

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1
STATE OF NEW JERSEY

Sponsored by Senator LESNIAK

AN ACT concerning affordable housing, amending, supplementing and repealing various parts of the statutory law.

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

1. (New section) The Legislature finds and declares that:

a. The Legislature, in an attempt to comply with the requirements enumerated by the opinions in Mount Laurel I and II and to provide municipalities a safe haven from exclusionary zoning litigation and the builder's remedy, established the "Fair Housing Act," P.L.1985, c.222, which required a complex system of administration that micromanages all types of development: residential, market rate and affordable; and commercial, retail and industrial, through a determination of each region and municipality's affordable housing needs based on difficult to predict and fallible population and job growth projections.

b. This complex system of regulation has resulted in scores of lawsuits and court decisions, and huge expenses to municipalities, the judiciary, and the State.

c. The most effective way of complying with the Mount Laurel I and II decisions without wasting limited governmental resources needed to fulfill its many functions, including public safety, health care, and environmental protection, education, protection of civil rights, promotion of economic growth and job creation, is to establish a simple, rather than complex, system that maximizes the ability of the free market to produce affordable housing for low and moderate income residents of the State.

d. Municipalities that already have a healthy mix of affordable and market rate housing should not be encumbered with State zoning mandates that are needed to create an opportunity for an

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

Matter underlined thus is new matter.

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appropriate variety and choice of affordable and market rate housing in other municipalities where a reasonable variety of housing does not already exist.

e. By requiring those municipalities not already having a reasonable mix of affordable and market rate housing to comply with zoning mandates as established hereunder, the State will maximize the opportunity for affordable housing in those municipalities without wasting limited resources necessary to provide for the other governmental functions stated herein, which only represent some, but not all, of governments responsibility to provide for the general welfare of its residents

f. The simple, market-driven system established hereunder will enable the State to establish a housing policy that maximizes the production of affordable housing to serve the general welfare of all the State's residents.

2. (New section) The Council on Affordable Housing established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) is abolished, and all of its powers, functions, and duties that are not repealed herein are continued in the State Planning Commission established pursuant to section 2 of P.L.1985, c.398 (C.52:18A-197), except as herein otherwise provided. Whenever, in any law rule, regulation, order, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Council on Affordable Housing, the same shall mean and refer to the State Planning Commission. All appropriations and other moneys available and to become available to the Council on Affordable Housing are hereby continued in the commission, and shall be available for the objects and purposes for which such moneys are appropriated, subject to any terms, restriction, limitations, or other requirements imposed by State or federal law.

This transfer shall be subject to the provisions of the "State Agency Transfer Act," P.L.1971, c.375 (C.52:14D-1 et seq.).

3. Section 4 of P.L.1985, c.398 (C.52:18A-199) is amended to read as follows:

4. The commission shall:

a. Prepare and adopt within 36 months after the enactment of P.L.1985, c.398 (C.52:18A-196 et al.), and revise and readopt at least every **three** six years thereafter, the State Development and Redevelopment Plan, which shall provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions and which shall identify areas for growth, agriculture, open space conservation and other appropriate designations;

b. Prepare and adopt as part of the plan a long-term Infrastructure Needs Assessment, which shall provide information

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on present and prospective conditions, needs and costs with regard to State, county and municipal capital facilities, including water, sewerage, transportation, solid waste, drainage, flood protection, shore protection and related capital facilities;

c. Develop and promote procedures to facilitate cooperation and coordination among State agencies, regional entities, and local governments with regard to the development of plans, programs and policies which affect land use, environmental, capital and economic development issues;

d. Provide technical assistance to local governments and regional entities in order to encourage the use of the most effective and efficient planning and development review data, tools and procedures;

e. Periodically review State, regional, and local government planning procedures and relationships and recommend to the Governor and the Legislature administrative or legislative action to promote a more efficient and effective planning process;

f. Review any bill introduced in either house of the Legislature which appropriates funds for a capital project and may study the necessity, desirability and relative priority of the appropriation by reference to the State Development and Redevelopment Plan, and may make recommendations to the Legislature and to the Governor concerning the bill; **[and]**

g. Take all actions necessary and proper to carry out the provisions of P.L.1985, c.398 (C.52:18A-196 et al.)

h. To assume the duties of the Council on Affordable Housing that are not repealed herein and are transferred to the commission pursuant to section 2 of P.L. , c. (C.) and section 18 of P.L. , c. (C.) (pending before the Legislature as this bill).
(cf: P.L.2004, c.120, s.64)

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

2. The Legislature finds that:

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

b. In the second *Mount Laurel* ruling, the Supreme Court stated that the determination of the methods for satisfying this constitutional obligation "is better left to the Legislature," that the court has "always preferred legislative to judicial action in their field," and that the judicial role in upholding the *Mount Laurel*

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doctrine "could decrease as a result of legislative and executive action." The Fair Housing Act, as administered by the Council on Affordable Housing, increased, rather than decreased, the judicial role and added the expense of bureaucratic paper and process at both the State and local level.

c. **【The interest of all citizens, including low and moderate income families in need of affordable housing, and the needs of the workforce, would be best served by a comprehensive planning and implementation response to this constitutional obligation.】** (Deleted by amendment, P.L. , c. .) (pending before the Legislature as this bill)

d. **【There are a number of essential ingredients to a comprehensive planning and implementation response, including the establishment of reasonable fair share housing guidelines and standards, the initial determination of fair share by officials at the municipal level and the preparation of a municipal housing element, State review of the local fair share study and housing element, and continuous State funding for low and moderate income housing to replace the federal housing subsidy programs which have been almost completely eliminated.】** (Deleted by amendment, P.L. , c. .) (pending before the Legislature as this bill)

e. **【The State can maximize the number of low and moderate income units provided in New Jersey by allowing its municipalities to adopt appropriate phasing schedules for meeting their fair share, so long as the municipalities permit a timely achievement of an appropriate fair share of the regional need for low and moderate income housing as required by the Mt. Laurel I and II opinions and other relevant court decisions】.** (Deleted by amendment, P.L. , c. .) (pending before the Legislature as this bill)

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

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

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

i. **【Certain amendments to the enabling act of the Council on Affordable Housing are necessary to provide guidance to the council to ensure consistency with the legislative intent, while at the same time clarifying the limitations of the council in its rulemaking. Although the court has remarked in several decisions that the Legislature has granted the council considerable deference in its rulemaking, the Legislature retains its power and obligation to clarify and amend the enabling act from which the council derives its rulemaking power, from time to time, in order to better guide the council.】** (~~Deleted by amendment, P.L. _____, c. _____~~) (pending before the Legislature as this bill)

j. The Legislature finds that the use of regional contribution agreements, which permits municipalities to transfer a certain portion of their fair share housing obligation outside of the municipal borders, should no longer be utilized after December 31, 2011 as a mechanism for the creation of affordable housing **【by the council】**.

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

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

4. As used in this act:

a. "Council" means the Council on Affordable Housing established **【in this act】** by section 5 of P.L.1985, c.222 (C.52:27D-305), 【which shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State】 and, pursuant to section 1 of P.L. _____, c. _____ (C. _____) (pending before the Legislature as this bill) subsequent to its effective date, the State Planning Commission.

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

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

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

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

e. **["Resolution of participation" means a resolution adopted by a municipality in which the municipality chooses to prepare a fair share plan and housing element in accordance with this act.]** (Deleted by amendment, P.L. _____, c. _____) (pending before the Legislature as this bill)

f. "Inclusionary development" means a market rate residential housing development **[in which a substantial percentage of the housing units are provided for a reasonable income range of] that includes units set-aside as housing affordable to low and moderate income households.**

g. **["Conversion" means the conversion of existing commercial, industrial, or residential structures for low and moderate income housing purposes where a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households.]** (Deleted by amendment, P.L. _____, c. _____) (pending before the Legislature as this bill)

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

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

j. **["Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. In determining prospective need, consideration shall be given to approvals of development applications, real property transfers and economic projections prepared by the State Planning Commission established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).]** (Deleted by amendment, P.L. _____, c. _____) (pending before the Legislature as this bill)

k. "Disabled person" means a person with a physical disability, infirmity, malformation or disfigurement which is caused by bodily

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injury, birth defect, aging or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device.

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

m. "Very low income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30% or less of the median gross household income for households of the same size within the housing region in which the housing is located.

n. "Commission" means the State Planning Commission, established pursuant to section 2 of P.L.1985, c.398 (C.52:18A-197), that shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State.

o. "Inclusionary unit" means a dwelling unit for sale or for rent that is low income or moderate income housing as part of an inclusionary development pursuant to section 21 of P.L. , c. (C.) (pending before the Legislature as this bill).

p. "Price restricted unit" means a residential dwelling unit that is price restricted, including units that are deed restricted for occupancy by residents of low or moderate income; price restricted pursuant to covenants established for units financed by federal Low Income Housing Tax Credits; price restricted pursuant to covenants established for units developed pursuant to the "Neighborhood Revitalization State Tax Credit Act," P.L.2001, c.415 (C.52:27D-490 et seq.); units rehabilitated as either a sending or receiving municipality under a regional contribution agreement, and subject to price controls; units built or rehabilitated as part of a Community Development Block Grant, and subject to price controls; housing units operated by a Public Housing Authority; units constructed, rehabilitated, or receiving project-based assistance under the program authorized pursuant to section 8 of the United States Housing Act of 1937; or units that are subject to local rent control ordinances ,or under the jurisdiction of a rent-leveling board, for which the maximum allowable rent is based on a median income standard.

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q. "Special needs housing" means housing, or the residential portion of a development that is permanent supportive housing, as defined in section 2 of P.L.2004, c.70, or a community residence that is primarily for occupancy by individuals with special needs who shall occupy such housing as their usual and permanent residence.

r. "Special needs unit" means a single unit of special needs housing for one or more occupants that contains at a minimum a bedroom and a bathroom.

s. "Inclusionary municipality" means a municipality deemed, pursuant to section 20 of P.L. , c. (C.) (pending before the Legislature as this bill), to have provided a variety and choice of housing as evidenced by the quantity of price-restricted units or amount of other units, the characteristics of which demonstrate an opportunity for low-income or moderate-income housing.

t. "Workforce housing" means housing affordable to, according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied by, or reserved for occupancy by, households with a gross household income equal to more than 80 percent but less than 120 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

u. "Residential development project" means new construction resulting in the production of 20 or more residential dwelling units, whether attached or detached.

v. "Small residential development project" means new construction resulting in the production of greater than five, but less than 20, residential dwelling units, whether attached or detached.

(cf: P.L.2008, c.46, s.5)

6. Section 1 of P.L.1991, c.479 (C.52:27D-307.1) is amended to read as follows:

1. As used in this act:

"Agency" means the Housing and Mortgage Finance Agency established pursuant to section 4 of the "New Jersey Housing and Mortgage Finance Agency Law of 1983," P.L.1983, c.530 (C.55:14K-4).

"Commissioner" means the Commissioner of Community Affairs.

"Council" means the Council on Affordable Housing created by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and, pursuant to section 2 of P.L. , c. (C.) (pending before the Legislature as this bill) subsequent to its effective date, the State Planning Commission.

"Department" means the Department of Community Affairs.

"Housing region" means a housing region as determined by the **【Council on Affordable Housing】** State Planning Commission

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pursuant to section **7** of P.L.1985, c.222 (C.52:27D-307) **15** of P.L. , c. (C.) (pending before the Legislature as this bill).

"Project" or "housing project" means any specific work or undertaking for the purpose of providing housing accommodations, whether by new construction or by rehabilitation or adaptation of existing structures, that shall be affordable to persons and families of low or moderate income within the meaning of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.). Such work or undertaking may include the acquisition, construction or rehabilitation of lands, buildings and improvements, and such stores, offices, and social, recreational, communal or other facilities as may be incidental or appurtenant to the housing accommodations that are to be provided.

"Register" means the Register of Housing Projects directed by section 2 of **this act** P.L.1991, c.479 (C.52:27D-304.2) to be established and maintained by the commissioner.
(cf: P.L.1991, c.479, s.1)

7. Section 3 of P.L.1991, c.479 (C.52:27D-307.3) is amended to read as follows:

3. a. The commissioner shall cause to be developed a system for assigning and designating priority ratings to each project included in the register. Priority ratings shall be based upon the following factors, giving to each factor such weight as the commissioner shall judge to be appropriate:

(1) Feasibility. Each project shall be evaluated for its physical and financial feasibility, giving consideration to the capabilities of the proposed sponsor or developer, market conditions and regulatory requirements in the locality for which it is proposed, and the availability of financing in sufficient amount and at reasonable cost.

(2) Desirability. Each project shall be evaluated with relation to its probable effect in meeting the affordable housing needs of the housing region in which it is to be located, in accordance with the standards and criteria of the **council** State Planning Commission. Consideration shall be given to (a) the number of affordable dwelling units that the project would provide, (b) the proportion of affordable units to the total number of units envisaged in the project plan, (c) the distribution of those affordable units as between those affordable to persons and families of low income and those of moderate income, considered in relation to the needs of the housing region, (d) appropriateness of the proposed tenure of the affordable units, whether to be rental or owner-occupied, in relation to the needs of the housing region, and (e) appropriateness of the proposed distribution of units as to family size, in relation to the needs of the housing region.

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(3) Efficiency. Each project shall be evaluated on the basis of the cost to the State, in terms of financial assistance granted or revenue forgone in order to further the project, for each affordable dwelling unit judged by the commissioner to be feasible and desirable according to the terms of the proposal or application made for such assistance.

b. In developing the system of assigning and designating priorities, and in evaluating individual projects for such assignment and designation in the register, the commissioner shall consult with the executive director of the agency and the executive director of the **【council】** State Planning Commission. The **【council】** person having control over the project and the agency shall promptly and fully supply the commissioner with all relevant information necessary for the commissioner's timely and complete fulfillment of the requirements of this act.

(cf: P.L.1991, c.479, s.3)

8. Section 4 of P.L.1991, c.479 (C.52:27D-307.4) is amended to read as follows:

4. a. Any officer or employee of the department, including any member, officer or employee of the agency **【or the council】**, who receives from any person any solicitation, application, proposal or communication of any kind, whether oral or in writing, aimed at furthering the assistance of any project shall promptly report the same to the commissioner. The report shall identify the person or persons making such communication. If any such person is not identified in the register in accordance with the requirements of subsection b. of section 2 of this act, the report shall state the person's relationship to the sponsor or developer of the project and the capacity in which the person represents himself or herself to be acting on behalf of the sponsor or developer; or if the person fails or refuses to supply that information, the report shall so state.

b. The commissioner shall develop a procedure or procedures by which reports required under subsection a. of this section shall be made either to the commissioner directly or through such administrative channels as the commissioner shall devise and direct. Notwithstanding the provisions of subsection i. of section 4 of P.L.1983, c.530 (C.55:14K-4) **【and subsection a. of section 5 of P.L.1985, c.222 (C.52:27D-305)】**, the regulations adopted by the commissioner in fulfillment of this subsection shall be of full force and application on and within the agency **【and the council】**; and all members, officers and employees of the agency **【and council】** shall give full compliance with and obedience to the rules and orders of the commissioner made in pursuance of his duties and responsibilities under this act.

c. Reports made to the commissioner shall be promptly forwarded by him, not later than 10 days after their receipt, to the

Governor and to the presiding officers of the Houses of the Legislature, who shall cause all members of their respective Houses to be notified of the receipt of those reports and shall make adequate provision for the inspection of the commissioner's reports by members and committees of either House, and for the dissemination of those reports to the public. The reports forwarded by the commissioner shall in each instance indicate the priority rating that has been assigned in the register to the project to which the report relates.

(cf: P.L.1991, c.479, s.4)

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

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

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

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

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

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

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

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

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

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

(9) The purchase of privately owned real property used for residential purposes at the value of all liens secured by the property; excluding any tax liens, notwithstanding that the total amount of debt secured by liens exceeds the appraised value of the property, pursuant to regulations promulgated by the Commissioner of Community Affairs pursuant to subsection b. of section 41 of P.L.2000, c.126 (C.52:27D-311.2). **】** (Deleted by amendment, P.L. , c. .) (pending before the Legislature as this bill)

b. **【**The municipality may provide for a phasing schedule for the achievement of its fair share of low and moderate income housing.**】** (Deleted by amendment, P.L. , c. .) (pending before the Legislature as this bill)

c. (Deleted by amendment, P.L.2008, c.46)

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

e. **【**When a municipality's housing element includes the provision of rental housing units in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), which will be affordable to persons of low and moderate income, and for which adequate measures to retain such affordability pursuant to paragraph (3) of subsection a. of this section are included in the housing element, those housing units shall be fully credited as permitted under the rules of the council towards the fulfillment of the municipality's fair share of low and moderate income housing.**】** (Deleted by amendment, P.L. , c. .) (pending before the Legislature as this bill)

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

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

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the approval of the council.】 (Deleted by amendment, P.L. , c.)
(pending before the Legislature as this bill)

h. 【Whenever affordable housing units are proposed to be provided through an inclusionary development, a municipality shall provide, through its zoning powers, incentives to the developer, which shall include increased densities and reduced costs, in accordance with the regulations of the council and this subsection.】 (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

i. 【The council, upon the application of a municipality and a developer, may approve reduced affordable housing set-asides or increased densities to ensure the economic feasibility of an inclusionary development.】 (Deleted by amendment, P.L. , c.)
(pending before the Legislature as this bill)

(cf: P.L.2008, c.46, s.15)

10. Section 1 of P.L.2005, c.350 (C.52:27D-311a) is amended to read as follows:

1. Beginning upon the effective date of P.L.2005, c.350 (C.52:27D-311a et al.), in order to be considered a price restricted unit for purposes of a determination pursuant to section 20 of P.L. , c. (C.), any new construction 【for which credit is sought against a fair share obligation】 shall be adaptable in accordance with the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15). For the purposes of P.L.2005, c.350 (C.52:27D-311a et al.), "new construction" shall mean an entirely new improvement not previously occupied or used for any purpose.
(cf: P.L.2005,c.350, s.1)

11. Section 6 of P.L. 2005, c.350 (C.52:27D-311b) is amended to read as follows:

The 【council】 commission may take such measures as are necessary to assure compliance with the adaptability requirements imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), including the inspection of those units which are newly constructed and receive housing credit as provided under section 1 of P.L.2005, c.350 (C.52:27D-311a) and section 20 of P.L. , c. (C.) (pending before the Legislature as this bill) for adaptability, as part of the monitoring which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). 【If any units for which credit was granted in accordance with the provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et al.), the council may require the municipality to amend its fair share plan within 90 days of receiving notice from the council, to address its fair share obligation pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that

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the municipality fails to amend its fair share plan within 90 days of receiving such notice, the council may revoke substantive certification].

(cf: P.L.2005, c.350, s.6)

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

12. a. Except as prohibited under P.L.2008, c.46 (C.52:27D-329.1 et al.), a municipality may propose the transfer of up to 50% of its fair share to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. A municipality may also propose a transfer by contracting with the agency or another governmental entity designated by the council if the council determines that the municipality has exhausted all possibilities within its housing region. A municipality proposing to transfer to another municipality, whether directly or by means of a contract with the agency or another governmental entity designated by the council, shall provide the council with the housing element and statement required under subsection c. of section 11 of P.L.1985, c.222 (C.52:27D-311), and shall request the council to determine a match with a municipality filing a statement of intent pursuant to subsection e. of this section. Except as provided in subsection b. of this section, the agreement may be entered into upon obtaining substantive certification under section 14 of P.L.1985, c.222 (C.52:27D-314), or anytime thereafter. The regional contribution agreement entered into shall specify how the housing shall be provided by the second municipality, hereinafter the receiving municipality, and the amount of contributions to be made by the first municipality, hereinafter the sending municipality.

b. A municipality which is a defendant in an exclusionary zoning suit and which has not obtained substantive certification pursuant to P.L.1985, c.222 may request the court to be permitted to fulfill a portion of its fair share by entering into a regional contribution agreement. If the court believes the request to be reasonable, the court shall request the council to review the proposed agreement and to determine a match with a receiving municipality or municipalities pursuant to this section. The court may establish time limitations for the council's review, and shall retain jurisdiction over the matter during the period of council review. If the court determines that the agreement provides a realistic opportunity for the provision of low and moderate income housing within the housing region, it shall provide the sending municipality a credit against its fair share for housing to be provided through the agreement in the manner provided in this section. The agreement shall be entered into prior to the entry of a final judgment in the litigation. In cases in which a final judgment

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was entered prior to the date P.L.1985, c.222 takes effect and in which an appeal is pending, a municipality may request consideration of a regional contribution agreement; provided that it is entered into within 120 days after P.L.1985, c.222 takes effect. In a case in which a final judgment has been entered, the court shall consider whether or not the agreement constitutes an expeditious means of providing part of the fair share. **【Notwithstanding this subsection, no consideration shall be given to any regional contribution agreement of which the council did not complete its review and formally approve a recommendation to the court prior to the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.).】**

c. **【**Except as prohibited under P.L.2008, c.46 (C.52:27D-329.1 et al.), regional contribution agreements shall be approved by the council, after review by the county planning board or agency of the county in which the receiving municipality is located. The council shall determine whether or not the agreement provides a realistic opportunity for the provision of low and moderate income housing within convenient access to employment opportunities. The council shall refer the agreement to the county planning board or agency which shall review whether or not the transfer agreement is in accordance with sound, comprehensive regional planning. In its review, the county planning board or agency shall consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan, and the State development and redevelopment plan. In the event that there is no county planning board or agency in the county in which the receiving municipality is located, the council shall also determine whether or not the agreement is in accordance with sound, comprehensive regional planning. After it has been determined that the agreement provides a realistic opportunity for low and moderate income housing within convenient access to employment opportunities, and that the agreement is consistent with sound, comprehensive regional planning, the council shall approve the regional contribution agreement by resolution. All determinations of a county planning board or agency shall be in writing and shall be made within such time limits as the council may prescribe, beyond which the council shall make those determinations and no fee shall be paid to the county planning board or agency pursuant to this subsection.**】** (Deleted by amendment, P.L. , c. .) (pending before the Legislature as this bill)

d. In approving a regional contribution agreement, the council shall set forth in its resolution a schedule of the contributions to be appropriated annually by the sending municipality. A copy of the adopted resolution shall be filed promptly with the Director of the Division of Local Government Services in the Department of Community Affairs, and the director shall thereafter not approve an annual budget of a sending municipality if it does not include

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appropriations necessary to meet the terms of the resolution. Amounts appropriated by a sending municipality for a regional contribution agreement pursuant to this section are exempt from the limitations or increases in final appropriations imposed under P.L.1976, c.68 (C.40A:4-45.1 et seq.).

e. The council shall maintain current lists of municipalities which have stated an intent to enter into regional contribution agreements as receiving municipalities, and shall establish procedures for filing statements of intent with the council. No receiving municipality shall be required to accept a greater number of low and moderate income units through an agreement than it has expressed a willingness to accept in its statement, but the number stated shall not be less than a reasonable minimum number of units, not to exceed 100, as established by the council. The council shall require a project plan from a receiving municipality prior to the entering into of the agreement, and shall submit the project plan to the agency for its review as to the feasibility of the plan prior to the council's approval of the agreement. The agency may recommend and the council may approve as part of the project plan a provision that the time limitations for contractual guarantees or resale controls for low and moderate income units included in the project shall be less than 30 years, if it is determined that modification is necessary to assure the economic viability of the project.

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

g. The council shall require receiving municipalities to file annual reports with the agency setting forth the progress in implementing a project funded under a regional contribution agreement, and the agency shall provide the council with its evaluation of each report. The council shall take such actions as may be necessary to enforce a regional contribution agreement with

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respect to the timely implementation of the project by the receiving municipality.

【No】 Except as otherwise provided in this section, no consideration shall be given to any regional contribution agreement for which the council did not complete its review and grant approval prior to the effective date of P.L.2008, c.46 (C. 52:27D-329.1 et al.).

h. (1) Notwithstanding any law, rule or regulation to the contrary, the State Planning Commission shall, prior to or on December 31, 2011, review and either grant approval to or disapprove any regional contribution agreement when the sending municipality, prior to July 17, 2008, by resolution, authorized the execution of a regional contribution agreement and the resolution identifies either a proposed number of units to be credited to the sending municipality or the dollar value of the total transfer amount.

(2) When reviewing a regional contribution agreement pursuant to this subsection, the State Planning Commission may apply the regulations of the Council on Affordable Housing in effect at the time agreement was entered into, or may revise and adopt regulations concerning regional contribution agreements in order to effectuate the requirements and policy of P.L. , c. (C.) (pending before the Legislature as this bill).

(3) The commission shall record specific, judicially reviewable findings of fact concerning any action taken by the commission concerning the proposed regional contribution agreement.
(cf. P.L.2008, c.46, s.16)

13. Section 41 of P.L.2009, c.90 (C.52:27D-320.1) is amended to read as follows:

41. a. Notwithstanding any law to the contrary, there is appropriated \$15 million to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320)【, to replace the suspended non-residential development fee established under the provisions of the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7)】.

b. (1) Municipalities authorized by **【**the provisions of the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7)**】** section 8 of P.L.2008, c.46 (C.52:27D-329.2) to directly receive and use development fees are permitted to petition the commissioner for the award of a grant or loan of any portion of the appropriation described in subsection a. of this section. The commissioner shall award grants or loans from the fund to municipalities that incorporated anticipated or existing housing projects and programs funded by a municipal development trust

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fund in a housing element submitted to the council pursuant to section 7 of P.L.1985, c.222 (C.52:27D-307).

(2) The commissioner shall target the award of any grant or loan to municipalities based on the extent that their housing plan relied on housing projects or programs funded in part or in whole by municipal development trust fund revenues.
(cf: P.L.2009, c.90)

14. Section 12 of P.L.2008, c.46 (C.52:27D-329.6) is amended to read as follows:

12. The Legislature finds and declares that:

a. The transfer of a portion of the fair share obligations among municipalities has proven to not be a viable method of ensuring that an adequate supply and variety of housing choices are provided in municipalities experiencing growth. Therefore, the use of a regional contribution agreement shall no longer be permitted under P.L.1985, c.222 (C.52:27D-301 et al.), except as permitted pursuant to subsection h. of section 12 of P.L.1985, c.222 (C.52:27D-312).

b. **【Although the elimination of the regional contribution agreement as a tool for the production of affordable housing pursuant to P.L.1985, c.222 (C.52:27D-301 et al.), will impact on some proposed agreements awaiting approval it is for a public purpose and for the public good that such contracts be declared void for the current and future housing obligation rounds.】** (Deleted by amendment, P.L. , c. .) (pending before the Legislature as this bill)

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

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

(cf: P.L.2008, c.46, s.12)

15. Section 18 of P.L.2008, c.46 (C.52:27D-329.9) is amended to read as follows:

18. a. **【Notwithstanding any rules of the council to the contrary, for developments consisting of newly-constructed residential units located, or to be located, within the jurisdiction of any regional planning entity required to adopt a master plan or comprehensive management plan pursuant to statutory law, including the New**

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Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 (C.13:17-6), the Pinelands Commission pursuant to section 7 of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-8), the Fort Monmouth Economic Revitalization Planning Authority pursuant to section 5 of P.L.2006, c.16 (C.52:27I-5), or its successor, and the Highlands Water Protection and Planning Council pursuant to section 11 of P.L.2004, c.120 (C.13:20-11), but excluding joint planning boards formed pursuant to section 64 of P.L.1975, c.291 (C.40:55D-77), there shall be required to be reserved for occupancy by low or moderate income households at least 20 percent of the residential units constructed, to the extent this is economically feasible.】 (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

b. A developer of a project consisting of newly-constructed residential units being financed in whole or in part with State funds, including, but not limited to, transit villages designated by the Department of Transportation, units constructed on State-owned property, and urban transit hubs as defined pursuant to section 2 of P.L.2007, c.346 (C.34:1B-208), shall be required to reserve at least **【20】** 10 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as required under the rules of the **【council】** commission, unless the municipality in which the property is located has received **【substantive certification from the council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given】** a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan.

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

(2) The regional planning entities identified in subsection a. of this section shall identify and coordinate regional affordable housing opportunities in cooperation with municipalities in areas with convenient access to infrastructure, employment opportunities, and public transportation. Coordination of affordable housing opportunities may include methods to regionally provide housing in line with regional concerns, such as transit needs or opportunities, environmental concerns, or such other factors as the council may permit; provided, however, that such provision by such a regional

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entity may not result in more than a 50 percent change in the fair share obligation of any municipality; provided that this limitation shall not apply to affordable housing units directly attributable to development by the New Jersey Sports and Exposition Authority within the New Jersey Meadowlands District.

(3) In addition to the entities identified in subsection a. of this section, the Casino Reinvestment Development Authority, in conjunction with the Atlantic County Planning Board, shall identify and coordinate regional affordable housing opportunities directly attributable to Atlantic City casino development, which may be provided anywhere within Atlantic County, subject to the restrictions of paragraph (4) of this subsection. **](Deleted by amendment, P.L. , c. .) (pending before the Legislature as this bill)**

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

(cf: P.L.2008, c.46, s.18)

16. Section 23 of P.L.2008, c.46 (C.52:27D-329.12) is amended to read as follows:

As used in sections 21 through 30 of P.L.2008, c.46 (C.52:27D-329.10 through C.52:27D-329.19):

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

"Commission" means the State Housing Commission established pursuant to section 24 of P.L.2008, c.46 (C.52:27D-329.13).

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

"Department" means the Department of Community Affairs.

["Middle income housing"] "Workforce housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to or more than 80% but less than 120% of the median gross household income for

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households of the same size within the housing region in which the housing is located.

"Plan" means the Annual Strategic Housing Plan prepared pursuant to section 27 of P.L.2008, c.46 (C.52:27D-329.16).

"Report" means the Annual Housing Performance Report required to be prepared pursuant to section 29 of P.L.2008, c.46 (C.52:27D-329.18).

"Senior Deputy Commissioner for Housing" means the position established within the department which is charged with overseeing all housing programs.

"Working group" means the interdepartmental working group created pursuant to section 26 of P.L.2008, c.46 (C.52:27D-329.15). (cf. P.L.2008, c.46, s.23)

17. Section 30 of P.L.2008, c.46 (C.52:27D-329.19) is amended to read as follows:

30. a. The position of Senior Deputy Commissioner for Housing is established within the department, which position shall be filled by an individual with recognized and extensive experience in housing policy, planning, and development with particular emphasis on the planning and development of workforce housing and housing affordable to low **【,】** and moderate **【, and middle】** income households.

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

c. The commissioner may appoint the Senior Deputy Commissioner for Housing as his or her designee to chair the agency, the commission, or the council, in which capacity or capacities the Senior Deputy Commissioner for Housing will have all of the powers vested in those positions by law. (cf. P.L.2008, c.46, s.30)

18. (New section) It shall be the duty of the State Planning Commission to administer the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and to assist municipalities that are developing toward fulfilling their obligation to provide an appropriate variety and choice of housing, including housing for low- and moderate-income families. The commission shall:

a. Determine the housing regions of the State, for the use and information of municipalities;

b. Promulgate guidelines and criteria for housing elements prepared pursuant to section 19 of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-28) and section 10 of the "Fair Housing Act," P.L. 1985, c.222 (C.52:27D-310);

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c. Pursuant to subsection b. of section 20 of P.L. , c. (C.), make a determination of whether a municipality is an inclusionary municipality;

d. Establish guidelines or model language for covenants or other devices to maintain the affordability of inclusionary units developed pursuant to P.L. , c. (C.) (pending before the Legislature as this bill); and

e. Establish affirmative marketing requirements for those inclusionary units developed pursuant to section 21 of P.L. , c. (C.) (pending before the Legislature as this bill).

Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the State Planning Commission may promulgate any rules and regulations necessary to effectuate the purposes of this section.

19. (New section) a. Within 30 days following the effective date of P.L. , c. (C.), a municipality shall apply to the commission for a determination of whether the municipality is an inclusionary municipality that shall be deemed to have provided for its portion of the region's opportunity for low and moderate-income housing.

b. (1) A municipality that has not met the criteria in section 20 of P.L. , c. (C.) (pending before the Legislature as this bill) may reapply to the commission, at anytime during the six-year planning cycle, based upon additional evidence that those criteria have been satisfied.

(2) A municipality that does not meet the criteria in section 20 of P.L. , c. (C.) (pending before the Legislature as this bill) may, nevertheless, be deemed to meet those criteria if it adopts an ordinance providing that at least 20 percent of the vacant and developable lands within the municipality are zoned for residential development.

c. An application from a municipality shall contain an analysis of the municipality's housing stock for determination of whether the municipality is an inclusionary municipality as defined in P.L. , c. (C.) (pending before the Legislature as this bill).

20. (New section) a. The commission shall determine that a municipality is an inclusionary municipality if:

(1) seven and one-half percent of its total present housing stock is price restricted units; or

(2) 33 percent of the housing stock is: single-family attached housing; or mobile homes located a mobile home park as defined in subsection d. of section 3 of P.L.1986, c.386 (C.40:55D-102); or multiple dwellings as defined pursuant to subsection k. of section 3 of P.L.1967, c.76 (C.55:13A-3), provided that multiple dwellings

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that are determined to be luxury dwellings by the State Planning Commission shall not be counted; or

(3) the municipality has adopted an ordinance which reserves at least one-fifth of its vacant, developable property having reasonable access to sewer service, for residential use.

b. In making a determination pursuant to this section, the commission shall give special needs housing units newly constructed following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) twice as much weight as their actual proportion of a municipality's housing stock when making a determination of whether a municipality is an inclusionary municipality.

c. For units constructed following the effective date of P.L.2005, c.350 (C.52:27D-311a et al.), to be considered price restricted for purposes of a determination pursuant to this section, a unit shall be adaptable as described in section 5 of P.L.2005, c.350 (C.52:27D-123.15) and section 1 of P.L.2005, c.350 (C.52:27D-311a).

d. A municipality that received substantive certification under the Council on Affordable Housing's most recently adopted ("third round rules") shall be considered an inclusionary municipality pursuant to this section until the end of its approved certification period; provided that the municipality continues to fully and faithfully implement the provisions of its fair-share plan.

e. The commission shall review any application for a determination that a municipality is an inclusionary municipality and render a determination within 90 days. A determination of whether a municipality is inclusionary shall be based upon a municipality's existing housing stock. Units transferred through a regional contribution agreement shall be fully credited to the sending municipality for purposes of determining whether a municipality is an inclusionary municipality.

f. Any party may appeal a determination made by the commission to the Superior Court.

For purposes of this section, "single family attached housing" means two or more dwelling units sharing a wall that extends from ground to roof with an adjoining unit, with no other units above or below, with separate major utility systems and metering.

21. (New section) a. (1) For any new residential development project, as defined in subsection u. of section 4 of P.L.1985, c.222 (C.52:27D-304), and any redevelopment, rehabilitation, infill development, or adaptive reuse of a residential development project that would qualify as a residential development project if it was new construction, a municipality shall require that one out of every 10 residential housing units proposed as part of that project be reserved for occupancy as low income or moderate income housing, provided that the project remains economically viable. For the

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purposes of this reservation, one special needs housing unit shall count as two.

(2) For any new small residential development project, as defined in subsection v. of section 4 of P.L.1985, c.222 (C.52:27D-304), and any redevelopment, rehabilitation, infill development, or adaptive reuse of a residential or small residential development project that would qualify as a small residential development project if it was new construction, a municipality shall require that one out of every 20 residential housing units proposed as part of that project be reserved for occupancy as low income or moderate income housing, provided that the project remains economically viable. For the purposes of this reservation, one special needs housing unit shall count as two.

b. Where land use or other local government approvals are required, a municipality shall make a reasonable effort to facilitate the economic viability of an inclusionary development developed pursuant to the requirements of this section.

c. Residential development projects resulting in a fractional unit reserved for occupancy by low-income or moderate-income households, shall make a payment in lieu of construction into a municipal trust fund established by a municipality pursuant to section 30 of P.L. , c. (C.) (pending before the Legislature as this bill) or into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). The commission shall promulgate guidelines for payments in lieu of construction of fractional dwelling units in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

d. Nothing in this section shall preclude a municipality from imposing additional inclusionary requirements upon redevelopment or rehabilitation projects or any form of infill development or adaptive reuse of a residential development project.

22. (New section) A municipality shall authorize any person engaging in a residential or small residential development project to satisfy the set-aside requirements imposed by section 21 of P.L. , c. (C.) (pending before the Legislature as this bill) through any combination of the following alternate means:

(1) Permitting the required inclusionary units to be newly constructed off-site;

(2) Permitting the required inclusionary units to be provided off-site by rehabilitation of existing substandard units; and

(3) Permitting a developer to pay a fee in lieu of constructing a portion of the inclusionary units into a municipal trust fund for the construction of affordable housing pursuant to section 28 of P.L. , c. (C.) (pending before the Legislature as this bill).

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23. (New section) A municipality is permitted to give preference, for occupancy of the units required to be provided pursuant to section 21 of P.L. , c. (C.) (pending before the Legislature as this bill), both to those households that have at least one member who works in the municipality and to those households that have at least one member who resides in the municipality.

24. (New section) A municipality shall acquire State surplus property in the municipality for affordable housing purposes wherever surplus property is available for disposal in exchange for nominal consideration, pursuant to section 1 of P.L.1962, c.220 (C.52:31-1.1) or policies of the State House Commission, or both.

25. (New section) a. In any municipality not determined to be an inclusionary municipality by the commission as described in section 20 of P.L. , c. (C.) (pending before the Legislature as this bill), when a proposed inclusionary development requires approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et al.) of a subdivision, site plan or conditional use, or a variance, including a variance pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70), the board of adjustment shall review the request for a subdivision, site plan or conditional use, or a variance, and the inclusionary development shall be deemed to be an inherently beneficial use and the developer shall be required to make only a showing that the variance or other relief can be granted without substantial detriment to the public good.

b. The provisions of this section shall not apply to areas in a municipality that are not located in a sewer-service area and for which sewer-service cannot be reasonably extended from a nearby approved sewer-service area.

26. (New section) The Legislature finds and declares:

a. In July 2008, the New Jersey Legislature enacted a law imposing a fee on non-residential development to encourage the production of opportunities for affordable housing for low- and moderate-income New Jersey residents.

b. Since the adoption of this policy, the State and our nation have been engulfed in an economic recession that has resulted in substantial increases in unemployment, including an unemployment rate of more than nine percent, and substantial decreases in revenue to the State treasury.

c. Revenues actually collected pursuant to the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) fell far short of the amounts anticipated before the "New Jersey Economic

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Stimulus Act of 2009," P.L.2009, c.90 (C.52:27D-489a et al.) suspended implementation of the Statewide non-residential development fee.

d. It is undisputable that the charging of fees at high levels dissuades commerce from locating within a State or municipality or locality, increases unemployment, and deters non-residential and residential development, and these ill effects impede the implicit constitutional requirement that government action provide for the general welfare of the State's citizens.

e. Continued imposition of the development fee will hamper the State's ability to recover from the economic recession, slowing job creation and development that are normally are a source of revenue, increasing the revenue shortfall in the State's budget, further hampering the State's ability to provide for the general welfare needs of its residents, including, but not limited to, funding programs for the developmentally disabled, health care services for senior citizens and indigent families, financial support for special education services within local school districts, funding for State institutions for the mentally ill and general financial support for municipal governments and local school districts.

f. The negative impact of a State policy that relies on a municipal fee structure and of State programs that require a municipality to impose fees and charges on developers must be balanced against any public good expected from such regulation.

g. It is essential to the public good to repeal the fee imposed under the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

27. (New section) a. Notwithstanding any law, rule, or regulation to the contrary, no municipality shall adopt an ordinance imposing a fee upon the developer of non-residential property or construction to provide for affordable housing.

b. Any provision of a local ordinance which imposes a fee for the development of affordable housing upon a developer of non-residential property, including any and all development fee ordinances adopted in accordance with any regulations of the Council on Affordable Housing, or any provision of an ordinance which imposes an obligation relating to the provision of housing affordable to low and moderate income households, or payment in-lieu of building as a condition of non-residential development, shall be void and of no effect.

c. The provisions of this section shall not apply to a financial or other contribution that a developer made or committed itself to make for a non-residential property that received preliminary site plan approval, pursuant to section 34 of P.L.1975, c.291 (C.40:55D-46), or final approval, pursuant to section 38 of P.L.1975, c.291

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(C.40:55D-50) prior to July 17, 2008, or for a non-residential project that, prior to July 17, 2008, was referred to a planning board by the State, a governing body, or other public agency for review pursuant to section 22 of P.L.1975, c.291 (C.40:55D-31).

d. The provisions of this section shall not apply to a financial or other contribution, including the investment obligations made pursuant to P.L.1977, c.110 (C.5:12-1 et seq.), that a developer of a non-residential development regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or committed itself to make relating to the provision of housing affordable to low, moderate or middle-income households.

28. (New section) a. A municipality may impose and collect payments in lieu of construction of affordable housing in residential development projects, as permitted in section 21 of P.L. , c. (C.) (pending before the Legislature as this bill) pursuant to guidelines promulgated by the State Planning Commission.

b. A municipality shall deposit all payments collected into a trust fund dedicated to those purposes as required under this section. Each amount collected shall be deposited and shall be accounted for separately, by payer and date of deposit.

c. (1) A municipality may only spend payments in lieu of construction for an activity to address the municipality's obligation to provide its portion of the region's need for affordable housing.

(2) Municipal payment trust funds shall not be expended to reimburse municipalities for activities which occurred prior to the authorization of a municipality to collect payments in lieu of construction.

(3) A municipality shall set aside a portion of its payment-in-lieu fee trust fund for the purpose of providing affordability assistance to low and moderate income households in affordable units located in the municipality.

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

(b) Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low income units in a municipality to make them affordable to households earning 30 percent or less of median income.

(4) A municipality may contract with a private or public entity to administer any program facilitating housing affordable to low and moderate income households including the requirement for affordability assistance, or any program or activity for which the municipality expends payment in lieu proceeds.

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(5) Not more than 20 percent of the revenues collected from payments in lieu of construction shall be expended on administration, in accordance with rules of the commission.

d. Notwithstanding any provision of this section, or regulations of the commission, a municipality shall not collect a payment-in-lieu fee from a developer whenever that developer is providing for the construction of all of the affordable units required pursuant to section 21 of P.L. , c. (C.) (pending before the Legislature as this bill), either on-site or elsewhere within the municipality.

29. (New section) Under any rental or purchase program implemented to assist persons who have experienced or may experience the foreclosure and loss of their personal residence, or any program which addresses the needs of low and moderate income households residing within the municipality including, but not limited to, State, federal, or local programs, benefitting from the program are otherwise income qualified to occupy such housing under federal or State law, then affirmative marketing requirements under regulations promulgated to effectuate the "Fair Housing Act," or P.L. , c. (C.) (pending before the Legislature as this bill) shall be waived to permit such persons to occupy, rent or purchase new or rehabilitated inclusionary housing units which they may have previously occupied or owned.

30. (New section) a. A municipality shall not be liable for any unmet housing obligation based on regulations promulgated by the Council on Affordable Housing pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any law or fact in a time period prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

b. Notwithstanding subsection a. of this section, a municipality shall not alter the zoning classification of any inclusionary development site that has received any local, county or state land use or environmental permit or approval, and is, by ordinance or court order, designated for or reserved for purposes of satisfying a municipality's fair share of the region's housing opportunities pursuant court order or to N.J.A.C.5:92, the regulations of the Council on Affordable Housing for the housing round beginning on August 4, 1986, N.J.A.C.5:93, the regulations of the Council on Affordable Housing for the housing round beginning June 6, 1994, N.J.A.C. 5:96 and 5:97, the regulations of the Council on Affordable Housing for the housing round beginning June 2, 2008.

31. (New section) a. No exclusionary zoning action naming a municipality as a defendant shall be filed for 120 days following the effective date of this act.

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b. Subsection a. and subsection b. of this section shall not apply to a municipality subject to a court order to provide affordable housing prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

c. For any litigation involving exclusionary zoning instituted prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) jurisdiction may remain with the court, which shall take judicial notice of the statutory intent stated hereunder.

32. Section 57 of P.L.1975, c.291 (C.40:55D-70) is amended to read as follows:

57. Powers. The board of adjustment shall have the power to:

a. Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance;

b. Hear and decide requests for interpretation of the zoning map or ordinance or for decisions upon other special questions upon which such board is authorized to pass by any zoning or official map ordinance, in accordance with this act;

c. (1) Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of **[this act]** P.L.1975, c.291 would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship; (2) where in an application or appeal relating to a specific piece of property the purposes of this act or the purposes of the "Educational Facilities Construction and Financing Act," P.L.2000, c.72 (C.18A:7G-1 et al.), would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to article 8 of **[this act]** P.L.1975, c.291; provided, however, that the fact that a proposed use is an inherently beneficial use shall not be dispositive of a decision on a variance under this subsection and provided that no variance from those departures enumerated in subsection d. of this section shall be granted under this subsection; and provided further that the proposed development does not require approval by the planning board of a subdivision, site plan or conditional use, in

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conjunction with which the planning board has power to review a request for a variance pursuant to subsection a. of section 47 of **[this act]** P.L.1975, c.291; and

d. In particular cases for special reasons, grant a variance to allow departure from regulations pursuant to article 8 of **[this act]** P.L.1975, c.291 to permit:

(1) a use or principal structure in a district restricted against such use or principal structure**[,]** ;

(2) an expansion of a nonconforming use**[,]** ;

(3) deviation from a specification or standard pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67) pertaining solely to a conditional use**[,]** ;

(4) an increase in the permitted floor area ratio as defined in section 3.1 of P.L.1975, c.291 (C.40:55D-4) **[,]** ;

(5) an increase in the permitted density as defined in section 3.1 of P.L.1975, c.291 (C.40:55D-4), except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings, which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision; or

(6) a height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district for a principal structure. A variance under this subsection shall be granted only by affirmative vote of at least five members, in the case of a municipal board, or two-thirds of the full authorized membership, in the case of a regional board, pursuant to article 10 of **[this act]** P.L.1975, c.291.

If an application development requests one or more variances but not a variance for a purpose enumerated in subsection d. of this section, the decision on the requested variance or variances shall be rendered under subsection c. of this section.

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

With respect to variances requested for the development of affordable housing pursuant to this subsection, a municipality that has been deemed inclusionary pursuant to section 20 of P.L. , c. (C.) (pending before the Legislature as this bill), shall not be required to review those variance requests under inherently beneficial use tests, and a denial of a variance under such circumstances shall be presumptively valid.

e. In respect to any airport safety zones delineated under the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), no variance or other relief may be granted under the terms of

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this section, permitting the creation or establishment of a nonconforming use which would be prohibited under standards promulgated pursuant to that act, except upon issuance of a permit by the Commissioner of Transportation. An application under this section may be referred to any appropriate person or agency for its report; provided that such reference shall not extend the period of time within which the zoning board of adjustment shall act.
(cf: P.L.2007, c.137, s.60)

33. The following sections are repealed:

Section 32 of P.L.2008, c.46 (C.40:55D-8.1);
Section 33 of P.L.2008, c.46 (C.40:55D-8.2);
Section 34 of P.L.2008, c.46 (C.40:55D-8.3);
Section 35 of P.L.2008, c.46 (C.40:55D-8.4);
Section 36 of P.L.2008, c.46 (C.40:55D-8.5);
Section 37 of P.L.2008, c.46 (C.40:55D-8.6);
Section 38 of P.L.2008, c.46 (C.40:55D-8.7);
Section 39 of P.L.2009, c.90 (C.40:55D-8.8);
Section 5 of P.L.1985 c.222 (C.52:27D-305);
Section 6 of P.L.1985, c.222 (C.52:27D-306);
Section 7 of P.L.1985, c.222 (C.52:27D-307);
Section 6 of P.L.2001, c.435 (C.52:27D-307.6);
Section 8 of P.L.1985, c.222 (C.52:27D-308);
Section 9 of P.L.1985, c.222 (C.52:27D-309);
Section 10 of P.L.1985, c.222 (C.52:27D-310);
Section 1 of P.L.1995, c.231 (C.52:27D-310.1);
Section 2 of P.L.1995, c.231 (C.52:27D-310.2);
Section 40 of P.L.2009, c.90 (C. 52:27D-311.3);
Section 13 of P.L.1985 c.222 (C.52:27D-313);
Section 2 of P.L.1989, c.142 (C.52:27D-313.1);
Section 14 of P.L.1985 c.222 (C.52:27D-314);
Section 15 of P.L.1985 c.222 (C.52:27D-315);
Section 16 of P.L.1985, c.222 (C.52:27D-316);
Section 17 of P.L.1985, c.222 (C.52:27D-317);
Section 18 of P.L.1985, c.222 (C.52:27D-318);
Section 19 of P.L.1985 c.222 (C.52:27D-319);
Section 7 of P.L.2008, c.46 (C.52:27D-329.1);
Section 8 of P.L.2008, c.46 (C.52:27D-329.2)
Section 10 of P.L.2008, c.46 (C.52:27D-329.4);
Section 12 of P.L.2008, c.46 (C.52:27D-329.6); and
Section 14 of P.L.2008, c.46 (C.52:27D-329.8

34. This act shall take effect immediately.

Reforms procedures concerning provision of affordable housing;
abolishes Council on Affordable Housing.

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