its finding that the
11 specifically delineated project area is located in an area in need of
12 redevelopment or in an area in need of rehabilitation, or in both,
13 according to criteria set forth in section 5 or section 14 of P.L.1992,
14 c.79 (C.40A:12A-5 or 40A:12A-14), as appropriate.

15 The redevelopment plan shall include an outline for the planning,
16 development, redevelopment, or rehabilitation of the project area
17 sufficient to indicate:

18 (1) Its relationship to definite local objectives as to appropriate
19 land uses, density of population, and improved traffic and public
20 transportation, public utilities, recreational and community facilities
21 and other public improvements.

22 (2) Proposed land uses and building requirements in the project
23 area.

24 (3) Adequate provision for the temporary and permanent
25 relocation, as necessary, of residents in the project area, including
26 an estimate of the extent to which decent, safe and sanitary dwelling
27 units affordable to displaced residents will be available to them in
28 the existing local housing market.

29 (4) An identification of any property within the redevelopment
30 area which is proposed to be acquired in accordance with the
31 redevelopment plan.

32 (5) Any significant relationship of the redevelopment plan to (a)
33 the master plans of contiguous municipalities, (b) the master plan of
34 the county in which the municipality is located, and (c) the State
35 Development and Redevelopment Plan adopted pursuant to the
36 "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.).

37 (6) As of the date of the adoption of the resolution finding the
38 area to be in need of redevelopment, an inventory of all housing
39 units affordable to low and moderate income households, as defined
40 pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), that are to
41 be removed as a result of implementation of the redevelopment
42 plan, whether as a result of subsidies or market conditions, listed by
43 affordability level, number of bedrooms, and tenure.

44 (7) A plan for the provision, through new construction or
45 substantial rehabilitation of one comparable, affordable replacement
46 housing unit for each affordable housing unit that has been
47 occupied at any time within the last 18 months, that is subject to
48 affordability controls and that is identified as to be removed as a

1 result of implementation of the redevelopment plan. Displaced
2 residents of housing units provided under any State or federal
3 housing subsidy program, or pursuant to the "Fair Housing Act,"
4 P.L.1985, c.222 (C.52:27D-301 et al.), provided they are deemed to
5 be eligible, shall have first priority for those replacement units
6 provided under the plan; provided that any such replacement unit
7 shall not be credited against a prospective municipal obligation
8 under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et
9 al.), if the housing unit which is removed had previously been
10 credited toward satisfying the municipal fair share obligation. To
11 the extent reasonably feasible, replacement housing shall be
12 provided within or in close proximity to the redevelopment area. A
13 municipality shall report annually to the Department of Community
14 Affairs on its progress in implementing the plan for provision of
15 comparable, affordable replacement housing required pursuant to
16 this section.

17 b. A redevelopment plan may include the provision of
18 affordable housing in accordance with the "Fair Housing Act,"
19 P.L.1985, c.222 (C.52:27D-301 et al.) and the housing element of
20 the municipal master plan.

21 c. The redevelopment plan shall describe its relationship to
22 pertinent municipal development regulations as defined in the
23 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
24 The redevelopment plan shall supersede applicable provisions of the
25 development regulations of the municipality or constitute an
26 overlay zoning district within the redevelopment area. When the
27 redevelopment plan supersedes any provision of the development
28 regulations, the ordinance adopting the redevelopment plan shall
29 contain an explicit amendment to the zoning district map included
30 in the zoning ordinance. The zoning district map as amended shall
31 indicate the redevelopment area to which the redevelopment plan
32 applies. Notwithstanding the provisions of the "Municipal Land
33 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or of other law, no
34 notice beyond that required for adoption of ordinances by the
35 municipality shall be required for the hearing on or adoption of the
36 redevelopment plan or subsequent amendments thereof.

37 d. All provisions of the redevelopment plan shall be either
38 substantially consistent with the municipal master plan or designed
39 to effectuate the master plan; but the municipal governing body may
40 adopt a redevelopment plan which is inconsistent with or not
41 designed to effectuate the master plan by affirmative vote of a
42 majority of its full authorized membership with the reasons for so
43 acting set forth in the redevelopment plan.

44 e. Prior to the adoption of a redevelopment plan, or revision or
45 amendment thereto, the planning board shall transmit to the
46 governing body, within 45 days after referral, a report containing its
47 recommendation concerning the redevelopment plan. This report
48 shall include an identification of any provisions in the proposed

1 redevelopment plan which are inconsistent with the master plan and
2 recommendations concerning these inconsistencies and any other
3 matters as the board deems appropriate. The governing body, when
4 considering the adoption of a redevelopment plan or revision or
5 amendment thereof, shall review the report of the planning board
6 and may approve or disapprove or change any recommendation by a
7 vote of a majority of its full authorized membership and shall
8 record in its minutes the reasons for not following the
9 recommendations. Failure of the planning board to transmit its
10 report within the required 45 days shall relieve the governing body
11 from the requirements of this subsection with regard to the pertinent
12 proposed redevelopment plan or revision or amendment thereof.
13 Nothing in this subsection shall diminish the applicability of the
14 provisions of subsection d. of this section with respect to any
15 redevelopment plan or revision or amendment thereof.

16 f. The governing body of a municipality may direct the planning
17 board to prepare a redevelopment plan or an amendment or revision
18 to a redevelopment plan for a designated redevelopment area. After
19 completing the redevelopment plan, the planning board shall
20 transmit the proposed plan to the governing body for its adoption.
21 The governing body, when considering the proposed plan, may
22 amend or revise any portion of the proposed redevelopment plan by
23 an affirmative vote of the majority of its full authorized
24 membership and shall record in its minutes the reasons for each
25 amendment or revision. When a redevelopment plan or amendment
26 to a redevelopment plan is referred to the governing body by the
27 planning board under this subsection, the governing body shall be
28 relieved of the referral requirements of subsection e. of this section.
29 (cf: P.L.1992, c.79, s.7)

30
31 3. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to read
32 as follows:

33 4. (a) Prior to the adoption, amendment, or repeal of any rule,
34 except as may be otherwise provided, the agency shall:

35 (1) Give at least 30 days' notice of its intended action. The
36 notice shall include a statement of either the terms or substance of
37 the intended action or a description of the subjects and issues
38 involved, and the time when, the place where, and the manner in
39 which interested persons may present their views thereon. The
40 notice shall be mailed to all persons who have made timely requests
41 of the agency for advance notice of its rule-making proceedings and
42 in addition to other public notice required by law shall be published
43 in the New Jersey Register. Notice shall also be distributed to the
44 news media maintaining a press office to cover the State House
45 Complex, and made available electronically through the largest
46 nonproprietary cooperative public computer network. Each agency
47 shall additionally publicize the intended action and shall adopt rules
48 to prescribe the manner in which it will do so, and inform those

1 persons most likely to be affected by or interested in the intended
2 action. Methods that may be employed include publication of the
3 notice in newspapers of general circulation or in trade, industry,
4 governmental or professional publications, distribution of press
5 releases to the news media and posting of notices in appropriate
6 locations. The rules shall prescribe the circumstances under which
7 each additional method shall be employed;

8 (2) Prepare for public distribution at the time the notice appears
9 in the Register a statement setting forth a summary of the proposed
10 rule, a clear and concise explanation of the purpose and effect of the
11 rule, the specific legal authority under which its adoption is
12 authorized, a description of the expected socio-economic impact of
13 the rule, a regulatory flexibility analysis, or the statement of finding
14 that a regulatory flexibility analysis is not required, as provided in
15 section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement
16 which shall include an assessment of the number of jobs to be
17 generated or lost if the proposed rule takes effect, **[and]** an
18 agriculture industry impact statement as provided in section 7 of
19 P.L.1998, c.48 (C.4:1C-10.3) , and a housing affordability impact
20 statement and a smart growth development impact statement, as
21 provided in section 31 of P.L. , c. (C.) (pending before
22 the Legislature as this bill); and

23 (3) Afford all interested persons reasonable opportunity to
24 submit data, views, or arguments, orally or in writing. The agency
25 shall consider fully all written and oral submissions respecting the
26 proposed rule. If within 30 days of the publication of the proposed
27 rule sufficient public interest is demonstrated in an extension of the
28 time for submissions, the agency shall provide an additional 30 day
29 period for the receipt of submissions by interested parties. The
30 agency shall not adopt the proposed rule until after the end of that
31 30 day extension.

32 The agency shall conduct a public hearing on the proposed rule
33 at the request of a committee of the Legislature, or a governmental
34 agency or subdivision, or if sufficient public interest is shown,
35 provided such request is made to the agency within 30 days
36 following publication of the proposed rule in the Register. The
37 agency shall provide at least 15 days' notice of such hearing, which
38 shall be conducted in accordance with the provisions of subsection
39 (g) of this section.

40 The head of each agency shall adopt as part of its rules of
41 practice adopted pursuant to section 3 of P.L.1968, c.410
42 (C.52:14B-3) definite standards of what constitutes sufficient public
43 interest for conducting a public hearing and for granting an
44 extension pursuant to this paragraph.

45 (4) Prepare for public distribution a report listing all parties
46 offering written or oral submissions concerning the rule,
47 summarizing the content of the submissions and providing the

1 agency's response to the data, views and arguments contained in the
2 submissions.

3 (b) A rule prescribing the organization of an agency may be
4 adopted at any time without prior notice or hearing. Such rules
5 shall be effective upon filing in accordance with section 5 of [this
6 act] P.L.1968, c.410 (C.52:14B-5) or upon any later date specified
7 by the agency.

8 (c) If an agency finds that an imminent peril to the public health,
9 safety, or welfare requires adoption of a rule upon fewer than 30
10 days' notice and states in writing its reasons for that finding, and the
11 Governor concurs in writing that an imminent peril exists, it may
12 proceed without prior notice or hearing, or upon any abbreviated
13 notice and hearing that it finds practicable, to adopt the rule. The
14 rule shall be effective for a period of not more than 60 days unless
15 each house of the Legislature passes a resolution concurring in its
16 extension for a period of not more than 60 additional days. The rule
17 shall not be effective for more than 120 days unless repromulgated
18 in accordance with normal rule-making procedures.

19 (d) No rule hereafter adopted is valid unless adopted in
20 substantial compliance with [this act] P.L.1968, c.410 (C.52:14B-1
21 et seq.). A proceeding to contest any rule on the ground of
22 noncompliance with the procedural requirements of [this act]
23 P.L.1968, c.410 (C.52:14B-1 et seq.) shall be commenced within
24 one year from the effective date of the rule.

25 (e) An agency may file a notice of intent with respect to a
26 proposed rule-making proceeding with the Office of Administrative
27 Law, for publication in the New Jersey Register at any time prior to
28 the formal notice of action required in subsection (a) of this section.
29 The notice shall be for the purpose of eliciting the views of
30 interested parties on an action prior to the filing of a formal rule
31 proposal. An agency may use informal conferences and
32 consultations as means of obtaining the viewpoints and advice of
33 interested persons with respect to contemplated rule-making. An
34 agency may also appoint committees of experts or interested
35 persons or representatives of the general public to advise it with
36 respect to any contemplated rule-making.

37 (f) An interested person may petition an agency to adopt a new
38 rule, or amend or repeal any existing rule. Each agency shall
39 prescribe by rule the form for the petition and the procedure for the
40 submission, consideration and disposition of the petition. The
41 petition shall state clearly and concisely:

42 (1) The substance or nature of the rule-making which is
43 requested;

44 (2) The reasons for the request and the petitioner's interest in the
45 request;

46 (3) References to the authority of the agency to take the
47 requested action.

1 The petitioner may provide the text of the proposed new rule,
2 amended rule or repealed rule.

3 Within 60 days following receipt of any such petition, the agency
4 shall either; (i) deny the petition, giving a written statement of its
5 reasons; (ii) grant the petition and initiate a rule-making proceeding
6 within 90 days of granting the petition ; or (iii) refer the matter for
7 further deliberations which shall be concluded within 90 days of
8 referring the matter for further deliberations . Upon conclusion of
9 such further deliberations, the agency shall either deny the petition
10 and provide a written statement of its reasons or grant the petition
11 and initiate a rule-making proceeding within 90 days. Upon the
12 receipt of the petition, the agency shall file a notice stating the name
13 of the petitioner and the nature of the request with the Office of
14 Administrative Law for publication in the New Jersey Register.
15 Notice of formal agency action on such petition shall also be filed
16 with the Office of Administrative Law for publication in the
17 Register.

18 If an agency fails to act in accordance with the time frame set
19 forth in the preceding paragraph, upon written request by the
20 petitioner, the Director of the Office of Administrative Law shall
21 order a public hearing on the rule-making petition and shall provide
22 the agency with a notice of the director's intent to hold the public
23 hearing if the agency does not. If the agency does not provide
24 notice of a hearing within 15 days of the director's notice, the
25 director shall schedule and provide the public with a notice of that
26 hearing at least 15 days prior thereto. If the public hearing is held
27 by the Office of Administrative Law, it shall be conducted by an
28 administrative law judge, a person on assignment from another
29 agency, a person from the Office of Administrative Law assigned
30 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-
31 5), or an independent contractor assigned by the director. The
32 petitioner and the agency shall participate in the public hearing and
33 shall present a summary of their positions on the petition, a
34 summary of the factual information on which their positions on the
35 petition are based and shall respond to questions posed by any
36 interested party. The hearing procedure shall otherwise be
37 consistent with the requirements for the conduct of a public hearing
38 as prescribed in subsection (g) of section 4 of P.L.1968, c.410
39 (C.52:14B-4), except that the person assigned to conduct the
40 hearing shall make a report summarizing the factual record
41 presented and the arguments for and against proceeding with a rule
42 proposal based upon the petition. This report shall be filed with the
43 agency and delivered or mailed to the petitioner. A copy of the
44 report shall be filed with the Legislature along with the petition for
45 rule-making.

46 (g) All public hearings shall be conducted by a hearing officer,
47 who may be an official of the agency, a member of its staff, a
48 person on assignment from another agency, a person from the

1 Office of Administrative Law assigned pursuant to subsection o. of
2 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent
3 contractor. The hearing officer shall have the responsibility to
4 make recommendations to the agency regarding the adoption,
5 amendment or repeal of a rule. These recommendations shall be
6 made public. At the beginning of each hearing, or series of
7 hearings, the agency, if it has made a proposal, shall present a
8 summary of the factual information on which its proposal is based,
9 and shall respond to questions posed by any interested party.
10 Hearings shall be conducted at such times and in locations which
11 shall afford interested parties the opportunity to attend. A verbatim
12 record of each hearing shall be maintained, and copies of the record
13 shall be available to the public at no more than the actual cost ,
14 which shall be that of the agency where the petition for rule-making
15 originated.

16 (cf: P.L.2001, c.5, s.2)

17

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

20 2. The Legislature finds that:

21 a. The New Jersey Supreme Court, through its rulings in South
22 Burlington County NAACP v. Mount Laurel, 67 N.J.151 (1975) and
23 South Burlington County NAACP v. Mount Laurel, 92 N.J.158
24 (1983), has determined that every municipality in a growth area has
25 a constitutional obligation to provide through its land use
26 regulations a realistic opportunity for a fair share of its region's
27 present and prospective needs for housing for low and moderate
28 income families.

29 b. In the second Mount Laurel ruling, the Supreme Court stated
30 that the determination of the methods for satisfying this
31 constitutional obligation "is better left to the Legislature," that the
32 court has "always preferred legislative to judicial action in their
33 field," and that the judicial role in upholding the Mount Laurel
34 doctrine "could decrease as a result of legislative and executive
35 action."

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

40 d. There are a number of essential ingredients to a
41 comprehensive planning and implementation response, including
42 the establishment of reasonable fair share housing guidelines and
43 standards, the initial determination of fair share by officials at the
44 municipal level and the preparation of a municipal housing
45 element, State review of the local fair share study and housing
46 element, and continuous State funding for low and moderate income
47 housing to replace the federal housing subsidy programs which
48 have been almost completely eliminated.

- 1 e. The State can maximize the number of low and moderate
2 income units provided in New Jersey by allowing its municipalities
3 to adopt appropriate phasing schedules for meeting their fair share,
4 so long as the municipalities permit a timely achievement of an
5 appropriate fair share of the regional need for low and moderate
6 income housing as required by the Mt. Laurel I and II opinions and
7 other relevant court decisions.
- 8 f. The State can also maximize the number of low and
9 moderate income units by creating new affordable housing and by
10 rehabilitating existing, but substandard, housing in the State [, and,
11 in order to achieve this end, it is appropriate to permit the transfer
12 of a limited portion of the fair share obligations among
13 municipalities in a housing region, so long as the transfer occurs on
14 the basis of sound, comprehensive planning, with regard to an
15 adequate housing financing plan, and in relation to the access of
16 low and moderate income households to employment
17 opportunities]. Because the Legislature has determined, pursuant
18 to P.L. , c. (C.) (pending before the Legislature as this
19 bill), that it is no longer appropriate or in harmony with the *Mount*
20 *Laurel* doctrine to permit the transfer of the fair share obligations
21 among municipalities within a housing region, it is necessary and
22 appropriate to create a new program to create new affordable
23 housing and to foster the rehabilitation of existing, but substandard,
24 housing.
- 25 g. Since the urban areas are vitally important to the State,
26 construction, conversion and rehabilitation of housing in our urban
27 centers should be encouraged. However, the provision of housing
28 in urban areas must be balanced with the need to provide housing
29 throughout the State for the free mobility of citizens.
- 30 h. The Supreme Court of New Jersey in its Mount Laurel
31 decisions demands that municipal land use regulations affirmatively
32 afford a reasonable opportunity for a variety and choice of housing
33 including low and moderate cost housing, to meet the needs of
34 people desiring to live there. While provision for the actual
35 construction of that housing by municipalities is not required, they
36 are encouraged but not mandated to expend their own resources to
37 help provide low and moderate income housing.
- 38 i. Certain amendments to the enabling act of the Council on
39 Affordable Housing are necessary to provide guidance to the
40 council to ensure consistency with the legislative intent, while at the
41 same time clarifying the limitations of the council in its rulemaking.
42 Although the court has remarked in several decisions that the
43 Legislature has granted the council considerable deference in its
44 rulemaking, the Legislature retains its power and obligation to
45 clarify and amend the enabling act from which the council derives
46 its rulemaking power, from time to time, in order to better guide the
47 council.

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

6 (cf: P.L.1985, c.222, s.2)

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

10 4. As used in this act:

11 a. "Council" means the Council on Affordable Housing
12 established in this act, which shall have primary jurisdiction for the
13 administration of housing obligations in accordance with sound
14 regional planning considerations in this State.

15 b. "Housing region" means a geographic area of not less than
16 two nor more than four contiguous, whole counties which exhibit
17 significant social, economic and income similarities, and which
18 constitute to the greatest extent practicable the primary metropolitan
19 statistical areas as last defined by the United States Census Bureau
20 prior to the effective date of [this act] P.L.1985, c.222 (C.52:27D-
21 301 et al.).

22 c. "Low income housing" means housing affordable according
23 to federal Department of Housing and Urban Development or other
24 recognized standards for home ownership and rental costs and
25 occupied or reserved for occupancy by households with a gross
26 household income equal to 50% or less of the median gross
27 household income for households of the same size within the
28 housing region in which the housing is located.

29 d. "Moderate income housing" means housing affordable
30 according to federal Department of Housing and Urban
31 Development or other recognized standards for home ownership
32 and rental costs and occupied or reserved for occupancy by
33 households with a gross household income equal to more than 50%
34 but less than 80% of the median gross household income for
35 households of the same size within the housing region in which the
36 housing is located.

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

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

44 g. "Conversion" means the conversion of existing commercial,
45 industrial, or residential structures for low and moderate income
46 housing purposes where a substantial percentage of the housing
47 units are provided for a reasonable income range of low and
48 moderate income households.

- 1 h. "Development" means any development for which
 2 permission may be required pursuant to the "Municipal Land Use
 3 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 4 i. "Agency" means the New Jersey Mortgage and Housing
 5 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
 6 seq.).
- 7 j. "Prospective need" means a projection of housing needs
 8 based on development and growth which is reasonably likely to
 9 occur in a region or a municipality, as the case may be, as a result
 10 of actual determination of public and private entities. In
 11 determining prospective need, consideration shall be given to
 12 approvals of development applications, real property transfers and
 13 economic projections prepared by the State Planning Commission
 14 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-
 15 196 et seq.).
- 16 k. "Disabled person" means a person with a physical disability,
 17 infirmity, malformation or disfigurement which is caused by bodily
 18 injury, birth defect, aging or illness including epilepsy and other
 19 seizure disorders, and which shall include, but not be limited to, any
 20 degree of paralysis, amputation, lack of physical coordination,
 21 blindness or visual impediment, deafness or hearing impediment,
 22 muteness or speech impediment or physical reliance on a service or
 23 guide dog, wheelchair, or other remedial appliance or device.
- 24 l. "Adaptable" means constructed in compliance with the
 25 technical design standards of the barrier free subcode adopted by
 26 the Commissioner of Community Affairs pursuant to the "State
 27 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
 28 et seq.) and in accordance with the provisions of section 5 of
 29 P.L.2005, c.350 (C.52:27D-123.15).
- 30 m. "Very low income housing" means housing affordable
 31 according to federal Department of Housing and Urban
 32 Development or other recognized standards for home ownership
 33 and rental costs and occupied or reserved for occupancy by
 34 households with a gross household income equal to 30% or less of
 35 the median gross household income for households of the same size
 36 within the housing region in which the housing is located.
 37 (cf: P.L.2005, c.350, s.2)
- 38
- 39 6. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
 40 read as follows:
- 41 7. It shall be the duty of the council, seven months after the
 42 confirmation of the last member initially appointed to the council,
 43 or January 1, 1986, whichever is earlier, and from time to time
 44 thereafter, to:
- 45 a. Determine housing regions of the State;
- 46 b. Estimate the present and prospective need for low and
 47 moderate income housing at the State and regional levels;
- 48 c. Adopt criteria and guidelines for:

1 (1) Municipal determination of its present and prospective fair
2 share of the housing need in a given region which shall be
3 computed for a 10-year period.

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

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

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

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

1 promulgated or to be promulgated by the council, to the extent that
2 the units are affordable to persons of low and moderate income and
3 are available to the general public.

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

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

27 No housing unit subject to the provisions of section 5 of
28 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the
29 barrier free subcode adopted by the Commissioner of Community
30 Affairs pursuant to the "State Uniform Construction Code Act,"
31 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for
32 inclusion in the municipal fair share plan certified by the council
33 unless the unit complies with the requirements set forth thereunder.
34 (cf: P.L.2005, c.350, s.4)

35
36 7. (New section) The council shall coordinate and review the
37 housing elements as filed pursuant to section 11 of P.L.1985, c.222,
38 (C.52:27D-311), and the housing activities under section 20 of
39 P.L.1985, c.222 (C.52:27D-320), at least once every three years, to
40 ensure that at least 13 percent of the housing units made available
41 for occupancy by low-income and moderate income households will
42 be reserved for occupancy by very low income households, as that
43 term is defined pursuant to section 4 of P.L.1985, c.222, (C.52:27D-
44 304). Nothing in this section shall require that a specific percentage
45 of the units in any specific project be reserved as very low income
46 housing; provided, however, that a municipality shall not receive
47 bonus credits for the provision of housing units reserved for
48 occupancy by very low income households unless the 13 percent

1 target has been exceeded within that municipality. The council
2 shall coordinate all efforts to meet the goal of this section in a
3 manner that will result in a balanced number of housing units being
4 reserved for very low income households throughout all housing
5 regions. For the purposes of this section, housing activities under
6 section 20 of P.L.1985, c.222 (C.52:27D-320) shall include any
7 project-based assistance provided from the "New Jersey Affordable
8 Housing Trust Fund" pursuant to P.L.2004, c.140 (C.52:27D-287.1
9 et seq.), regardless of whether the housing activity is counted
10 toward the municipal obligation under the "Fair Housing Act,"
11 P.L.1985, c.222 (C.52:27D-301 et al.).

12

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

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

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

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

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

47 (3) A municipality shall set aside a portion of its development
48 fee trust fund for the purpose of providing affordability assistance

1 to low and moderate income households in affordable units
2 included in a municipal fair share plan, in accordance with rules of
3 the council.

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

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

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

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

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

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

41 This section shall not apply to the collection of a Statewide
42 development fee imposed upon non-residential development
43 pursuant to sections 32 through 38 of P.L. , c. (C.) (pending
44 before the Legislature as this bill) by the State Treasurer, when such
45 collection is not authorized to be retained by a municipality.

46

47 9. (New section) a. The council may authorize a municipality
48 that has petitioned for substantive certification to impose and

1 collect payments-in-lieu of constructing affordable units on site
2 upon the construction of residential development, which payments
3 may be imposed and collected as provided pursuant to the rules of
4 the council. Payment-in-lieu fees shall be deposited into a trust
5 fund, and accounted for separately from any other fees collected by
6 a municipality. Whenever a payment-in-lieu is charged by a
7 municipality pursuant to this subsection, a development fee
8 authorized pursuant to section 8 of P.L. , c. (C.) (pending
9 before the Legislature as this bill) shall not be charged in
10 connection with the same development.

11 b. A municipality shall commit to expend collections from
12 payments-in-lieu imposed pursuant to subsection a. of this section
13 within four years of the date of collection. The council may extend
14 this deadline if the municipality submits sufficient proof of building
15 or other permits, or other efforts concerning land acquisition or
16 project development. The council shall provide such administrative
17 assistance as may be required to aid in the construction of
18 affordable housing units. A municipality that fails to commit to
19 expend the amounts collected pursuant to this section within the
20 timeframes established shall be required to transfer any unexpended
21 revenue collected pursuant to subsection a. of this section to the
22 "New Jersey Affordable Housing Trust Fund," established pursuant
23 to section 20 of P.L.1985, c.222 (C.52:27D-320), to be used within
24 the same housing region for the authorized purposes of that fund, in
25 accordance with regulations promulgated by the council.

26

27 10. (New section) The council shall maintain on its website,
28 and also publish on a regular basis, an up-to-date municipal status
29 report concerning the petitions for substantive certification of each
30 municipality that has submitted to the council's jurisdiction, and
31 shall collect and publish information concerning the number of
32 housing units actually constructed, construction starts, certificates
33 of occupancy granted, rental units maintained, and the number of
34 housing units transferred or sold within the previous 12-month
35 period. With respect to units actually constructed, the information
36 shall specify the characteristics of the housing, including housing
37 type, tenure, affordability level, number of bedrooms, and whether
38 occupancy is reserved for families, senior citizens, or other special
39 populations. No later than 60 months after the effective date of
40 P.L. , c. (C.) (pending before the Legislature as this bill), the
41 council shall require each municipality, as a condition of
42 substantive certification, to provide, in a standardized electronic
43 media format as determined by the council, the details of the fair
44 share plan as adopted by the municipality and approved by the
45 council. The council shall publish and maintain such approved
46 plans on its website.

1 11. (New section) Sections 11 through 14 of P.L. , c. (C.)
2 (pending before the Legislature as this bill) shall be known and may
3 be cited as the "Housing Rehabilitation and Assistance Program
4 Act."

5
6 12. (New section) The Legislature finds and declares that:

7 a. The transfer of a portion of the fair share obligations among
8 municipalities has proven to not be a viable method of ensuring that
9 an adequate supply and variety of housing choices are provided in
10 municipalities experiencing growth. Therefore, the use of a
11 regional contribution agreement shall no longer be permitted under
12 P.L.1985, c.222 (C.52:27D-301 et al.).

13 b. Although the elimination of the regional contribution
14 agreement as a tool for the production of affordable housing
15 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), will impact on
16 some proposed agreements awaiting approval, it is for a public
17 purpose and for the public good that such contracts be declared void
18 for the current and future housing obligation rounds.

19 c. There is a need to assist municipalities in the rehabilitation
20 of housing for occupancy by low and moderate income households.
21 To this end, a specific program for housing rehabilitation by
22 municipalities would best serve this need. It is the intent of the
23 Legislature that this program, as well as funds earmarked for the
24 purposes of the program, will be utilized, especially in urban areas
25 which were the main recipients of regional contribution agreements,
26 to continue to upgrade housing stock in order to provide a wide
27 variety and choice of housing for persons living in those areas.

28 d. There is also a need to provide funding to municipalities to
29 create additional incentives and assistance for the production of
30 safe, decent, and affordable rental and other housing.

31
32 13. (New section) a. There is established within the
33 Department of Community Affairs an Urban Housing Assistance
34 Program for the purposes of assisting certain municipalities in the
35 provision of housing through the rehabilitation of existing buildings
36 or the construction of affordable housing.

37 b. Within the program there shall be established a trust fund to
38 be known as the "Urban Housing Assistance Fund," into which may
39 be deposited:

40 (1) monies which may be available to the fund from any other
41 programs established for the purposes of housing rehabilitation,
42 other than monies from the "New Jersey Affordable Housing Trust
43 Fund," established pursuant to section 20 of P.L.1985, c.222
44 (C.52:27D-320);

45 (2) monies appropriated by the Legislature to the fund; and

46 (3) any other funds made available through State or federal
47 housing programs for the purposes of producing affordable housing,
48 other than monies from the "New Jersey Affordable Housing Trust

1 Fund," established pursuant to section 20 of P.L.1985, c.222
2 (C.52:27D-320).

3 c. The Commissioner of Community Affairs shall develop a
4 strategic five-year plan for the program aimed at developing
5 strategies to assist municipalities in creating rehabilitation programs
6 and other programs to produce safe, decent housing within the
7 municipality.

8 d. The commissioner may award a housing rehabilitation grant
9 to a municipality that qualifies for aid pursuant to P.L.1978, c.14
10 (C.52:27D-178 et seq.) and that has submitted a valid application to
11 the Department of Community Affairs which details the manner in
12 which the municipality will utilize funding in order to meet the
13 municipality's need to rehabilitate or create safe, decent, and
14 affordable housing.

15 e. The commissioner shall promulgate rules and regulations,
16 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
17 (C.52:14B-1 et seq.), to effectuate the purposes of P.L. , c. (C.)
18 (pending before the Legislature as this bill); provided that the
19 regulations shall permit a municipality broad discretion in shaping
20 its housing rehabilitation and construction program, but shall not
21 permit a municipality to provide assistance to any household having
22 an income greater than 120% of median household income for the
23 housing region. The department may require a return of a grant
24 upon its determination that a municipality is not performing in
25 accordance with its grant or with the regulations.

26

27 14. (New section) a. There shall be appropriated annually from
28 the amounts collected by the State Treasurer from the imposition of
29 Statewide non-residential development fees and retained by the
30 State pursuant to P.L. , c. (C.) (pending before the
31 Legislature as this bill), the sum of \$20,000,000 for deposit into the
32 "Urban Housing Assistance Fund," established pursuant to section
33 13 of P.L. , c. (C.) (pending before the Legislature as this
34 bill), to be used for the purposes authorized under that section. Any
35 surplus amounts remaining after crediting the "Urban Housing
36 Assistance Fund," in the amount required under this section from
37 the collection of Statewide non-residential development fees, shall
38 be annually appropriated to the "New Jersey Affordable Housing
39 Trust Fund," established pursuant to section 20 of P.L.1985, c.222
40 (C.52:27D-320).

41 b. In the event the full amount required to be transferred
42 pursuant to subsection a. of this section is not transferred in any
43 fiscal year, the Legislature shall subsequently appropriate in the
44 same fiscal year from the General Fund an amount equal to the
45 difference between the amount actually transferred and the amount
46 required to be transferred pursuant to subsection a. of this section,
47 so that the total funds made available to the "Urban Housing

1 Assistance Fund” annually shall be equal to the amount established
2 pursuant to subsection a. of this section.

3

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

6 11. a. In adopting its housing element, the municipality may
7 provide for its fair share of low and moderate income housing by
8 means of any technique or combination of techniques which provide
9 a realistic opportunity for the provision of the fair share. The
10 housing element shall contain an analysis demonstrating that it will
11 provide such a realistic opportunity, and the municipality shall
12 establish that its land use and other relevant ordinances have been
13 revised to incorporate the provisions for low and moderate income
14 housing. In preparing the housing element, the municipality shall
15 consider the following techniques for providing low and moderate
16 income housing within the municipality, as well as such other
17 techniques as may be published by the council or proposed by the
18 municipality:

19 (1) Rezoning for densities necessary to assure the economic
20 viability of any inclusionary developments, either through
21 mandatory set-asides or density bonuses, as may be necessary to
22 meet all or part of the municipality's fair share in accordance with
23 the regulations of the council and the provision of subsection h. of
24 this section;

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

27 (3) Determination of measures that the municipality will take to
28 assure that low and moderate income units remain affordable to
29 low and moderate income households for an appropriate period of
30 not less than six years;

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

34 (5) Donation or use of municipally owned land or land
35 condemned by the municipality for purposes of providing low and
36 moderate income housing;

37 (6) Tax abatements for purposes of providing low and moderate
38 income housing;

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

42 (8) Utilization of municipally generated funds toward the
43 construction of low and moderate income housing; and

44 (9) The purchase of privately owned real property used for
45 residential purposes at the value of all liens secured by the property;
46 excluding any tax liens, notwithstanding that the total amount of
47 debt secured by liens exceeds the appraised value of the property,
48 pursuant to regulations promulgated by the Commissioner of

1 Community Affairs pursuant to subsection b. of section 41 of
 2 P.L.2001, c.126 (C.52:27D-311.2).

3 b. The municipality may provide for a phasing schedule for the
 4 achievement of its fair share of low and moderate income housing.

5 c. ~~【The municipality may propose that a portion of its fair share
 6 be met through a regional contribution agreement. The housing
 7 element shall demonstrate, however, the manner in which that
 8 portion will be provided within the municipality if the regional
 9 contribution agreement is not entered into. The municipality shall
 10 provide a statement of its reasons for the proposal.】 (Deleted by
 11 amendment, P.L. _____, c. _____) (pending before the Legislature as
 12 this bill)~~

13 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall require
 14 a municipality to raise or expend municipal revenues in order to
 15 provide low and moderate income housing.

16 e. When a municipality's housing element includes the provision
 17 of rental housing units in a community residence for the
 18 developmentally disabled, as defined in section 2 of P.L.1977,
 19 c.448 (C.30:11B-2), which will be affordable to persons of low and
 20 moderate income, and for which adequate measures to retain such
 21 affordability pursuant to paragraph (3) of subsection a. of this
 22 section are included in the housing element, those housing units
 23 shall be fully credited as permitted under the rules of the council
 24 towards the fulfillment of the municipality's fair share of low and
 25 moderate income housing.

26 f. It having been determined by the Legislature that the
 27 provision of housing under ~~【this act】 P.L.1985, c.222 (C.52:27D-
 28 301 et al.)~~ is a public purpose, a municipality or municipalities may
 29 utilize public monies to make donations, grants or loans of public
 30 funds for the rehabilitation of deficient housing units and the
 31 provision of new or substantially rehabilitated housing for low and
 32 moderate persons, providing that any private advantage is
 33 incidental.

34 g. A municipality which has received substantive certification
 35 from the council, and which has actually effected the construction
 36 of the affordable housing units it is obligated to provide, may
 37 amend its affordable housing element or zoning ordinances without
 38 the approval of the council.

39 h. Whenever affordable housing units are proposed to be
 40 provided through an inclusionary development, a municipality shall
 41 provide, through its zoning powers, incentives to the developer,
 42 which shall include increased densities and reduced costs, in
 43 accordance with the regulations of the council and this subsection.

44 i. The council, upon the application of a municipality and a
 45 developer, may approve reduced affordable housing set-asides or
 46 increased densities to ensure the economic feasibility of an
 47 inclusionary development.

48 (cf: P.L.2001, c.441, s.1)

1 16. Section 12 of P.L.1985, c.222 (52:27D-312) is amended to
2 read as follows:

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

26 b. A municipality which is a defendant in an exclusionary
27 zoning suit and which has not obtained substantive certification
28 pursuant to P.L.1985, c.222 may request the court to be permitted to
29 fulfill a portion of its fair share by entering into a regional
30 contribution agreement. If the court believes the request to be
31 reasonable, the court shall request the council to review the
32 proposed agreement and to determine a match with a receiving
33 municipality or municipalities pursuant to this section. The court
34 may establish time limitations for the council's review, and shall
35 retain jurisdiction over the matter during the period of council
36 review. If the court determines that the agreement provides a
37 realistic opportunity for the provision of low and moderate income
38 housing within the housing region, it shall provide the sending
39 municipality a credit against its fair share for housing to be
40 provided through the agreement in the manner provided in this
41 section. The agreement shall be entered into prior to the entry of a
42 final judgment in the litigation. In cases in which a final judgment
43 was entered prior to the date P.L.1985, c.222 takes effect and in
44 which an appeal is pending, a municipality may request
45 consideration of a regional contribution agreement; provided that it
46 is entered into within 120 days after P.L.1985, c.222 takes effect.
47 In a case in which a final judgment has been entered, the court shall
48 consider whether or not the agreement constitutes an expeditious

1 means of providing part of the fair share. Notwithstanding this
2 subsection, no consideration shall be given to any regional
3 contribution agreement of which the council did not complete its
4 review and formally approve a recommendation to the court prior to
5 the effective date of P.L. , c. (C.) (pending before the
6 Legislature as this bill).

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

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

47 e. The council shall maintain current lists of municipalities
48 which have stated an intent to enter into regional contribution

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

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

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

42 No consideration shall be given to any regional contribution
43 agreement for which the council did not complete its review and
44 grant approval prior to the effective date of P.L. , c. (C.)
45 (pending before the Legislature as this bill). On or after the
46 effective date of P.L. , c. (C.) (pending before the
47 Legislature as this bill), no regional contribution agreement shall be

1 entered into by a municipality, or approved by the council or the
2 court.

3 (cf: P.L.2001, c.435, s.4)

4

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

7 20. **【The Neighborhood Preservation Program within the**
8 **Department of Community Affairs' Division of Housing and**
9 **Development, established pursuant to the Commissioner of**
10 **Community Affairs' authority under section 8 of P.L.1975, c.248**
11 **(C.52:27D-149), shall establish a separate Neighborhood**
12 **Preservation Nonlapsing Revolving Fund for monies appropriated**
13 **by section 33 of P.L.1985, c.222, or other monies as may be**
14 **appropriated by the Legislature for the purposes of the fund.】**

15 There is established in the Department of Community Affairs a
16 separate trust fund, to be used for the exclusive purposes as
17 provided in this section, and which shall be known as the “New
18 Jersey Affordable Housing Trust Fund.” The fund shall be a non-
19 lapsing, revolving trust fund, and all monies deposited or received
20 for purposes of the fund shall be accounted for separately, by source
21 and amount, and remain in the fund until appropriated for such
22 purposes. The fund shall be the repository of all State funds
23 appropriated for affordable housing purposes, including the
24 proceeds from the receipts of the additional fee collected pursuant
25 to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49
26 (C.46:15-7), proceeds from available receipts of the Statewide non-
27 residential development fees collected pursuant to section 35 of
28 P.L. , c. (C.) (pending before the Legislature as this bill),
29 monies lapsing or reverting from municipal development trust
30 funds, or other monies as may be dedicated, earmarked, or
31 appropriated by the Legislature for the purposes of the fund. All
32 references in any law, order, rule, regulation, contract, loan,
33 document, or otherwise, to the “Neighborhood Preservation
34 Nonlapsing Revolving Fund” shall mean the “New Jersey
35 Affordable Housing Trust Fund.” The department shall be
36 permitted to utilize annually up to 7.5 percent of the monies
37 available in the fund for the payment of any necessary
38 administrative costs related to the administration of the “Fair
39 Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.), the State
40 Housing Commission, or any costs related to administration of
41 P.L. , c. (C.) (pending before the Legislature as this bill).

42 a. Except as permitted pursuant to subsection g. of this section,
43 the commissioner shall award grants or loans from this fund for
44 housing projects and programs in municipalities whose housing
45 elements have received substantive certification from the council, in
46 municipalities receiving State aid pursuant to P.L.1978, c.14
47 (C.52:27D-178 et seq.), in municipalities subject to builder's
48 remedy as defined in section 28 of P.L.1985, c.222 (C.52:27D-328)

1 or in receiving municipalities in cases where the council has
2 approved a regional contribution agreement and a project plan
3 developed by the receiving municipality.

4 Of those monies deposited into the “New Jersey Affordable
5 Housing Trust Fund” that are derived from municipal development
6 fee trust funds, or from available collections of Statewide non-
7 residential development fees, a priority for funding shall be
8 established for projects in municipalities that have petitioned the
9 council for substantive certification.

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

13 b. The commissioner shall establish rules and regulations
14 governing the qualifications of applicants, the application
15 procedures, and the criteria for awarding grants and loans and the
16 standards for establishing the amount, terms and conditions of each
17 grant or loan.

18 c. **【During the first 12 months from the effective date of**
19 **P.L.1985, c.222 (C.52:27D-301 et al.) and for】** For any
20 **【additional】** period which the council may approve, the
21 commissioner may assist affordable housing programs which are
22 not located in municipalities whose housing elements have been
23 granted substantive certification or which are not in furtherance of a
24 regional contribution agreement; provided that the affordable
25 housing program will meet all or part of a municipal low and
26 moderate income housing obligation.

27 d. Amounts deposited in the **【Neighborhood Preservation】**
28 “New Jersey Affordable Housing Trust Fund” shall be targeted to
29 regions based on the region's percentage of the State's low and
30 moderate income housing need as determined by the council.
31 Amounts in the fund shall be applied for the following purposes in
32 designated neighborhoods;

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

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

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

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

43 (5) Grants of assistance to eligible municipalities for costs of
44 necessary studies, surveys, plans and permits; engineering,
45 architectural and other technical services; costs of land acquisition
46 and any buildings thereon; and costs of site preparation, demolition
47 and infrastructure development for projects undertaken pursuant to
48 an approved regional contribution agreement;

1 (6) Assistance to a local housing authority, nonprofit or limited
2 dividend housing corporation or association or a qualified entity
3 acting as a receiver under P.L.2003, c.295 (C.2A:42-114 et al.) for
4 rehabilitation or restoration of housing units which it administers
5 which: (a) are unusable or in a serious state of disrepair; (b) can be
6 restored in an economically feasible and sound manner; and (c) can
7 be retained in a safe, decent and sanitary manner, upon completion
8 of rehabilitation or restoration; and

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

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

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

42 g. In addition to other grants or loans awarded pursuant to this
43 section, and without regard to any limitations on such grants or
44 loans for any other purposes herein imposed, the commissioner
45 shall annually allocate such amounts as may be necessary in the
46 commissioner's discretion, and in accordance with section 3 of
47 P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants
48 under the program created pursuant to P.L.2004, c.140 (C.52:27D-

1 287.1 et al.). Such rental assistance grants shall be deemed
2 necessary and authorized pursuant to P.L.1985, c.222 (C.52:27D-
3 301 et al.), in order to meet the housing needs of certain low income
4 households who may not be eligible to occupy other housing
5 produced pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

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

22 (cf: P.L.2004, c.140, s.4)

23

24 18. (New section) a. Notwithstanding any rules of the council
25 to the contrary, for developments consisting of newly-constructed
26 residential units located, or to be located, within the jurisdiction of
27 any regional planning entity required to adopt a master plan or
28 comprehensive management plan pursuant to statutory law,
29 including the New Jersey Meadowlands Commission pursuant to
30 subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6), the
31 Pinelands Commission pursuant to section 7 of the "Pinelands
32 Protection Act," P.L.1979, c.111 (C.13:18A-8), the Fort Monmouth
33 Economic Revitalization Planning Authority pursuant to section 5
34 of P.L.2006, c.16 (C.52:27I-5), or its successor, and the Highlands
35 Water Protection and Planning Council pursuant to section 11 of
36 P.L.2004, c.120 (C.13:20-11), but excluding joint planning boards
37 formed pursuant to section 64 of P.L.1965, c.291 (C.40:55D-77),
38 there shall be required to be reserved for occupancy by low or
39 moderate income households at least 20 percent of the residential
40 units constructed, to the extent this is economically feasible.

41 b. A developer of a project consisting of newly-constructed
42 residential units being financed in whole or in part with State funds,
43 including, but not limited to, transit villages designated by the
44 Department of Transportation, units constructed on State-owned
45 property, and urban transit hubs as defined pursuant to section 2 of
46 P.L.2007, c.346 (C.34:1B-208), shall be required to reserve at least
47 20 percent of the residential units constructed for occupancy by low
48 or moderate income households, as those terms are defined in

1 section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability
2 controls as required under the rules of the council, unless the
3 municipality in which the property is located has received
4 substantive certification from the council and such a reservation is
5 not required under the approved affordable housing plan, or the
6 municipality has been given a judgment of repose or a judgment of
7 compliance by the court, and such a reservation is not required
8 under the approved affordable housing plan.

9 c. (1) The Legislature recognizes that regional planning entities
10 are appropriately positioned to take a broader role in the planning
11 and provision of affordable housing based on regional planning
12 considerations. In recognition of the value of sound regional
13 planning, including the desire to foster economic growth, create a
14 variety and choice of housing near public transportation, protect
15 critical environmental resources, including farmland and open space
16 preservation, and maximize the use of existing infrastructure, there
17 is created a new program to foster regional planning entities.

18 (2) The regional planning entities identified in subsection a. of
19 this section shall identify and coordinate regional affordable
20 housing opportunities in cooperation with municipalities in areas
21 with convenient access to infrastructure, employment opportunities,
22 and public transportation. Coordination of affordable housing
23 opportunities may include methods to regionally provide housing in
24 line with regional concerns, such as transit needs or opportunities,
25 environmental concerns, or such other factors as the council may
26 permit; provided, however, that such provision by such a regional
27 entity may not result in more than a 50 percent change in the fair
28 share obligation of any municipality; provided that this limitation
29 shall not apply to affordable housing units directly attributable to
30 development by the New Jersey Sports and Exposition Authority
31 within the New Jersey Meadowlands District.

32 (3) In addition to the entities identified in subsection a. of this
33 section, the Casino Reinvestment Development Authority, in
34 conjunction with the Atlantic County Planning Board, shall identify
35 and coordinate regional affordable housing opportunities directly
36 attributable to Atlantic City casino development, which may be
37 provided anywhere within Atlantic County, subject to the
38 restrictions of paragraph (4) of this subsection.

39 (4) The coordination of affordable housing opportunities by
40 regional entities as identified in this section shall not include
41 activities which would provide housing units to be located in those
42 municipalities that are eligible to receive aid under the "Special
43 Municipal Aid Act," P.L.1987, c.75 (C.52:27D-118.24 et seq.), or
44 are coextensive with a school district which qualified for
45 designation as a "special needs district" pursuant to the "Quality
46 Education Act of 1990," P.L.1990, c.52 (C.18A:7D-1 et seq.), or at
47 any time in the last 10 years has been qualified to receive assistance
48 under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the

1 jurisdiction of any of the regional entities specified in subsection a.
2 of this section.

3
4 19. (New section) Notwithstanding any rules of the New Jersey
5 Housing and Mortgage Finance Agency to the contrary, the
6 allocation of low income tax credits shall be made by the agency to
7 the full extent such credits are permitted to be allocated under
8 federal law, including allocations of 4 percent or 9 percent federal
9 low income tax credits, and including allocations allowable for
10 partial credits. The affordable portion of any mixed income or
11 mixed use development that is part of a fair share housing plan
12 approved by the council, or a court-approved judgment of repose or
13 compliance, including, but not limited to, a development that has
14 received a density bonus, shall be permitted to receive allocations
15 of low income tax credits, provided that the applicant can
16 conclusively demonstrate that the market rate residential or
17 commercial units are unable to internally subsidize the affordable
18 units, and the affordable units are developed contemporaneously
19 with the commercial or market rate residential units.

20
21 20. (New section) The New Jersey Housing and Mortgage
22 Finance Agency shall maintain on its website and publish annually
23 a report concerning its activities during the year in promotion of
24 affordable housing, including any activity pursuant to section 21 of
25 P.L.1985, c.222 (C.52:27D-321). The report shall detail the number
26 and amounts of grants, loans, the average loan amount made, the
27 amounts of low income tax credits allocated by the agency, by
28 location, and the number of proposed units, and any additional
29 information which the agency deems informative to the public.

30
31 21. (New section) Sections 21 through 30 of P.L. , c. (C.)
32 (pending before the Legislature as this bill) shall be known and may
33 be cited as the “Strategic Housing Plan Act.”

34
35 22. (New section) The Legislature finds that:

36 a. High housing prices, escalating property taxes, increasing
37 municipal fees, rising energy costs, and the costs to implement
38 various State rules and regulations have put housing out of the
39 reach of many citizens;

40 b. The State of New Jersey suffers from a serious lack of
41 housing affordable to its low and moderate income households,
42 reflected in the large number of households living in overcrowded
43 and substandard housing conditions, or burdened by unreasonable
44 and excessive housing costs;

45 c. As housing costs have increased in many parts of the State,
46 and the process of urban revitalization has taken hold in many of
47 the State’s cities, these problems have become more severe and

1 have come to affect a wide range of households at many income
2 levels;

3 d. While new housing affordable to households at all income
4 levels is urgently needed, the need to preserve existing housing
5 owned or rented by low and moderate income households, much of
6 which is at risk of loss, is also urgent;

7 e. The production of new housing and the preservation of the
8 existing housing stock, including but not limited to subsidized
9 affordable housing, has a significant positive impact on the health
10 and well-being of the State as a whole, in particular its older cities
11 and their neighborhoods, and should be encouraged as a matter of
12 public policy by the State government;

13 f. Although the State has devoted substantial public resources
14 for many years towards alleviating the housing needs of lower
15 income households, the effective use of those resources and their
16 impact on urban revitalization has been limited by inadequate
17 strategic planning in the allocation of public resources, as well as
18 inadequate coordination with and leveraging of private resources;

19 g. The development of a strategic housing plan that will
20 establish priorities to effectively targeted State resources should
21 significantly enhance the impact of those resources in meeting the
22 State's housing needs and fostering urban revitalization;

23 h. A strategic housing plan should provide for a means of
24 coordinating the activities of the many State departments and
25 agencies whose activities affect the ability of the State to meet its
26 housing needs;

27 i. The active involvement of individuals outside State
28 government with knowledge and experience in all phases of housing
29 preservation, development, and management, as well as planning
30 and urban revitalization, in the preparation and adoption of the plan,
31 and the monitoring of State activities pursuant to the plan, should
32 significantly enhance the value and effectiveness of the plan in
33 increasing the State's ability to meet its housing needs and foster
34 urban revitalization.

35

36 23. (New section) As used in sections 21 through 30 of P.L. ,
37 c. (C.) (pending before the Legislature as this bill):

38 "Agency" means the New Jersey Housing and Mortgage Finance
39 Agency.

40 "Commission" means the State Housing Commission established
41 pursuant to section 24 of P.L. , c. (C.) (pending before
42 the Legislature as this bill).

43 "Council" means the New Jersey Council on Affordable
44 Housing.

45 "Department" means the Department of Community Affairs.

46 "Middle income housing" means housing affordable according to
47 federal Department of Housing and Urban Development or other
48 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 or more than 80% but less than 120% of
3 the median gross household income for households of the same size
4 within the housing region in which the housing is located.

5 “Plan” means the Annual Strategic Housing Plan prepared
6 pursuant to section 27 of P.L. , c. (C.) (pending before
7 the Legislature as this bill).

8 “Report” means the Annual Housing Performance Report
9 required to be prepared pursuant to section 29 of P.L. , c.
10 (C.) (pending before the Legislature as this bill).

11 “Senior Deputy Commissioner for Housing” means the position
12 established within the department which is charged with overseeing
13 all housing programs.

14 “Working group” means the interdepartmental working group
15 created pursuant to section 26 of P.L. , c. (C.) (pending
16 before the Legislature as this bill).

17

18 24. (New section) a. The State Housing Commission is created
19 and established in the Executive Branch of the State Government.
20 For the purposes of complying with the provisions of Article V,
21 Section IV, paragraph 1 of the New Jersey Constitution, the
22 commission is allocated within the Department of Community
23 Affairs, but notwithstanding this allocation, the commission shall be
24 independent of any supervision or control by the department except
25 as expressly authorized under P.L. , c. (C.) (pending
26 before the Legislature as this bill). The commission shall consist of
27 15 public members and shall also include the Commissioner of
28 Community Affairs, the Commissioner of Environmental
29 Protection, the Commissioner of Human Services, the
30 Commissioner of Transportation, the Commissioner of Education,
31 the Chairman of the State Planning Commission, and the State
32 Treasurer, who shall be nonvoting, ex-officio members of the
33 commission. The non-public members may each designate a
34 qualified employee to serve in their stead.

35 Thirteen of the public members shall be appointed by the
36 Governor with the advice and consent of the Senate as follows:
37 four members shall be individuals qualified by expertise in housing
38 preservation, development, and management and who do not hold
39 public office or public employment, and one of the four shall have
40 particular experience in addressing the needs of the homeless; two
41 of the four members shall be individuals qualified by expertise in
42 urban revitalization and redevelopment and who do not hold public
43 office, one of whom shall be a nonprofit builder, and another
44 member of the four shall be a for-profit developer; two members
45 shall be elected local officials at the time of initial appointment, one
46 of whom shall be an elected official in a municipality having a
47 population greater than 50,000; two members shall be individuals
48 who do not hold public office and are qualified by their position and

1 experience to represent the interests of low and moderate income
2 and middle income families and individuals; one member shall be
3 an individual who does not hold public office and who is qualified
4 by expertise in planning and land use, one member who does not
5 hold public office shall be a licensed real estate broker or a licensed
6 real estate salesperson, and one member who shall be an executive
7 director of a public housing authority within the State. Two
8 additional public members who do not hold public office or public
9 employment shall be appointed as follows: one member by the
10 Speaker of the General Assembly and one member by the President
11 of the Senate. The public members of the commission shall reflect
12 the diversity of housing sector professionals.

13 b. The Governor shall nominate 13 public members of the
14 commission, within 90 days following the effective date of P.L. ,
15 c. (C.) (pending before the Legislature as this bill), and shall
16 designate a public member to preside over the commission until a
17 chair and vice-chair are elected by the members of the commission.
18 The Speaker of the General Assembly and the President of the
19 Senate shall each appoint a member, respectively, within 90 days
20 following the effective date of P.L. , c. (C.) (pending before
21 the Legislature as this bill).

22 c. Each public member of the commission shall serve for a
23 term of three years, except that of the initial members so appointed:
24 three members appointed by the Governor shall serve for terms of
25 one year; one member appointed by the President of the Senate, one
26 member appointed by the Speaker of the General Assembly and five
27 members appointed by the Governor shall serve for terms of two
28 years; and the remaining appointees shall serve for terms of three
29 years. Public members shall be eligible for reappointment. They
30 shall serve until their successors are appointed and qualified, and
31 the term of the successor of any incumbent shall be calculated from
32 the expiration of the term of that incumbent. A vacancy occurring
33 other than by expiration of term shall be filled in the same manner
34 as the original appointment, but for the unexpired term only.

35 The members of the commission shall serve without
36 compensation, but shall be entitled to reimbursement for all
37 necessary expenses incurred in the performance of their duties.
38 Each member of the commission may be removed from office by
39 the Governor, for cause, upon notice and opportunity to be heard.

40 d. The commission shall elect annually a chair and vice-chair
41 from among the public members of the commission, who shall serve
42 for one year and until a successor is elected.

43 e. The executive secretary of the commission shall be the
44 Senior Deputy Commissioner for Housing. In the event the
45 commissioner designates the Senior Deputy Commissioner for
46 Housing to serve in his or her stead as a member of the commission,
47 the Senior Deputy Commissioner for Housing shall designate a
48 qualified employee of the department to serve as executive

1 secretary of the commission. Eight of the voting members of the
2 commission shall constitute a quorum and a vote of the majority of
3 the members present shall be necessary for any action taken by the
4 commission.

5 f. The duties of the commission shall be as follows:

6 (1) To provide guidance and direction with respect to the
7 policies and strategies to be pursued by State agencies with respect
8 to housing which are incorporated into the plan.

9 (2) To prepare and adopt the Annual Strategic Housing Plan as
10 set forth in section 28 of P.L. , c. (C.) (pending before the
11 Legislature as this bill).

12 (3) To hold such public hearings and other activities as may be
13 desirable to ensure adequate public input into the preparation of the
14 plan and increase public awareness of the strategies and activities
15 contained in the plan.

16 (4) To gather and disseminate such information on housing
17 needs and strategies as may be useful for the work of the
18 commission and informative to the public.

19

20 25. (New section) The department shall provide such staff
21 services as may be needed for the commission to carry out its
22 responsibilities, including assembly of necessary information and
23 statistics, preparation of draft reports and analyses, and preparation
24 of the draft plan for review by the members of the commission,
25 acting under the supervision of the Senior Deputy Commissioner
26 for Housing.

27

28 26. (New section) a. An interdepartmental working group is
29 established for the purpose of supporting the activities of the
30 commission and its preparation of the draft plan.

31 b. The membership of the working group shall consist of the
32 commissioners or executive directors of the following departments
33 or agencies of State government: the Department of Community
34 Affairs, the Council on Affordable Housing, the New Jersey
35 Housing and Mortgage Finance Agency, the Department of Human
36 Services, the Department of Children and Families, the Department
37 of Health and Senior Services, the Public Advocate, the Department
38 of Education, the Department of Environmental Protection, the
39 Department of Transportation, the Office of Smart Growth, the
40 Department of the Treasury, the Highlands Council, the Pinelands
41 Commission, and the New Jersey Meadowlands Commission.

42 c. The Commissioner of Community Affairs may appoint the
43 Senior Deputy Commissioner for Housing as his or her
44 representative to serve on the working group.

45 d. Each other commissioner or executive director may appoint
46 a representative to serve on the working group, who shall be a
47 senior employee of the department or agency with substantial

1 background, experience, or training relevant to the mission of the
2 working group.

3 e. The working group shall be chaired by the Commissioner of
4 Community Affairs or by the Senior Deputy Commissioner for
5 Housing as the commissioner's designee, if so appointed.

6 f. Meetings of the working group shall be called by the chair as
7 needed during the course of preparation of the plan or the annual
8 performance report.

9 g. Each department or agency constituting the working group
10 shall make available such personnel and information as may be
11 necessary to enable the working group to perform its
12 responsibilities.

13

14 27. (New section) a. It shall be the duty of the commission
15 annually to prepare and adopt an Annual Strategic Housing Plan as
16 set forth in this section.

17 The objectives of the plan shall be as follows:

18 (1) To ensure that quality housing for people of all income
19 levels is made available throughout the State of New Jersey.

20 (2) To overcome the shortage of housing affordable to low,
21 moderate, and middle income households, in order to ensure the
22 viability of New Jersey's communities and maintain the State's
23 economic strength.

24 (3) To meet the need for safe and accessible affordable housing
25 and supportive services for people with disabilities.

26 (4) To foster a full range of quality housing choices for people
27 of diverse incomes through mixed income development in urban
28 areas and in locations appropriate for growth, including transit hubs
29 and corridors, and areas of job concentration.

30 (5) To address the needs of communities that have been
31 historically underserved and segregated due to barriers and trends in
32 the housing market, and frame strategies to address the needs of
33 those communities.

34 (6) To facilitate the preservation of existing affordable rental
35 housing, including both subsidized and private market rental
36 housing.

37 (7) To further the preservation of low and moderate income and
38 middle income homeownership, including strategies to protect
39 lower income homeowners from the loss of their homes through
40 foreclosure.

41 b. In addressing these objectives, the plan shall explicitly take
42 into consideration the needs of the following distinct populations:

43 (1) Households earning below 50% of the area median income,
44 with particular emphasis on households earning less than 30% of
45 the area median income;

46 (2) Low income senior citizens of 62 years of age or older;

47 (3) Low income persons with disabilities, including but not
48 limited to physical disability, developmental disability, mental

- 1 illness, co-occurring mental illness and substance abuse disorder,
2 and HIV/AIDS;
- 3 (4) Homeless persons and families, and persons deemed at high
4 risk of homelessness;
- 5 (5) Low and moderate income and middle income households
6 unable to find housing near work or transportation;
- 7 (6) Low and moderate income and middle income persons and
8 families in existing affordable housing that is at risk of becoming
9 unaffordable or being lost for any reason;
- 10 (7) Any other part of the population that the commission finds
11 to have significant housing needs, either Statewide or in particular
12 areas of the State.
- 13 c. The plan shall include, but not be limited to, the following:
- 14 (1) The identification of all funds which any agency or
15 department of the State controls and uses for housing construction,
16 rehabilitation, preservation, operating or rental subsidies and
17 supportive services, including bond proceeds, the allocation of
18 federal Low Income Housing Tax Credits, and the use of
19 administrative funds by the agency or the department;
- 20 (2) Goals for the number and type of housing units to be
21 constructed, rehabilitated, or preserved each year for the
22 underserved populations identified in subsection b. of this section,
23 taking into account realistic assessments of financial resources and
24 delivery capacity survey, and shall include an assessment aimed at
25 identifying and estimating the number of substandard housing units
26 within the State;
- 27 (3) Specific recommendations for the manner in which all funds
28 identified in paragraph (1) of this subsection should be prioritized
29 and used, either through new construction, rehabilitation,
30 preservation, rental subsidies, or other activities, to address the
31 needs of the underserved populations set forth in subsection b. of
32 this section;
- 33 (4) Specific actions needed to ensure the integrated use of State
34 government resources that can be used to create or preserve
35 affordable housing, provide supportive services, facilitate the use of
36 housing for urban revitalization, and prevent homelessness,
37 including an identification of the specific agencies and programs
38 responsible for each action;
- 39 (5) An assessment of the State's performance during the
40 preceding year;
- 41 (6) Recommendations for changes to any program or use of
42 funds which the State controls available for land use planning,
43 housing construction, rehabilitation, preservation, operating or
44 rental subsidies and supportive services, including both procedural
45 and substantive changes, and the specific agencies responsible for
46 each change;
- 47 (7) Recommendations for State and local actions to promote the
48 creation and preservation of subsidized affordable and market-rate

1 housing by private sector, non-profit, and government agencies,
2 with particular reference to changes to programs, regulations, and
3 other activities that impede such activities;

4 (8) Recommendations for State and local actions for programs
5 and strategies through which the provision of affordable and mixed-
6 income housing can better further citywide and neighborhood
7 revitalization in the State's urban areas; and

8 (9) Identification of strategies that local government can take to
9 create or preserve affordable housing, including specific
10 recommendations for the use of monies collected through developer
11 fees in local housing development trust funds.

12 d. The plan shall provide for both annual and long-term targets
13 and priorities.

14

15 28. (New section) a. The commission shall complete a draft
16 plan on or before October 1 of each year. The commission shall
17 adopt the plan by a vote of a majority of its members and transmit
18 the plan to the Governor and the Joint Committee on Housing
19 Affordability, or its successor, on or before the next January 1. The
20 plan shall cover the fiscal year from July 1 to June 30th, beginning
21 with July 1 of the preceding year, except that the first annual plan
22 shall be transmitted on the first January 1 that falls after the annual
23 anniversary of the effective date of P.L. , c. (C.) (pending
24 before the Legislature as this bill).

25 b. With respect to the plans for the second through fourth years
26 following the initial plan, the commission may adopt and submit
27 either a plan de novo or an update to, or revision of, the initial
28 year's plan, based on its judgment as to the extent of housing needs,
29 funding resources, or other conditions that have or have not
30 changed since the initial plan was prepared. In the fifth year
31 following the initial plan, and every five years thereafter, the
32 commission shall adopt and submit a complete plan de novo.

33 c. The plan and all supporting documentation thereof shall be
34 made available both in printed form by the department and in
35 downloadable form on the department's web site.

36

37 29. (New section) a. On or before January 1 of each year,
38 beginning with the first January 1 that falls after the annual
39 anniversary of the effective date of P.L. , c. (C.) (pending
40 before the Legislature as this bill), the department, in consultation
41 with the commission and the working group, shall prepare and
42 submit to the Governor and the Joint Committee on Housing
43 Affordability, or its successor, an Annual Housing Performance
44 Report. Within 30 days following receipt of the Annual Housing
45 Performance Report, a hearing shall be held by the Joint Committee
46 on Housing Affordability, or its successor, to provide an
47 opportunity for public comment and discussion.

1 b. The report shall include, but shall not be limited to, the
2 following information:

3 (1) All housing units constructed, rehabilitated, or preserved in
4 which funds controlled by any agency of the State were utilized,
5 including the number of units by:

6 (a) Location;

7 (b) Affordability and income ranges of occupants;

8 (c) Target population; i.e., small family, large family, senior
9 citizens, people with disabilities;

10 (d) Type of housing, including ownership, rental, and other
11 forms of tenure; physical type such as single family or multifamily;
12 and whether the unit was newly constructed, rehabilitated, or
13 preserved; and

14 (e) The amount and source of all State-controlled funds used.

15 (2) All bond issuance activity by the agency, including interest
16 rates and the use of bond proceeds.

17 (3) All other activities, including financial support, technical
18 assistance, or other support conducted by the State to further
19 affordable housing.

20 (4) Municipal performance pursuant to the "Fair Housing Act,"
21 P.L.1985, c.222 (C.52:27D-301 et al.), including the number of
22 units listed for the distinct populations as enumerated in subsection
23 b. of section 27 of P.L. , c. (C.) (pending before the
24 Legislature as this bill), and the monies collected and the use of all
25 developer fee proceeds deposited into municipal housing trust
26 funds.

27 (5) For every report issued subsequent to the end of the first
28 year for which a plan has been prepared pursuant to sections 27 and
29 28 of P.L. , c. (C.) (pending before the Legislature as this
30 bill):

31 (a) A comparison between the goals, strategies, and priorities
32 set forth in the plan and the outcomes of programs and strategies
33 carried out by the State during the year, and a statement of the
34 reasons for any differences between the plan and the State's
35 programs and strategies; and

36 (b) A description of the manner in which the State has addressed
37 the recommendations, if any, for procedural or substantive changes
38 to any State program or activity set forth in the plan.

39 (6) Statistical appendices providing information on individual
40 projects and funding allocations.

41 c. The report, appendices, and all supporting documentation
42 thereof shall be made available both in printed form from the
43 department and in downloadable form on the department's web site.
44

45 30. (New section) a. The position of Senior Deputy
46 Commissioner for Housing is established within the department,
47 which position shall be filled by an individual with recognized and
48 extensive experience in housing policy, planning, and development

1 with particular emphasis on the planning and development of
2 housing affordable to low, moderate, and middle income
3 households.

4 b. The Senior Deputy Commissioner for Housing shall exercise
5 oversight over the housing programs of the department, including,
6 but not limited to, programs of the agency and the council.

7 c. The commissioner may appoint the Senior Deputy
8 Commissioner for Housing as his or her designee to chair the
9 agency, the commission, or the council, in which capacity or
10 capacities the Senior Deputy Commissioner for Housing will have
11 all of the powers vested in those positions by law.

12

13 31. (New section) a. In proposing a rule for adoption, the
14 agency involved shall issue a housing affordability impact analysis
15 regarding the rule, which shall be included in the notice of a
16 proposed rule as required by subsection (a) of section 4 of
17 P.L.1968, c.410 (C.52:14B-4). Each housing affordability impact
18 analysis shall contain:

19 (1) A description of the types and an estimate of the number of
20 housing units to which the proposed rule will apply; and

21 (2) A description of the estimated increase or decrease in the
22 average cost of housing which will be affected by the regulation.

23 This subsection shall not apply to any proposed rule which the
24 agency finds would impose an insignificant impact, either because
25 the scope of the regulation is minimal, or there is an extreme
26 unlikelihood that the regulation would evoke a change in the
27 average costs associated with housing. The agency's finding and an
28 indication of the basis for its finding shall be included in the notice
29 of a proposed rule as required by subsection (a) of section 4 of
30 P.L.1968, c.410 (C.52:14B-4).

31 b. In proposing a rule for adoption, the agency involved shall
32 issue a smart growth development impact analysis regarding the
33 rule, which shall be included in the notice of a proposed rule as
34 required by subsection (a) of section 4 of P.L.1968, c.410
35 (C.52:14B-4). Each smart growth development impact analysis
36 shall contain:

37 (1) A description of the types and an estimate of the number of
38 housing units to which the proposed rule will apply;

39 (2) A description of the estimated increase or decrease in the
40 availability of affordable housing which will be affected by the
41 regulation; and

42 (3) A description as to whether the proposed rule will affect in
43 any manner new construction within Planning areas 1 or 2, or
44 within designated centers, under the State Development and
45 Redevelopment Plan.

46 This subsection shall not apply to any proposed rule which the
47 agency finds would impose an insignificant impact, either because
48 the scope of the regulation is minimal, or there is an extreme

1 unlikelihood that the regulation would evoke a change in the
2 housing production within Planning areas 1 or 2, or within
3 designated centers, under the State Development and
4 Redevelopment Plan. The agency's finding and an indication of the
5 basis for its finding shall be included in the notice of a proposed
6 rule as required by subsection (a) of section 4 of P.L.1968, c.410
7 (C.52:14B-4).

8 For the purposes of complying with this subsection, and in order
9 to avoid duplicative action, an agency may consider a series of
10 closely related rules as one rule.

11 c. For the purposes of this section, "types" means housing
12 groups distinguished by the following categories: housing reserved
13 for occupancy by very low, low and moderate and middle income
14 households, respectively; single family, two-family, and multi-
15 family housing; rental housing and for-sale housing.

16

17 32. (New section) Sections 32 through 38 of P.L. , c. (C.)
18 (pending before the Legislature as this bill) shall be known and may
19 be cited as the "Statewide Non-residential Development Fee Act."

20

21 33. (New section) The Legislature finds and declares:

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

27 b. New Jersey's land resources are becoming more scarce,
28 while its redevelopment needs are increasing. In order to balance
29 the needs of developing and redeveloping communities, a
30 reasonable method of providing for the housing needs of low and
31 moderate income and middle income households, without
32 mandating the inclusion of housing in every non-residential project,
33 must be established.

34 c. A Statewide non-residential development fee program which
35 permits municipalities under the council's jurisdiction to retain
36 these fees for use in the municipality will provide a fair and
37 balanced funding method to address the State's affordable housing
38 needs, while providing an incentive to all municipalities to seek
39 substantive certification from the council.

40 d. Whereas pursuant to P.L.1977, c.110 (C.5:12-1 et seq.),
41 organizations are directed to invest in the Casino Reinvestment
42 Development Authority to ensure that the development of housing
43 for families of low and moderate income shall be provided. The
44 Casino Reinvestment Development Authority, in consultation with
45 the council, shall work to effectuate the purpose and intent of P.L.
46 1985, c. 222 (C. 52:27D-301 et al.).

1 34. (New section) As used in sections 32 through 38 of P.L. ,
2 c. (C.) (pending before the legislature as this bill).

3 “Construction” means new construction and additions, but does
4 not include alterations, reconstruction, renovations, and repairs as
5 those terms are defined under the State Uniform Construction Code
6 promulgated pursuant to the "State Uniform Construction Code
7 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

8 “Commissioner” means the Commissioner of Community
9 Affairs.

10 “Council” means the Council on Affordable Housing, established
11 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

12 “Developer” means the legal or beneficial owner or owners of a
13 lot or of any land proposed to be included in a proposed
14 development, including the holder of an option or contract to
15 purchase, or other person having an enforceable proprietary interest
16 in such land.

17 "Equalized assessed value" means the assessed value of a
18 property divided by the current average ratio of assessed to true
19 value for the municipality in which the property is situated, as
20 determined in accordance with sections 1, 5, and 6 of P.L.1973,
21 c.123 (C.54:1-35a through C.54:1-35c).

22 “Mixed use development” means any development which
23 includes both a non-residential development component and a
24 residential development component, and shall include developments
25 for which (1) there is a common developer for both the residential
26 development component and the non-residential development
27 component, provided that for purposes of this definition, multiple
28 persons and entities may be considered a common developer if there
29 is a contractual relationship among them obligating each entity to
30 develop at least a portion of the residential or non-residential
31 development, or both, or otherwise to contribute resources to the
32 development; and (2) the residential and non-residential
33 developments are located on the same lot or adjoining lots,
34 including but not limited to lots separated by a street, a river, or
35 another geographical feature.

36 "Non-residential development" means: (1) any building or
37 structure, or portion thereof, including but not limited to any
38 appurtenant improvements, which is designated to a use group other
39 than a residential use group according to the State Uniform
40 Construction Code promulgated to effectuate the "State Uniform
41 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.),
42 including any subsequent amendments or revisions thereto; (2)
43 hotels, motels, vacation timeshares, and child-care facilities, and (3)
44 the entirety of all continuing care facilities within a continuing care
45 retirement community which is subject to the "Continuing Care
46 Retirement Community Regulation and Financial Disclosure Act,"
47 P.L.1986, c.103 (C.52:27D-330 et seq.).

1 “Non-residential development fee” means the fee authorized to
2 be imposed pursuant to sections 32 through 38 of P.L. , c. (C.)
3 (pending before the Legislature as this bill).

4 “Relating to the provision of housing” shall be liberally
5 construed to include the construction, maintenance, or operations of
6 housing, including but not limited to the provision of services to
7 such housing and the funding of any of the above.

8 “Spending plan” means a method of allocating funds collected
9 and to be collected pursuant to an approved municipal development
10 fee ordinance, or pursuant to P.L. , c. (C.) (pending before
11 the Legislature as this bill) for the purpose of meeting the housing
12 needs of low and moderate income individuals.

13 “Treasurer” means the Treasurer of the State of New Jersey.
14

15 35. (New section) a. Beginning on the effective date of P.L. ,
16 c. (C.) (pending before the Legislature as this bill), a fee is
17 imposed on all construction resulting in non-residential
18 development, as follows:

19 (1) A fee equal to two and one-half percent of the equalized
20 assessed value of the land and improvements, for all new non-
21 residential construction on an unimproved lot or lots; or

22 (2) A fee equal to two and one-half percent of the increase in
23 equalized assessed value, of the additions to existing structures to
24 be used for non-residential purposes.

25 b. All non-residential construction of buildings or structures on
26 property used by churches, synagogues, mosques, and other houses
27 of worship, and property used for educational purposes, which is
28 tax-exempt pursuant to R.S.54:4-3.6, shall be exempt from the
29 imposition of a non-residential development fee pursuant to this
30 section, provided that the property continues to maintain its tax
31 exempt status under that statute for a period of at least three years
32 from the date of issuance of the certificate of occupancy. In
33 addition, the following shall be exempt from the imposition of a
34 non-residential development fee:

35 (1) parking lots and parking structures, regardless of whether the
36 parking lot or parking structure is constructed in conjunction with a
37 non-residential development, such as an office building, or whether
38 the parking lot is developed as an independent non-residential
39 development;

40 (2) any non-residential development which is an amenity to be
41 made available to the public, including, but not limited to,
42 recreational facilities, community centers, and senior centers, which
43 are developed in conjunction with or funded by a non-residential
44 developer;

45 (3) non-residential construction resulting from a relocation of or
46 an on-site improvement to a nonprofit hospital or a nursing home
47 facility;

1 (4) projects that are located within a specifically delineated
2 urban transit hub, as defined pursuant to section 2 of P.L.2007,
3 c.346 (C.34:1B-208);

4 (5) projects that are located within an eligible municipality, as
5 defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a
6 majority of the project is located within a one-half mile radius of
7 the midpoint of a platform area for a light rail system; and

8 (6) projects determined by the New Jersey Transit Corporation to
9 be consistent with a transit village plan developed by a transit
10 village designated by the Department of Transportation.

11 A developer of a non-residential development exempted from the
12 non-residential development fee pursuant to this section shall be
13 subject to it at such time the basis for the exemption set forth in this
14 subsection no longer applies, and shall make the payment of the
15 non-residential development fee, in that event, within three years
16 after that event or after the issuance of the final certificate of
17 occupancy of the non-residential development whichever is later.

18 For purposes of this subsection, “recreational facilities and
19 community center” means any indoor or outdoor buildings, spaces,
20 structures, or improvements intended for active or passive
21 recreation, including but not limited to ball fields, meeting halls,
22 and classrooms, accommodating either organized or informal
23 activity; and “senior center” means any recreational facility or
24 community center with activities and services oriented towards
25 serving senior citizens.

26 If a property which was exempted from the collection of a non-
27 residential development fee thereafter ceases to be exempt from
28 property taxation, the owner of the property shall remit the fees
29 required pursuant to this section within 45 days of the termination
30 of the property tax exemption. Unpaid non-residential development
31 fees under these circumstances may be enforceable by the
32 municipality as a lien against the real property of the owner.

33 c. (1) Unless authorized to pay directly to the municipality in
34 which the non-residential construction is occurring in accordance
35 with paragraph (2) of this subsection, developers shall pay non-
36 residential development fees imposed pursuant to P.L. , c. (C.)
37 (pending before the Legislature as this bill) to the Treasurer, in
38 accordance with subsection h. of this section in a manner and on
39 such forms as required by the Treasurer, provided that a certified
40 proof concerning the payment shall be furnished by the Treasurer,
41 to the municipality.

42 (2) The council shall maintain on its website a list of each
43 municipality that is authorized to use the development fees
44 collected pursuant to this section and that has a confirmed status of
45 compliance with the “Fair Housing Act,” P.L.1985, c.222
46 (C.52:27D-301 et al.), which compliance shall include a spending
47 plan authorized by the council for all development fees collected.

1 d. The payment of non-residential development fees required
2 pursuant to sections 32 through 38 of P.L. , c. (C.) (pending
3 before the Legislature as this bill) shall be made prior to the
4 issuance of a certificate of occupancy for such development. A
5 final certificate of occupancy shall not be issued for any non-
6 residential development until such time as the fee imposed pursuant
7 to this section has been paid by the developer. A non-residential
8 developer may deposit with the appropriate entity the development
9 fees as calculated by the municipality under protest, and the local
10 code enforcement official shall thereafter issue the certificate of
11 occupancy provided that the construction is otherwise eligible for a
12 certificate of occupancy.

13 e. The construction official responsible for the issuance of a
14 building permit shall notify the local tax assessor of the issuance of
15 the first building permit for a development which may be subject to
16 a non-residential development fee. Within 90 days of receipt of that
17 notice, the municipal tax assessor, based on the plans filed, shall
18 provide an estimate of the equalized assessed value of the non-
19 residential development. The construction official responsible for
20 the issuance of a final certificate of occupancy shall notify the local
21 assessor of any and all requests for the scheduling of a final
22 inspection on property which may be subject to a non-residential
23 development fee. Within 10 business days of a request for the
24 scheduling of a final inspection, the municipal assessor shall
25 confirm or modify the previously estimated equalized assessed
26 value of the improvements of the non-residential development in
27 accordance with the regulations adopted by the Treasurer pursuant
28 to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential
29 development fee pursuant to sections 32 through 38 of P.L. , c.
30 (C.) (pending before the Legislature as this bill); and thereafter
31 notify the developer of the amount of the non-residential
32 development fee. Should the municipality fail to determine or
33 notify the developer of the amount of the non-residential
34 development fee within 10 business days of the request for final
35 inspection, the developer may estimate the amount due and pay that
36 estimated amount consistent with the dispute process set forth in
37 subsection b. of section 37 of P.L. , c. (C.) (pending before
38 the Legislature as this bill). Upon tender of the estimated non-
39 residential development fee, provided the developer is in full
40 compliance with all other applicable laws, the municipality shall
41 issue a final certificate of occupancy for the subject property.
42 Failure of the municipality to comply with the timeframes or
43 procedures set forth in this subsection may subject it to penalties to
44 be imposed by the commissioner; any penalties so imposed shall be
45 deposited into the “New Jersey Affordable Housing Trust Fund”
46 established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-
47 320).

1 A developer of a mixed use development shall be required to pay
2 the Statewide non-residential development fee relating to the non-
3 residential development component of a mixed use development
4 subject to the provisions of P.L. , c. (C.) (pending before
5 the Legislature as this bill).

6 Non-residential construction which is connected with the
7 relocation of the facilities of a for-profit hospital shall be subject to
8 the fee authorized to be imposed under this section to the extent of
9 the increase in equalized assessed valuation in accordance with
10 regulations to be promulgated by the Director of the Division of
11 Taxation, Department of the Treasury.

12 f. Any municipality that is not in compliance with the
13 requirements established pursuant to sections 32 through 38 of P.L.,
14 c. (C.) (pending before the Legislature as this bill), or
15 regulations of the council adopted thereto, may be subject to
16 forfeiture of any or all funds remaining within its municipal
17 development trust fund. Any funds so forfeited shall be deposited
18 into the "New Jersey Affordable Housing Trust Fund" established
19 pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

20 g. The Treasurer shall credit to the "Urban Housing Assistance
21 Fund," established pursuant to section 13 of P.L. , c. (C.)
22 (pending before the Legislature as this bill) annually from the
23 receipts of the fees authorized to be imposed pursuant to this
24 section an amount equal to \$20 million; all receipts in excess of this
25 amount shall be deposited into the "New Jersey Affordable Housing
26 Trust Fund," established pursuant to section 20 of P.L.1985, c.222
27 (C.52:27D-320), to be used for the purposes of that fund.

28 The Treasurer shall adopt such regulations as necessary to
29 effectuate sections 32 through 38 of P.L. , c. (C.) (pending
30 before the Legislature as this bill), in accordance with the
31 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
32 seq.

33

34 36. (New section) a. The commissioner, in consultation with
35 the council, shall promulgate, in accordance with the provisions of
36 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
37 seq.), such regulations as are necessary for the prompt and effective
38 implementation of the provisions and purposes of P.L. , c. (C.)
39 (pending before the Legislature as this bill), including, but not
40 limited to, provisions for the payment of any necessary
41 administrative costs related to the assessment of properties and
42 collection of any development fees by a municipality.

43 b. Notwithstanding the authority granted to the commissioner
44 herein, the council shall adopt and promulgate, in accordance with
45 the provisions of the "Administrative Procedure Act," P.L.1968,
46 c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the
47 effectuation of P.L. , c. (C.) (pending before the Legislature
48 as this bill), including but not limited to, regulations necessary for

1 the establishment, implementation, review, monitoring, and
2 enforcement of a municipal affordable housing trust fund and
3 spending plan.

4

5 37. (New section) a. The provisions of sections 32 through 38
6 of P.L. , c. (C.) (pending before the Legislature as this bill)
7 shall not apply to:

8 (1) Non-residential property for which a certificate of occupancy
9 has been issued prior to the effective date of P.L. , c. (C.)
10 (pending before the Legislature as this bill); or

11 (2) A non-residential planned development which has received
12 approval of a general development plan pursuant to section 5 of
13 P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development
14 for which the developer has entered into a developer's agreement
15 pursuant to a development approval granted pursuant to P.L.1975,
16 c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered
17 into a redevelopment agreement pursuant to P.L.1992, c.79
18 (C.40A:12A-1 et seq.) prior to the effective date of P.L. , c. (C.)
19 (pending before the Legislature as this bill); provided, however, that
20 the general development plan, developer's agreement,
21 redevelopment agreement, or any development agreement pursuant
22 to the "Municipal Land Use Law," P.L.1975, c.291 (C. 40:55D-1 et
23 seq.) provides that the developer or redeveloper pay a fee for
24 affordable housing of at least one percent of the equalized assessed
25 value of the improvements which are the subject of the development
26 plan, developer's agreement, or redevelopment agreement.

27 b. A developer may challenge non-residential development fees
28 imposed pursuant to P.L. , c. (C.) (pending before the
29 Legislature as this bill) by filing a challenge with the Director of the
30 Division of Taxation. Pending a review and determination by the
31 director, which shall be made within 45 days of receipt of the
32 challenge, collected fees shall be placed in an interest bearing
33 escrow account by the municipality or by the State, as the case may
34 be. Appeals from a determination of the director may be made to
35 the to the tax court in accordance with the provisions of the State
36 Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days
37 after the date of such determination. Interest earned on amounts
38 escrowed shall be credited to the prevailing party.

39 c. Whenever non-residential development is situated on real
40 property that has been previously developed with a building,
41 structure, or other improvement, the non-residential development
42 fee shall be equal to two and a half (2.5) percent of the equalized
43 assessed value of the land and improvements on the property where
44 the non-residential development is situated at the time the final
45 certificate of occupancy is issued, less the equalized assessed value
46 of the land and improvements on the property where the non-
47 residential development is situated, as determined by the tax
48 assessor of the municipality at the time the developer or owner,

1 including any previous owners, first sought approval for a
2 construction permit, including, but not limited to, demolition
3 permits, pursuant to the State Uniform Construction Code, or
4 approval under the "Municipal Land Use Law," P.L.1975, c.291
5 (C.40:55D-1 et seq.). If the calculation required under this section
6 results in a negative number, the non-residential development fee
7 shall be zero.

8 Whenever the developer of a non-residential development has
9 made or committed itself to make a financial or other contribution
10 relating to the provision of housing affordable to low and moderate
11 income households prior to the enactment of P.L. , c. (C.)
12 (pending before the Legislature as this bill), the non-residential
13 development fee shall be reduced by the amount of the financial
14 contribution and the fair market value of any other contribution
15 made by or committed to be made by the developer. For purposes
16 of this section, a developer is considered to have made or
17 committed itself to make a financial or other contribution, if and
18 only if: (1) the contribution has been transferred, including but not
19 limited to when the funds have already been received by the
20 municipality; (2) the developer has obligated itself to make a
21 contribution as set forth in a written agreement with the
22 municipality, such as a developer's agreement; or (3) the
23 developer's obligation to make a contribution is set forth as a
24 condition in a land use approval issued by a municipal land use
25 agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291
26 (C.40:55D-1 et seq.).

27 d. Unless otherwise provided for by law, no municipality shall
28 be required to return a financial or any other contribution made by
29 or committed to be made by the developer of a non-residential
30 development prior to the enactment of P.L. , c. (C.)
31 (pending before the Legislature as this bill) relating to the provision
32 of housing affordable to low and moderate income households,
33 provided that the developer does not obtain an amended, modified,
34 or new municipal land use approval with a substantial change in the
35 non-residential development. If the developer obtains an amended,
36 modified, or new land use approval for non-residential
37 development, the municipality, person, or entity shall be required to
38 return to the developer any funds or other contribution provided by
39 the developer for the provision of housing affordable to low and
40 moderate income households and the developer shall not be entitled
41 to a reduction in the affordable housing development fee based
42 upon that contribution.

43 e. The provisions of sections 32 through 38 of P.L. , c. (C.)
44 (pending before the Legislature as this bill) shall not be construed in
45 any manner as affecting the method or timing of assessing real
46 property for property taxation purposes. The payment of a non-
47 residential development fee shall not increase the equalized
48 assessed value of any property.

1 38. a. (New section) Except as expressly provided in P.L. , c.
2 (C.) (pending before the Legislature as this bill) including
3 subsection b. of this section, any provision of a local ordinance
4 which imposes a fee for the development of affordable housing
5 upon a developer of non-residential property, including any and all
6 development fee ordinances adopted in accordance with any
7 regulations of the Council on Affordable Housing, or any provision
8 of an ordinance which imposes an obligation relating to the
9 provision of housing affordable to low and moderate income
10 households, or payment in-lieu of building as a condition of non-
11 residential development, shall be void and of no effect. A provision
12 of an ordinance which imposes a development fee which is not
13 prohibited by any provision of P.L. , c. (C.) (pending before
14 the Legislature as this bill) shall not be invalidated by this section.

15 b. No affordable housing obligation shall be imposed
16 concerning a mixed use development that would result in an
17 affordable housing obligation greater than that which would have
18 been imposed if the residential portion of the mixed use
19 development had been developed independently of the non-
20 residential portion of the mixed use development.

21 c. Whenever the developer of a non-residential development
22 regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or
23 committed itself to make a financial or other contribution relating to
24 the provision of housing affordable to low and moderate income
25 households, the non-residential development fee authorized
26 pursuant to P.L. , c. (C.) (pending before the Legislature as
27 this bill) shall be satisfied through the investment obligations made
28 pursuant to P.L.1977, c.110 (C.5:12-1 et seq.).

29

30 39. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended
31 to read as follows:

32 1. When computing a municipal adjustment regarding available
33 land resources as part of the determination of a municipality's fair
34 share of affordable housing, the Council on Affordable Housing
35 shall exclude from designating as vacant land:

36 (a) any land that is owned by a local government entity that as of
37 January 1, 1997, has adopted, prior to the institution of a lawsuit
38 seeking a builder's remedy or prior to the filing of a petition for
39 substantive certification of a housing element and fair share plan, a
40 resolution authorizing an execution of agreement that the land be
41 utilized for a public purpose other than housing;

42 (b) any land listed on a master plan of a municipality as being
43 dedicated, by easement or otherwise, for purposes of conservation,
44 park lands or open space and which is owned , leased, licensed, or
45 in any manner operated by a county, municipality or tax-exempt,
46 nonprofit organization including a local board of education , or by
47 more than one municipality by joint agreement pursuant to
48 P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity

1 maintains such ownership, lease, license, or operational control of
2 such land ; **[and]**

3 (c) any vacant contiguous parcels of land in private ownership of
4 a size which would accommodate fewer than five housing units if
5 current standards of the council were applied pertaining to housing
6 density;

7 (d) historic and architecturally important sites listed on the State
8 Register of Historic Places or National Register of Historic Places
9 prior to the submission of the petition of substantive certification;

10 (e) agricultural lands when the development rights to these lands
11 have been purchased or restricted by covenant;

12 (f) sites designated for active recreation that are designated for
13 recreational purposes in the municipal master plan; and

14 (g) environmentally sensitive lands where development is
15 prohibited by any State or federal agency.

16 No municipality shall be required to utilize for affordable
17 housing purposes land that is excluded from being designated as
18 vacant land.

19 (cf: P.L.1997, c.49, s.1)

20

21 40. (New section) Sections 1 through 37 of P.L.1949, c.303
22 (C.55:14H-1 et seq.) and P.L.1950, c.108 (C.55:14H-9.1) are
23 repealed.

24

25 41. This act shall take effect immediately.