

STATE OF NEW JERSEY

EXECUTIVE DEPARTMENT

SENATE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1
(Third Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Committee Substitute for Senate Committee Substitute for Senate Bill No. 1 (Third Reprint) with my recommendations for reconsideration.

This bill purports to reform procedures concerning the provision of affordable housing by abolishing the Council on Affordable Housing (hereinafter "COAH"). In fact, the bill requires that at least 10% of the total housing units in most municipalities be dedicated as affordable housing, creating obligations for many municipalities throughout the state well in excess of what is required under the current failed COAH system. This bill, as passed by the Legislature on January 10, 2011, differs enormously from the version of Senate Bill No. 1 that passed the State Senate by a vote of 28-3 on June 10, 2010.

The version of Senate Bill No. 1 that passed on June 10, 2010 is a clearly superior bill and was the result of significant negotiation between the Legislature and the Governor's Office. While not perfect, it met many of our objectives to end the ineffective and burdensome COAH system. This bill, for many municipalities, is worse than the existing system. As such, I cannot sign it in its current form.

Senate Bill No. 1, as passed by the Senate on June 10, 2010, was simple and reasonably close to the recommendations contained in the March 19, 2010 report of the Housing Opportunity Task Force, chaired by the Honorable Marcia A. Karrow. The June version of Senate Bill No. 1 eliminated COAH and required simply that 1 out of every 10 newly constructed housing units had to be designated as affordable. If a town did

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not grow, it did not have a further affordable housing obligation - other than to inventory and rehabilitate its existing affordable housing stock. The past arbitrary assignment of numbers by COAH was eliminated. State review of municipal housing plans was significantly limited. Municipalities were given protection against builder's remedy lawsuits. Commercial development fees were eliminated, though residential development fees were permitted to be charged if a developer chose not to build affordable units on-site and decided to pay the residential development fee instead.

The revised version of Senate Bill No. 1, as passed on January 10, 2011, requires 10% of all the housing units in every town in the State to be affordable. There are presently approximately 3,500,000 housing units in the State, thus approximately 350,000 affordable housing units would eventually have to exist. The latest version of Senate Bill No. 1 places a disproportionately heavy burden on the towns that are well below the 10% number. Since some towns are presently significantly above the 10% affordable number, the 10% mandate for every town may result in the creation of even more than 350,000 units statewide. Even a small sampling of the new construction required in this latest version of Senate Bill No. 1 reveals the staggering amounts of development demanded:

Municipality	Affordable Units Required
Berkeley	1,528
Bloomfield	1,299
Brick	2,608
Cherry Hill	2,066
Clifton	655
Edison	2,204
Evesham	1,449
Fair Lawn	1,120
Ft. Lee	1,238
Galloway Township	569
Gloucester Township	1,264

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Hamilton	1,964
Hillsborough	1,087
Linden	845
Livingston	925
Middletown	1,667
Nutley	913
Ocean Township	1,070
Old Bridge	1,830
Parsippany	1,667
Raritan Township	555
Sayreville	948
Toms River	2,363
Union Township	1,055
Vernon	1,023
Washington Township	1,412
West Milford	861
Woodbridge	1,844

More troubling is the mandate that a portion of the affordable housing obligation (25%) must be met by inclusionary development - resulting in the building of market rate units at a ratio of 5 to 7 times the number of affordable units. Thus, a town needing to build 100 affordable units would have to build 500 to 700 market rate housing units on the same land to support the affordable units. This approach legislates sprawl and is too high a burden to place on towns looking to lower the property tax burden on its citizens.

Furthermore, the January 10, 2011 version of Senate Bill No. 1 requires towns to re-zone to densities of 6 to 20 units per acre to meet their affordable housing obligations (in certain towns to as much as 50 units per acre). This is Trenton-dictated direct interference with the local planning process that will fundamentally change the character of many of our State's towns and will allow builders to use affordable housing as a club to force overbuilding and sprawl.

The bill presented to me also creates a new regulated entity to review a municipality's housing plans - the licensed

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"housing compliance professional." Towns would now have to pay two planners - one to draft the housing element of their master plans and one to "certify" that it meets the requirements of this bill. Furthermore, towns that complete this certification process are still not given meaningful protection against builder's remedy lawsuits. Towns are not given credit for past widely accepted methods of satisfying their affordable housing obligations. Also troubling is that municipalities in the Highlands, Pinelands, Fort Monmouth and the Meadowlands districts are required to have 15% to 20% of all new construction as affordable. If this burden cannot be met due to the lack of developable land, neighboring towns within these regions will have to absorb the excess housing at rates greater than 15% to 20%. This is an immense burden for these environmentally sensitive areas. All in all, the latest version of Senate Bill No. 1 places far too heavy a burden on many municipalities and amounts to a legislative codification of many of COAH's practices, instead of simply eliminating COAH as does the version of Senate Bill No. 1 that was passed in June of 2010. I believe this bill should be amended to return it to the identical form as when it passed the Senate on June 10, 2010.

Accordingly, I herewith return Senate Committee Substitute for Senate Committee Substitute for Senate Bill No. 1 (Third Reprint) and recommend that it be amended as follows:

Page 24, Section 17, Line 8:

Insert "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

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housing and housing affordable to low, 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)"

Page 36, Section 1, Lines 2-3:

After "creation" delete ", through zoning requirements,"

Page 36, Section 1, Lines 5-6:

After "State" delete ", in consideration of regional and Statewide needs for affordable housing." and insert "without wasting"

Page 36, Section 1, Lines 6-7:

Delete "The welfare of the public requires a new approach that does not waste the"

Page 36, Section 1, Lines 36-41:

Delete in their entirety

Page 37, Section 3, Line 17 to Page 38 Section 4, Line 27:

Delete in their entirety

Page 38, Section 5, Line 29 to to Page 40, Line 2:

Delete in their entirety

Page 40, Line 4 to Page 43, Line 2:

Delete in their entirety and insert "4. Section 47 of P.L.1975, c.291 (C.40:55D-60) is amended to read as follows:

47. Whenever the proposed development requires approval pursuant to this act of a subdivision, site plan or conditional use, but not a variance pursuant to subsection d. of section 57 of this act (C. 40:55D-70), the planning board shall have the power to grant to the same extent and subject to the same restrictions as the board of adjustment:

a. Variances pursuant to subsection 57 c. of [this act] P.L.1975, c.291 (C.40:55D-70);

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b. Direction pursuant to section 25 of [this act] P.L.1975, c.291(C.40:55D-34) for issuance of a permit for a building or structure in the bed of a mapped street or public drainage way, flood control basin or public area reserved pursuant to section 23 of [this act] P.L.1975, c.291 (C.40:55D-32); [and]

c. Direction pursuant to section 27 of [this act] P.L.1975, c.291 (C.40:55D-36) for issuance of a permit for a building or structure not related to a street; and

d. Variances pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70), requested pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) for a proposed development in which at least 10 percent of the units are reserved for low- and moderate-income households, in a municipality that has not been determined to be inclusionary.

Whenever relief is requested pursuant to this section, notice of the hearing on the application for development shall include reference to the request for a variance or direction for issuance of a permit, as the case may be.

The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of the variance or direction of the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the planning board. No such subsequent approval shall be granted unless the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

(cf: P.L.1984, c.20, s.10)

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5. 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

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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 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[,] *i*

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

(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[,] *i*

(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) [,] *i*

(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

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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.

In a municipality that has been deemed inclusionary pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), the board shall not be required to review variances requested pursuant to this subsection for the development of affordable housing under inherently beneficial use standards, 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 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

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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.

f. Upon application, hear and determine which, where, and to what extent an alternative method described in section 22 of P.L. , c. (C.) (pending before the Legislature as this bill) of satisfying the set-aside requirements of section 21 of P.L. , c. (C.) (pending before the Legislature as this bill) may be employed. (cf: P.L.2007, c.137, s.60)

Page 43, Section 7, Line 4 to Page 45, Line 32:

Delete Section 7 in its entirety.

Page 45, Section 8, Line 34 to Page 46, Line 41:

Delete in their entirety

Page 46, Section 9, Line 43 to Page 47, Line 35:

Delete in their entirety

Page 47, Section 10, Line 37:

Delete "10" and insert "6"

Page 48, Section 11, Line 31:

Insert "7. 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

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has "always preferred legislative to judicial action in their field," and that the judicial role in upholding the Mount Laurel doctrine "could decrease as a result of legislative and executive action." As administered by the Council on Affordable Housing, the "Fair Housing Act," 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

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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 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.

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

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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 as a mechanism for the creation of affordable housing [by the council].
(cf: P.L.2008, c.46, s.4)

8. 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 2 of P.L. , c. (C.) (pending before the Legislature as this bill) and subsequent to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the Department of Community Affairs.

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

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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 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

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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 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

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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. "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.

o. "Developable land" means undeveloped property having reasonable access to sewer service, having a slope of less than 15 percent, that is not property owned by a

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municipality or county and designated by resolution or ordinance as open space, and located where development is not prohibited pursuant to the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.), or the Federal Clean Water Act, 33 U.S.C. ss.1251 through 1376, "Hackensack Meadowlands Reclamation and Development Act" P.L.1968, c.404 (C.13:17-1 et seq.).

p. "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 (C.34:1B-21.24), 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.

q. "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.

r. "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.

s. "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 or

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less than 120 of the median gross household income for households of the same size within the housing region in which the housing is located.

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

u. "Small residential development project" means new construction resulting in the production of fewer than five residential dwelling units, whether attached or detached, and shall not mean any construction or reconstruction of a single-family dwelling that is occupied by, or intended to be occupied by, the owner.
(cf: P.L.2008, c.46, s.5)

Page 49, Line 17:

Insert "9. 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] P.L.1991, c.479 (C.52:27D-307.1 et al.):

"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) and subsequent to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the Department of Community Affairs.

"Department" means the Department of Community Affairs.

"Housing region" means a housing region as determined by the [Council on Affordable Housing] Department of Community Affairs pursuant to section [7 of P.L.1985, c.222

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(C.52:27D-307)] 18 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-307.2) to be established and maintained by the commissioner.
(cf: P.L.1991, c.479, s.1)

10. 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.

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(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] Department of Community Affairs.

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.

(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] Commissioner of Community Affairs. The [council] person having control over the project and the agency shall promptly and fully supply the commissioner with all relevant information

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necessary for the commissioner's timely and complete fulfillment of the requirements of this act.
(cf: P.L.1991, c.479, s.3)

Page 50, Line 14:

Insert "11. 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

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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)

Page 51, Section 11, Line 9
to Page 53, Line 13:

Delete Sections 11 through 12 in their entirety

Page 53, Section 13, Line 15 to
Page 54, Line 13:

Delete in their entirety

Page 54, Line 14:

Insert "12. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to read as follows:

11. a. [In 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

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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;

(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

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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.) or in P.L. , c. (C.) (pending before the Legislature as this bill) 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

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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 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)

Page 54, Section 14, Line 15:

Insert "13. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to read as follows: 11. a. [In 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

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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;

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

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(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.) or in P.L. , c. (C.) (pending before the Legislature as this bill) 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

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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 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.)

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(pending before the
Legislature as this bill)
(cf: P.L.2008, c.46, s.15)

Page 54, Section 14, Line 15:

Delete Lines 15-26 and insert
"14. 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 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)

Page 55, Section 16, Line 25:

After "projects" add "and
programs"

Page 55, Section 16, Line 25
to Line 26:

Delete "and special needs
housing units."

Page 55, Section 16, Line 32:

Insert "Except as permitted
pursuant to subsection g. of
this section, and by section
41 of P.L.2009, c.90
(C.52:27D-320.1), the
commissioner shall award
grants or loans from this
fund for housing projects and
programs in municipalities
whose housing elements have
received substantive
certification from the
council, in municipalities
receiving State aid pursuant
to P.L.1978, c.14 (C.52:27D-
178 et seq.), in
municipalities subject to a
builder's remedy as defined
in section 28 of P.L.1985,
c.222 (C.52:27D-328) or in
receiving municipalities in
cases where the council has
approved a regional
contribution agreement and a
project plan developed by the
receiving municipality. The
commissioner shall prioritize
finding for projects that
include special needs units
when making grants and awards

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from the New Jersey
Affordable Housing Trust
Fund."

Page 55, Section 16, Line 34
to Line 35:

Delete "The commissioner shall award grants or loans from this fund from housing projects and programs"

Page 56, Section 16, Line 2:

Delete "non-profits and"

Page 56, Section 16, Line 4
to Line 6:

After "Affordable Housing Trust Fund" delete "The commissioner shall assess the housing need in each region of the state and consider the assessment in prioritizing awards from the fund."

Page 56, Section 16, Line 15:

Insert "c. For any period which the council may approve, the commissioner may assist affordable housing programs which are not located in municipalities whose housing elements have been granted substantive certification or which are not in furtherance of a regional contribution agreement; provided that the affordable housing program will meet all or part of a municipal low and moderate income housing obligation."

Page 56, Section 16, Line 24:

After "to" insert "regions based on the region's percentage of the State's low and moderate income housing need as determined by the council,"

Page 56, Section 16, Lines 26
- 28:

Delete "assist projects in municipalities that are deemed compliant pursuant to section 23 of P.L. , c.) (pending before the Legislature as this bill)."

Page 56, Section 16, Line 27:

After "deemed" delete "compliant" and insert "inclusionary"

Page 56, Section 16, Line 31:

After "neither" delete "compliant nor deemed compliant" and insert "inclusionary or not inclusionary"

Page 56, Section 16, Line 33
to Line 34:

Delete "deposited in the "New Jersey Affordable Housing Trust Fund." and insert "in the fund"

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Page 56, Section 16, Line 41:

After "provided" delete "at least 10 percent" and insert "a substantial percentage"

Page 57, Section 16, Lines 24 to 28:

Delete in their entirety

Page 58, Section 16, Lines 39 to 46:

Delete in their entirety

Page 59, Section 17, Line 1:

Delete Section 17 in its entirety

Page 59, Line 1:

Insert new section "17. 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 27 of P.L. , c. (C.) (pending before the Legislature as this bill) 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] approve anticipated or existing housing projects and programs funded by a municipal development trust 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

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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 s.41)

Page 59, Section 18, Line 41
to Page 60, Line 41:

Delete in its entirety

Page 60, Section 19, Line 43:

Delete "19" and insert "18"

Page 61, Section 19, Lines 16
to 32:

Delete in their entirety

Page 61, Section 19, Line 39
to Line 46:

Delete "10 percent of the residential units constructed as low or moderate income housing, as those terms are defined in section 21 of P.L. , c. (C.) (pending before the Legislature as this bill), with affordability controls as required under the rules of the department" and insert "at least 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 department, unless the municipality in which the property is located has received 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 or the municipality has received substantive certification from the council or has petitioned for substantive certification prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) and such petition has not been dismissed or otherwise determined to be invalid. A municipality may satisfy the set-aside requirements imposed by this subsection through any combination of the alternate means provided for in section 22 of P.L. , c. (C.) (pending before the Legislature as this bill)."

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Page 62, Section 19, Lines 4-14: After "plan]" delete in their entirety

Page 63, Line 10 to Page 64, Line 24: Delete in their entirety

Page 64, Section 20, Line 26 to Page 108, Line 16: Delete Sections 20 through 33 in their entirety and insert "19. (New section) It shall be the duty of the Department of Community Affairs 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 department 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);
- c. Pursuant to subsection a. 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);
- e. Establish affirmative marketing requirements for those inclusionary units developed pursuant to section 19 of P.L. , c. (C.) (pending before the Legislature as this bill); and
- f. Review and grant approval or disapprove any petition for substantive certification filed prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). The department may apply the regulations of the Council on

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Affordable Housing in effect at the time a petition for substantive certification was filed, or may adopt new regulations, or revisions or amendments to existing regulations, concerning petitions for substantive certification. The department shall conduct an interim review of the housing plan of any municipality granted substantive certification.

g. The department shall promulgate guidelines for development fees lieu of construction of fractional dwelling units.

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

20. (New section) a. Within 60 days following the effective date of P.L. , c. (C.), a municipality shall apply to the department 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 department at any time 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 one fifth of its developable property shall be reserved for use as workforce housing as defined in subsection s. of section 4

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of P.L.1985, c.222 (C.52:27D-304).

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

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

(2) at least 33 percent of the housing stock is: single-family attached housing; or mobile homes located in a mobile home park as defined in subsection d. of section 3 of P.L.1983, 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 no less than one-half of the housing stock described in this paragraph is rental housing; or

(3) it adopts zoning ordinances or incorporates into its Master Plan prepared pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28) standards that contain:

(a) an analysis of the municipality's current housing stock;

(b) a plan pertaining to how the municipality will satisfy the obligation pursuant to Section 21 of P.L. , c. (C.) (pending before the Legislature as this bill), which may include, the provision of funding sources and other incentives to encourage the development of on-site and off-site low and moderate income housing developments; construction by non-profit developers of 100 percent low and moderate income housing developments; the construction of accessory apartments; programs to purchase and mark down existing units; construction of supportive and special needs housing; extension of existing affordability controls; and other innovative means to provide for a variety and choice of housing opportunities for low and moderate income citizens.

(c) a detailed analysis of the municipality's

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existing low and moderate income housing stock; and

(d) a detailed plan providing for any municipal action, including rehabilitation, necessary to address the needs of a municipality's low- and moderate-income households residing in dilapidated or unsuitable housing;

b. (1) In making a determination pursuant to subsection a., paragraph (1) or (2), the department 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.

(2) In making a determination pursuant to paragraph (2) of subsection a. of this section, the department may exclude buildings determined to be luxury dwellings.

(3) Upon filing of ordinances or Master Plan elements with the Department of Community Affairs pursuant to paragraph (3) of subsection a. of this section, the filing shall be deemed to satisfy the criteria in this section. In the event of a challenge to this filing, the Commissioner of Community Affairs will undertake a limited review of the municipality's filing, for the sole purpose of determining whether the filing meets the criteria of paragraph (3) of subsection a. of section 20.

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

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certification under
N.J.A.C.5:96 and
N.J.A.C.5:97, the rules of
the Council on Affordable
Housing for the period
beginning June 2, 2008, 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 department
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. A determination
by the Commissioner or
department pursuant to this
section shall be deemed a
final agency action
appealable to the Appellate
Division of 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.

22. (New section) a.
(1) For any new residential
development project, as
defined in subsection t. 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

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every 10 residential housing units proposed as part of that project be reserved for occupancy as low income or moderate income housing. For the purposes of this reservation, one special needs housing unit shall count as two housing units.

(2) For any new small 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 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. For the purposes of this reservation, one special needs housing unit shall count as two housing units. Nothing in this paragraph shall be construed to require the developer of a small residential development project to pay a development fee when the developer is providing for the on-site construction of affordable units.

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. A municipality, in evaluating the economic viability of an application for an inclusionary development, may be guided by the applicable provisions of N.J.A.C.5:96 and N.J.A.C.5:97, the regulations of the Council on Affordable Housing for the housing round beginning June 2, 2008.

d. Residential development projects resulting in a fractional unit reserved for occupancy by low-income or moderate-

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income households, shall deposit a development fee collected into a municipal trust fund established by a municipality pursuant to section 27 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).

e. 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.

f. Half of the units reserved for low-income or moderate-income housing pursuant to this section shall be reserved for low-income housing and half the units shall be reserved for moderate-income housing. If an odd number of affordable units is being constructed, rehabilitated or developed pursuant to this section, the higher number of units may be determined by the municipality.

g. At least 50 percent of the units reserved for low income or moderate income housing pursuant to this section shall be self-contained residential dwelling units with a kitchen, sanitary facilities, sleeping quarters and a private entrance, and which are available to the general public and not restricted to any specific segment of the population.

h. A municipality that has petitioned for substantive certification prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), or that has received substantive certification from the former Council on Affordable Housing or the State Planning Commission, pursuant to section 18 of P.L. , c. (C.) (pending before the Legislature as this bill), shall be exempt

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from the requirements of this section for the duration of the housing round for which the municipality is certified. This paragraph shall not be construed to apply to a municipality whose petition for substantive certification is dismissed or otherwise determined to be invalid.

i. A municipality may withdraw a petition for substantive certification or act to withdraw its certification and elect to comply with the requirement of P.L. , c. (C.) (pending before the Legislature as this bill) by satisfying the requirements of this section.

23. (New section) a. A municipality may authorize the following alternate means to satisfy the set-aside requirements imposed by section 21 of P.L. , c. (C.) (pending before the Legislature as this bill):

(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;

(3) Permitting a developer to pay a development 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 27 of P.L. , c. (C.) (pending before the Legislature as this bill);

(4) Assisting a municipally-sponsored 100 percent affordable development;

(5) Permitting construction of Elder Cottage Housing Opportunity units;

(6) Permitting the construction off-site of accessory apartment units affordable to low- and moderate-income households;

(7) Permitting the purchase or subsidization of units that are subsequently sold or rented to low- and moderate-income households at affordable sale prices or

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rents ("buy down, write down"); and

(8) Permitting the construction of an assisted living residence in which all or a designated number of units are restricted to low- or moderate-income households.

b. Any person engaging in a residential development project shall file an application to the zoning board of adjustment for approval of alternate means of satisfying the set-aside requirements imposed by section 21 of P.L. , c.

(C.) (pending before the Legislature as this bill).

In the case of an application, the board of adjustment shall limit its determination to approving and determining which, and to what extent alternate means may be employed, and shall include the reasons for its determination in the findings of its decision thereon.

For purposes of this section, "rehabilitation" means the repair, renovation, alteration, reconstruction of a building or structure containing a dwelling space, pursuant to the rehabilitation subcode adopted by the Commissioner of Community Affairs pursuant to section 5 of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-123), that includes the rehabilitation of a major system and a minimum average investment for hard costs of \$10,000 per unit. The Department of Community Affairs shall develop standards for minimum documentation for qualifying rehabilitation.

24. (New section) A municipality may provide a preference for occupancy of up to one-half of the units required to be provided pursuant to section 21 of P.L. , c. (C.) (pending before the Legislature as this bill), 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.

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25. (New section) a.
In any municipality not determined to be an inclusionary municipality by the department as described in section 20 of P.L. , c. (C.) (pending before the Legislature as this bill), when a proposed residential development project in which at least 10 percent of the dwelling units are set aside for low- or moderate-income households requires approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) 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 planning board shall, pursuant to section 47 of P.L.1975, c.291 (C.40:55D-60), review the request for a subdivision, site plan or conditional use, or a variance, and the development including an affordable housing unit 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 only apply to a municipality's vacant, developable property.

c. The provisions of this section shall not apply to a municipality that has adopted an ordinance that reserves, for use as workforce housing as defined in subsection s. of section 4 of P.L.1985, c.222 (C.52:27D-304), at least one-fifth of its vacant, developable property having reasonable access to sewer service, for residential use.

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

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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 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 imposing fees at high levels dissuades commerce from locating within a State, 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 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

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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 development fee 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 (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

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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 development fees of two and one-half percent of equalized assessed value for residential development projects.

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 development fees for an activity to address the municipality's obligation to provide its portion of the region's need for affordable housing.

(2) A municipality shall set aside a portion of its development 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, but are not limited to, down payment assistance, security deposit assistance, low interest loans, common maintenance expenses for units located in condominiums, and rental assistance.

(b) Affordability assistance to households earning 30 percent or less of

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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.

(3) 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 development fee proceeds.

(4) Not more than 7.5 percent of the revenues collected as development fees shall be expended on administration, in accordance with rules of the department.

d. Notwithstanding any provision of this section, or regulations of the department, a municipality shall not collect a development fee from a developer whenever that developer is providing for the construction of all of the low- and moderate-income housing units required by section 21 of P.L. , c. (C.) (pending before the Legislature as this bill), either on-site or elsewhere within the municipality. A development fee may only be collected for the portion of the equalized assessed value attributable to the low- and moderate-income housing units required by section 21 of P.L. , c. (C.) (pending before the Legislature as this bill) that are not provided for by on-site construction or other alternate means specified in section 22 of P.L. , c. (C.) (pending before the Legislature as this bill).

e. All development fees collected and deposited in the trust fund shall be committed for expenditure within four years from the date of collection. A municipality that fails to commit to expend the balance required in the development fee trust fund by the time set forth in this subsection

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shall be required by the department to transfer the remaining unspent balance at the end of the four-year period to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320), to be used in the housing region of the transferring municipality for the authorized purposes of that fund. A balance transferred to the "New Jersey Affordable Housing Trust Fund" from a municipality meeting the criteria described in subsection a. of section 18 of P.L. , c. (C.) pending before the Legislature as this bill) shall be expended for the authorized purposes in the county in which the municipality where the funds were collected is located. A balance transferred to the "New Jersey Affordable Housing Trust Fund" from a municipality that does not meet the criteria described in subsection a. of section 18 of P.L. , c. (C.) (pending before the Legislature as this bill) shall be expended in the municipality where the funds were collected.

29. (New section) If any persons benefitting from a housing program established pursuant to P.L. , c. (C.) (pending before the Legislature as this bill) that assists persons who have experienced, or may experience, the foreclosure and loss of their personal residence, or addresses the needs of low- and moderate-income households residing within the municipality, are otherwise income qualified to occupy such housing under federal or State law, then any affirmative marketing requirements contained in regulations promulgated to effectuate the program shall be waived to permit the persons to occupy, rent, or purchase new or rehabilitated affordable housing units that they may have previously occupied or owned.

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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 is by judgment of repose, court order, or settlement in exclusionary zoning litigation, designated or reserved for purposes of satisfying a municipality's fair share of the region's housing opportunities.

c. Subsection b. of this section shall not apply to any property that is the subject of pending exclusionary litigation that has not reached final judgment through and including all appeals, including an appeal to the New Jersey Supreme Court.

31. (New section) a. No exclusionary zoning action naming a municipality as a defendant shall be filed for 365 days following the effective date of this act.

b. Subsection a. 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.

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Page 108, Section 35, Lines 25 to 32: Delete in their entirety

Page 108, Line 34: Delete "36" and insert "33"

Page 108, Section 36, Line 42: Delete in its entirety and insert "Section 39 of P.L. 2009, c.90, (C.40:55D-8.8)."

Page 108, Section 36, Line 43: Delete in its entirety

Page 108, Section 36, Lines 46-47: Delete in their entirety

Page 109, Section 36, Lines 1-4: Delete in their entirety

Page 109, Section 36, Line 8: Insert "Section 10 of P.L. 1985, c. 222 (C.52:27D-310)"

Page 109, Section 36, Line 10: Delete in its entirety

Page 109, Section 36, Lines 20 to 21: Delete in their entirety

Page 109, Section 36, Line 23: Insert "Section 8 of P.L. 2008, c.46 (C.52:27D-329.2)"

Page 109, Section 36, Line 24: Insert "Section 10 of P.L. 2008, c.46, (C.52:27D-329.4)"

Page 109, Section 36, Lines 26-35: Delete in their entirety

Page 109, Section 37, Lines 37-39: Delete in its entirety and insert "34. This act shall take effect immediately, except that Sections 2 and 32 shall be inoperative until the first day of the seventh month following enactment."

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attested:

/s/ Jeffrey S. Chiesa

Chief Counsel to the Governor