

NEW JERSEY FAIR HOUSING ACT

N.J.S.A. 52:27D-301 et seq.

Amended July 2008



State of New Jersey
Jon Corzine
Governor

N.J. Council on Affordable Housing
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Department of Community Affairs
Joseph V. Doria, Jr.
Commissioner

52:27D-301. Short title

This act shall be known and may be cited as the "Fair Housing Act."

L. 1985, c. 222, s. 1, eff. July 2, 1985, operative July 2, 1985.

52:27D-302 Findings.

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* doctrine "could decrease as a result of legislative and executive action."

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.

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.

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.

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 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.

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.

L.1985, c.222, s.2; amended 2008, c.46, s.4.

52:27D-303. Declarations

The Legislature declares that the statutory scheme set forth in this act is in the public interest in that it comprehends a low and moderate income housing planning and financing mechanism in accordance with regional considerations and sound planning concepts which satisfies the constitutional obligation enunciated by the Supreme Court. The Legislature declares that the State's preference for the resolution of existing and future disputes involving exclusionary zoning is the mediation and review process set forth in this act and not litigation, and that it is the intention of this act to provide various alternatives to the use of the builder's remedy as a method of achieving fair share housing.

L. 1985, c. 222, s. 3, eff. July 2, 1985, operative July 2, 1985.

52:27D-304 Definitions.

4. As used in this act:

- a. "Council" means the Council on Affordable Housing established in this act, which shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State.
- 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 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.
- f. "Inclusionary development" means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of 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.
- 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.).

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 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.

L.1985, c.222, s.4; amended 2005, c.350, s.2; 2008, c.46, s.5.

52:27D-305 Council on Affordable Housing established.

5. a. There is established in, but not of, the Department of Community Affairs a Council on Affordable Housing to consist of 12 members appointed by the Governor with the advice and consent of the Senate, of whom four shall be elected officials representing the interests of local government, at least one of whom shall be representative of an urban municipality having a population in excess of 40,000 persons and a population density in excess of 3,000 persons per square mile, at least one of whom shall be representative of a municipality having a population of 40,000 persons or less and a population density of 3,000 persons per square mile or less, and no more than one of whom may be a representative of the interests of county government; four shall represent the interests of households in need of low and moderate housing, one of whom shall represent the interests of the nonprofit builders of low and moderate income housing, and shall have an expertise in land use practices and housing issues, one of whom shall be the Commissioner of Community Affairs, ex officio, or his or her designee, who shall serve as chairperson, one of whom shall be the executive director of the agency, serving ex officio; and one of whom shall represent the interests of disabled persons and have expertise in construction accessible to disabled persons; one shall represent the interests of the for-profit builders of market rate homes, and shall have an expertise in land use practices and housing issues; and three shall represent the public interest. Not more than six of the 12 shall be members of the same political party. The membership shall be balanced to the greatest extent practicable among the various housing regions of the State.

b. The members shall serve for terms of six years, except that of the members first

appointed, two shall serve for terms of four years, three for terms of five years, and three for terms of six years. All members shall serve until their respective successors are appointed and shall have qualified. Notwithstanding the above, a member appointed to represent the interests of local government shall serve only such length of the term for which appointed as the member continues to hold elected local office, except that the term of a member so appointed shall not become vacant until 60 days after the member ceases to hold that elected office. Vacancies shall be filled in the same manner as the original appointments, but for the remainders of the unexpired terms only.

c. The members, excluding the executive director of the agency and the Commissioner of Community Affairs, shall be compensated at the rate of \$150.00 for each six-hour day, or prorated portion thereof for more or less than six hours, spent in attendance at meetings and consultations and all members shall be eligible for reimbursement for necessary expenses incurred in connection with the discharge of their duties.

d. The Governor shall nominate the members within 30 days of the effective date of this act and shall designate a member to serve as chairman throughout the member's term of office and until his successor shall have been appointed and qualified. The member added by P.L.2005, c.350 (C.52:27D-311a et al.) shall be nominated within 30 days of the effective date of that act.

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

L.1985,c.222,s.5; amended 1989, c.199; 1995, c.83; 2005, c.350, s.3.

52:27D-306. Vice-chairman, executive director; other personnel

a. The council may establish, and from time to time alter, such plan of organization as it may deem expedient, and may incur expenses within the limits of funds available to it.

b. The council shall elect annually by a majority of its members one of its members, other than the chairman, to serve as vice-chairman for a term of one year and until his successor is elected. The vice-chairman shall carry out all of the responsibilities of the chairman as prescribed in this act during the chairman's absence, disqualification or inability to serve.

c. The council shall appoint and fix the salary of an executive director who shall serve at its pleasure. The council may employ such other personnel as it deems necessary. All employees of the council shall be in the unclassified service of the Civil Service. The council may employ legal counsel who shall represent it in any proceeding to which it is a party, and who shall render legal advice to the council. The council may contract for the services of other professional,

technical and operational personnel and consultants as may be necessary to the performance of its duties. Employees shall be enrolled in the Public Employees' Retirement System of New Jersey established under P.L. 1954, c. 84 (C. 43:15A-1 et seq.).

L. 1985, c. 222, s. 6, eff. July 2, 1985, operative July 2, 1985.

52:27D-307 Duties of council.

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

a. Determine housing regions of the State;

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

c. Adopt criteria and guidelines for:

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

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

Nothing in P.L.1995, c.81 shall affect the validity of substantive certification granted by the council prior to November 21, 1994, or of a judgment of compliance entered by any court of competent jurisdiction prior to that date. Additionally, any municipality that received substantive certification or a judgment of compliance prior to November 21, 1994 and filed a motion prior to November 21, 1994 to amend substantive certification or a judgment of compliance for the purpose of obtaining credits, shall be entitled to a determination of its right to

credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81. Any municipality that filed a motion prior to November 21, 1994 for the purpose of obtaining credits, which motion was supported by the results of a completed survey performed pursuant to council rules, shall be entitled to a determination of its right to credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81;

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

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

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

(c) Adequate land for recreational, conservation or agricultural and farmland preservation purposes would not be provided,

(d) Adequate open space would not be provided,

(e) The pattern of development is contrary to the planning designations in the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.),

(f) Vacant and developable land is not available in the municipality, and

(g) Adequate public facilities and infrastructure capacities are not available, or would result in costs prohibitive to the public if provided.

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

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

e. In its discretion, place a limit, based on a percentage of existing housing stock in a municipality and any other criteria including employment opportunities which the council deems appropriate, upon the aggregate number of units which may be allocated to a municipality as its fair share of the region's present and prospective need for low and moderate income housing. No municipality shall be required to address a fair share of housing units affordable to households with a gross household income of less than 80% of the median gross household income beyond 1,000 units within ten years from the grant of substantive certification, unless it is demonstrated, following objection by an interested party and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within that ten-year period. For the purposes of this section, the facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units, as provided

above, shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the ten-year period preceding the petition for substantive certification in connection with which the objection was filed.

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

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

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

No housing unit subject to the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15) and to the provisions 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.) shall be eligible for inclusion in the municipal fair share plan certified by the council unless the unit complies with the requirements set forth thereunder.

L.1985, c.222, s.7; amended 1993, c.31, s.1; 1993, c.104; 1995, c.81; 1995, c.344, s.1; 2001, c.435, s.1; 2005, c.350, s.4; 2008, c.46, s.6.

52:27D-307.1. Definitions

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.)

"Department" means the Department of Community Affairs.

"Housing region" means a housing region as determined by the Council on Affordable Housing pursuant to section 7 of P.L.1985, c.222 (C.52:27D-307).

"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 to be established and maintained by the commissioner.

L.1991,c.479,s.1.

52:27D-307.2. Register of Housing Projects, requirements, reports

2. a. The commissioner shall cause to be established and kept a Register of Housing Projects. The register shall list all projects for which proposal or application has been submitted for assistance under any program of loans, grants or other financial aid administered by the department, including programs administered by the agency, or for which the offices of the department have been solicited in furthering an application for such assistance from any other program of like nature administered by another agency or instrumentality of the State or of the United States government.

b. The register shall identify each such project by name and location, and shall identify the proposed sponsor or developer thereof. If the proposed sponsor or developer is a corporation, association or partnership, the register shall identify by name and address each stockholder, member or partner whose participation therein represents an equity interest exceeding five percent. No application or proposal relating to a project for which the information required by this subsection is not made available to the commissioner shall be received or entertained by the department or any division, bureau, officer or employee thereof, or by the agency; nor shall any action upon such application or proposal heretofore received or entertained be taken after the effective date of this act until the required information is made available to the commissioner.

c. The commissioner shall, not later than the 90th day next following the effective date of this

act, file with the Governor and Legislature a copy of the register upon its compilation in accordance with this section, and thereafter shall promptly report to the Governor and Legislature any additional projects to be included therein. The register and subsequent reports shall include for each project the priority designation assigned to it pursuant to section 3 of this act. The register and subsequent supplements pursuant to this subsection shall be filed with the Secretary of the Senate and Clerk of the General Assembly, and shall be a public record.

L.1991,c.479,s.2.

52:27D-307.3. Priority ratings of projects

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. 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. The council 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.

L.1991,c.479,s.3.

52:27D-307.4. Reports of communications in furtherance of projects

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.

L.1991,c.479,s.4.

52:27D-307.5 Rules, regulations

5. The commissioner shall adopt and promulgate, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), all rules and regulations necessary or expedient for the prompt and effective carrying out of the provisions and purposes of this act.

L.1991,c.479,s.5.

52:27D-307.6 Methodology for change in calculation for use on June 7, 2000 and after.

6. The change in the calculation of a municipality's determination of present and prospective share of housing need as provided in P.L.2001,c.435 shall apply to the methodology employed by the council for the certification period beginning June 7, 2000 and thereafter.

L.2001,c.435,s.6.

52:27D-308. Procedural rules

Within four months after the confirmation of the last member initially appointed to the council, or January 1, 1986, whichever is earlier, the council shall, in accordance with the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), propose procedural rules.

L. 1985, c. 222, s. 8, eff. July 2, 1985, operative July 2, 1985.

52:27D-309. Municipal housing element

a. Within four months after the effective date of this act, each municipality which so elects shall, by a duly adopted resolution of participation, notify the council of its intent to submit to the council its fair share housing plan. Within five months after the council's adoption of its criteria and guidelines, the municipality shall prepare and file with the council a housing element, based on the council's criteria and guidelines, and any fair share housing ordinance introduced and given first reading and second reading in a hearing pursuant to R.S. 40:49-2 which implements the housing element.

b. A municipality which does not notify the council of its participation within four months may do so at any time thereafter. In any exclusionary zoning litigation instituted against such a municipality, however, there shall be no exhaustion of administrative remedy requirements pursuant to section 16 of this act unless the municipality also files its fair share plan and housing element with the council prior to the institution of the litigation.

L. 1985, c. 222, s. 9, eff. July 2, 1985, operative July 2, 1985.

52:27D-310 Essential components of municipality's housing element.

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

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

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

and probable residential development of lands;

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

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

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

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

L.1985,c.222,s.10; amended 2001, c.435, s.2.

52:27D-310.1 Computing municipal adjustment, exclusions.

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

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

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

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

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

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

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

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

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

L.1995, c.231, s.1; amended 1997, c.49; 2008, c.46, s.39.

52:27D-310.2 Reservation of park land

2. Notwithstanding any law or regulation to the contrary, nothing shall preclude a municipality which has reserved less than three percent of its land area for conservation, park lands or open space under the standards set forth in section 1 of this act from reserving up to three percent of its land area for those purposes. Nothing herein is intended to alter the responsibilities of municipalities with respect to plans already approved which were based upon the right to a vacant land adjustment.

L.1995,c.231,s.2.

52:27D-311 Provision of fair share by municipality.

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 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 Affairs pursuant to subsection b. of section 41 of P.L.2000, c.126 (C.52:27D-311.2).

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

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.

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.

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.

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.

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.

L.1985, c.222, s.11; amended 1995, c.344, s.2; 1998, c.89; 2000, c.126, s.30; 2001, c.435, s.3; 2001, c.441; 2008, c.46, s.15.

52:27D-311a Adaptability requirement; "new construction" defined.

1. Beginning upon the effective date of P.L.2005, c.350 (C.52:27D-311a et al.), 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.

L.2005,c.350,s.1.

52:27D-311b Assurance of adaptability requirements; council measures.

6. The council 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 P.L.2005, c.350 (C.52:27D-311a et al.) 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 the municipality fails to amend its fair share plan within 90 days of receiving such notice, the council may revoke substantive certification.

L.2005,c.350,s.6.

52:27D-311.1. Demolition invalidated

Nothing in the act to which this act is supplementary, P.L.1985, c.222 (C.52:27D-301 et al.), shall be construed to require that a municipality fulfill all or any portion of its fair share housing

obligation through permitting the development or redevelopment of property within the municipality on which is located a residential structure which has not been declared unfit, or which was within the previous three years negligently or willfully rendered unfit, for human occupancy or use pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), and which is situated on a lot of less than two acres of land or on a lot formed by merging two or more such lots, if the development or redevelopment would require the demolition of that structure. Any action heretofore taken by the Council on Affordable Housing based upon such a construction of P.L.1985, c.222 is invalidated.

L.1989,c.142,s.1.

52:27D-311.2 Purchase of privately owned land by municipality for fair share housing.

41. a. Notwithstanding the provisions of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), or of any other law, rule or regulation to the contrary, a municipality may provide for the purchase of privately owned residential property at the value of all liens secured by real property, excluding any tax lien to which the property is subject and include those units toward the fulfillment of its fair share housing obligation pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). Any such purchase under this section shall be made pursuant to and consistent with regulations promulgated by the Commissioner of Community Affairs pursuant to subsection b. of this section.

b. The Commissioner of Community Affairs shall, on or before the first day of the seventh month next following the effective date of P.L.2000, c.126 (C.52:13H-21 et al.) promulgate rules and regulations pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to effectuate the provisions of subsection a. of this section.

L.2000,c.126,s.41.

52:27D-312 Regional contribution agreements.

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 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.

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

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.). On or after the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), no regional contribution agreement shall be entered into by a municipality, or approved by the council or the court.

L.1985, c.222, s.12; amended 1995, c.83, s.2; 2001, c.435, s.4; 2008, c.46, s.16.

52:27D-313 Petition for substantive certification.

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

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

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

L.1985,c.222,s.13; amended 1990, c.121; 2001, c.435, s.5.

52:27D-313.1. Previous application for development

The Council on Affordable Housing shall not consider for substantive certification any application of a housing element submitted which involves the demolition of a residential structure, which has not been declared unfit, or which was within the previous three years negligently or willfully rendered unfit, for human occupancy or use pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.), and which is situated on a lot of less than two acres of land or on a lot formed by merging two or more such lots, unless an application for development has been previously approved by the municipal planning board or municipal zoning board pursuant to procedures prescribed by the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

L.1989,c.142,s.2.

52:27D-314. Issuance of certification

Unless an objection to the substantive certification is filed with the council by any person within 45 days of the publication of the notice of the municipality's petition, the council shall review the petition and shall issue a substantive certification if it shall find that:

a. The municipality's fair share plan is consistent with the rules and criteria adopted by the council and not inconsistent with achievement of the low and moderate income housing needs of the region as adjusted pursuant to the council's criteria and guidelines adopted pursuant to subsection c. of section 7 of this act; and

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

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

Once substantive certification is granted, the municipality shall have 45 days in which to adopt its fair share housing ordinance approved by the council.

L. 1985, c. 222, s. 14, eff. July 2, 1985, operative July 2, 1985.

52:27D-315. Mediation, review process

a. The council shall engage in a mediation and review process in the following situations: (1) if an objection to the municipality's petition for substantive certification is filed with the council within the time specified in section 14 of this act; or (2) if a request for mediation and review is made pursuant to section 16 of this act.

b. In cases in which an objection is filed to substantive certification the council shall meet with the municipality and the objectors and attempt to mediate a resolution of the dispute. If the mediation is successful, the council shall issue a substantive certification if it finds that the criteria of section 14 of this act have been met.

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

The Office of Administrative Law shall expedite its hearing process as much as practicable by promptly assigning an administrative law judge to the matter; promptly scheduling an evidentiary hearing; expeditiously conducting and concluding the evidentiary hearing; limiting the time allotted for briefs, proposed findings of fact, conclusions of law, forms of order or other disposition, or other supplemental material; and the prompt preparation of the initial decision. A written transcript of all oral testimony and copies of all exhibits introduced into evidence shall be submitted to the council by the Office of Administrative Law simultaneously with a copy of the

initial decision. The evidentiary hearings shall be concluded and the initial decision issued no later than 90 days after the transmittal of the matter as a contested case to the Office of Administrative Law by the council, unless the time is extended by the Director of the Office of Administrative Law for good cause shown.

L. 1985, c. 222, s. 15, eff. July 2, 1985, operative July 2, 1985.

52:27D-316. Motion for transfer

For those exclusionary zoning cases instituted more than 60 days before the effective date of this act, any party to the litigation may file a motion with the court to seek a transfer of the case to the council. In determining whether or not to transfer, the court shall consider whether or not the transfer would result in a manifest injustice to any party to the litigation. If the municipality fails to file a housing element and fair share plan with the council within five months from the date of transfer, or promulgation of criteria and guidelines by the council pursuant to section 7 of this act, whichever occurs later, jurisdiction shall revert to the court.

b. Any person who institutes litigation less than 60 days before the effective date of this act or after the effective date of this act challenging a municipality's zoning ordinance with respect to the opportunity to provide for low or moderate income housing, shall file a notice to request review and mediation with the council pursuant to sections 14 and 15 of this act. In the event that the municipality adopts a resolution of participation within the period established in subsection a. of section 9 of this act, the person shall exhaust the review and mediation process of the council before being entitled to a trial on his complaint.

L. 1985, c. 222, s. 16, eff. July 2, 1985, operative July 2, 1985.

52:27D-317. Presumption of validity

a. In any exclusionary zoning case filed against a municipality which has a substantive certification and in which there is a requirement to exhaust the review and mediation process pursuant to section 16 of this act, there shall be a presumption of validity attaching to the housing element and ordinances implementing the housing element. To rebut the presumption of validity, the complainant shall have the burden of proof to demonstrate by clear and convincing evidence that the housing element and ordinances implementing the housing element do not provide a realistic opportunity for the provision of the municipality's fair share of low and moderate income housing after allowing for the implementation of any regional contribution agreement approved by the council.

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

c. The council shall be made a party to any exclusionary zoning suit against a municipality

which receives substantive certification, and shall be empowered to present to the court its reasons for granting substantive certification.

L. 1985, c. 222, s. 17, eff. July 2, 1985, operative July 2, 1985.

52:27D-318. Expiration of administrative remedy obligation

If a municipality which has adopted a resolution of participation pursuant to section 9 of this act fails to meet the deadline for submitting its housing element to the council prior to the institution of exclusionary zoning litigation, the obligation to exhaust administrative remedies contained in subsection b. of section 16 of this act automatically expires. The obligation also expires if the council rejects the municipality's request for substantive certification or conditions its certification upon changes which are not made within the period established in this act or within an extension of that period agreed to by the council and all litigants.

L. 1985, c. 222, s. 18, eff. July 2, 1985, operative July 2, 1985.

52:27D-319. Motion for relief

If the council has not completed its review and mediation process for a municipality within six months of receipt of a request by a party who has instituted litigation, the party may file a motion with a court of competent jurisdiction to be relieved of the duty to exhaust administrative remedies. In the case of review and mediation requests filed within nine months after this act takes effect, the six-month completion date shall not begin to run until nine months after this act takes effect.

L. 1985, c. 222, s. 19, eff. July 2, 1985, operative July 2, 1985.

52:27D-320 "New Jersey Affordable Housing Trust Fund."

20. There is established in the Department of Community Affairs a separate trust fund, to be used for the exclusive purposes as provided in this section, and which shall be known as the "New Jersey Affordable Housing Trust Fund." The fund shall be a non-lapsing, revolving trust fund, and all monies deposited or received for purposes of the fund shall be accounted for separately, by source and amount, and remain in the fund until appropriated for such purposes. The fund shall be the repository of all State funds appropriated for affordable housing purposes, including the proceeds from the receipts of the additional fee collected pursuant to paragraph (2) of subsection a. of section 3 of P.L.1968, c.49 (C.46:15-7), proceeds from available receipts of the Statewide non-residential development fees collected pursuant to section 35 of P.L.2008, c.46 (C.40:55D-8.4), monies lapsing or reverting from municipal development trust funds, or other monies as may be dedicated, earmarked, or appropriated by the Legislature for the purposes of the fund. All references in any law, order, rule, regulation, contract, loan, document, or otherwise, to the "Neighborhood Preservation Nonlapsing Revolving Fund" shall mean the "New Jersey Affordable Housing Trust Fund." The department shall be permitted to utilize annually up to 7.5 percent of the monies available in the fund for the payment of any necessary administrative costs related to the administration of the "Fair Housing Act," P.L.1985, c.222

(C.52:27D-301 et al.), the State Housing Commission, or any costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et al.).

a. Except as permitted pursuant to subsection g. of this section, 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 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.

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

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

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

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.

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

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

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

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

(4) Acquisition of real property, demolition and removal of buildings, or construction of

new housing that will be occupied by low and moderate income households, or any combination thereof;

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

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

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

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

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

g. In addition to other grants or loans awarded pursuant to this section, and without regard to any limitations on such grants or loans for any other purposes herein imposed, the commissioner shall annually allocate such amounts as may be necessary in the commissioner's discretion, and in accordance with section 3 of P.L.2004, c.140 (C.52:27D-287.3), to fund rental assistance grants under the program created pursuant to P.L.2004, c.140 (C.52:27D-287.1 et al.).

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

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

L.1985, c.222, s.20; amended 1995, c.83, s.3; 2003, c.295, s.30; 2004, c.140, s.4; 2008, c.46, s.17.

52:27D-321 Affordable housing assistance.

21. The agency shall establish affordable housing programs to assist municipalities in meeting the obligation of developing communities to provide low and moderate income housing.

a. Of the bond authority allocated to it under section 24 of P.L.1983, c.530 (C.55:14K-24) the agency will allocate, for a reasonable period of time established by its board, no less than 25% to be used in conjunction with housing to be constructed or rehabilitated with assistance under this act.

b. The agency shall to the extent of available funds, award assistance to affordable housing programs located in municipalities whose housing elements have received substantive certification from the council, or which have been subject to a builder's remedy or which are in furtherance of a regional contribution agreement approved by the council. During the first 12 months from the effective date of this act and for any additional period which the council may approve, the agency 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 the affordable housing program will meet all or in part a municipal low and moderate income housing obligation.

c. Assistance provided pursuant to this section may take the form of grants or awards to municipalities, prospective home purchasers, housing sponsors as defined in P.L.1983, c.530 (C.55:14K-1 et seq.), or as contributions to the issuance of mortgage revenue bonds or multi-family housing development bonds which have the effect of achieving the goal of producing affordable housing.

d. Affordable housing programs which may be financed or assisted under this provision may include, but are not limited to:

(1) Assistance for home purchase and improvement including interest rate assistance, down payment and closing cost assistance, and direct grants for principal reduction;

(2) Rental programs including loans or grants for developments containing low and moderate income housing, moderate rehabilitation of existing rental housing, congregate care and retirement facilities;

(3) Financial assistance for the conversion of nonresidential space to residences;

(4) Other housing programs for low and moderate income housing, including infrastructure projects directly facilitating the construction of low and moderate income housing; and

(5) Grants or loans to municipalities, housing sponsors and community organizations to encourage development of innovative approaches to affordable housing, including:

(a) Such advisory, consultative, training and educational services as will assist in the planning, construction, rehabilitation and operation of housing; and

(b) Encouraging research in and demonstration projects to develop new and better techniques and methods for increasing the supply, types and financing of housing and housing projects in the State.

e. The agency shall establish procedures and guidelines governing the qualifications of applicants, the application procedures and the criteria for awarding grants and loans for affordable housing programs and the standards for establishing the amount, terms and conditions of each grant or loan.

f. In consultation with the council, the agency shall establish requirements and controls to insure the maintenance of housing assisted under this act as affordable to low and moderate income households for a period of not less than 20 years; provided that the agency may establish a shorter period upon a determination that the economic feasibility of the program is jeopardized by the requirement and the public purpose served by the program outweighs the shorter period. The controls may include, among others, requirements for recapture of assistance provided pursuant to this act or restrictions on return on equity in the event of failure to meet the requirements of the program. With respect to rental housing financed by the agency pursuant to this act or otherwise which promotes the provision or maintenance of low and moderate income housing, the agency may waive restrictions on return on equity required pursuant to P.L.1983, c.530 (C.55:14K-1 et seq.) which is gained through the sale of the property or of any interest in the property or sale of any interest in the housing sponsor.

g. The agency may establish affordable housing programs through the use or

establishment of subsidiary corporations or development corporations as provided in P.L.1983, c.530 (C.55:14K-1 et seq.). The subsidiary corporations or development corporations shall be eligible to receive funds provided under this act for any permitted purpose.

h. The agency shall provide assistance, through its bonding powers or in any other manner within its powers, to the grant and loan program established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

L.1985,c.222,s.21; amended 2004, c.140, s.5.

52:27D-321.1 Allocation of low income tax credits.

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

L.2008, c.46, s.19.

52:27D-321.2 Maintenance, publishing of annual report by NJHMFA.

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

L.2008, c.46, s.20.

52:27D-322. 6-year moratorium

Any municipality which has reached a settlement of any exclusionary zoning litigation prior to the effective date of this act shall not be subject to any exclusionary zoning suit for a six year period following the effective date of this act. Any such municipality shall be deemed to have a substantively certified housing element and ordinances, and shall not be required during that period to take any further actions with respect to provisions for low and moderate income housing in its land use ordinances or regulations.

L. 1985, c. 222, s. 22, eff. July 2, 1985, operative July 2, 1985.

52:27D-324. Agency administration of controls, agreements to provide services

24. The agency shall establish procedures for entering into, and shall enter into, contractual agreements with willing municipalities or developers of inclusionary developments whereby the agency will administer resale controls and rent controls in municipalities where no appropriate administrative agency exists. The contractual agreements shall be for the duration of the controls and shall involve eligibility determinations, determination of initial occupants, the marketing of units, maintenance of eligibility lists for subsequent purchasers or renters, and determination of maximum resale prices or rents. The agency may charge the municipality or inclusionary developer a reasonable per unit fee for entering into such an agreement, or may charge a reasonable fee to a low or moderate income household at the time the home is sold subject to the resale control or both. Agency fees shall be established according to methods or schedules approved by the State Treasurer.

Neither the agency nor any other entity entering into an agreement to provide services to a municipality under this section shall require, as a condition of that agreement, that these services be provided for all eligible housing units in the municipality. A municipality, at its discretion, may enter into an agreement for the provision of services for any reasonable portion of its eligible housing units.

L.1985, c.222, s.24; amended 1996, c.113, s.20.

52:27D-325. Municipal powers

Notwithstanding any other law to the contrary, a municipality may purchase, lease or acquire by gift or through the exercise of eminent domain, real property and any estate or interest therein, which the municipal governing body determines necessary or useful for the construction or rehabilitation of low and moderate income housing or conversion to low and moderate income housing.

The municipality may provide for the acquisition, construction and maintenance of buildings, structures or other improvements necessary or useful for the provision of low and moderate income housing, and may provide for the reconstruction, conversion or rehabilitation of those improvements in such manner as may be necessary or useful for those purposes.

Notwithstanding the provisions of any other law regarding the conveyance, sale or lease of real property by municipalities, the municipal governing body may, by resolution, authorize the private sale and conveyance or lease of a housing unit or units acquired or constructed pursuant to this section, where the sale, conveyance or lease is to a low or moderate income household or nonprofit entity and contains a contractual guarantee that the housing unit will remain available to low and moderate income households for a period of at least 30 years.

L.1985,c.222,s.25; amended 1990,c.109,s.1.

52:27D-326. Reports to Governor, Legislature

Within 12 months after the effective date of this act and every year thereafter, the agency and the council shall report separately to the Governor and the Legislature on the effect of this act in promoting the provision of low and moderate income housing in the several housing regions of this State. The reports may include recommendations for any revisions or changes in this act which the agency and the council believe necessary to more nearly effectuate this end.

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

L. 1985, c. 222, s. 26, eff. July 2, 1985, operative July 2, 1985.

52:27D-328. Builder's remedy moratorium

No builder's remedy shall be granted to a plaintiff in any exclusionary zoning litigation which has been filed on or after January 20, 1983, unless a final judgment providing for a builder's remedy has already been rendered to that plaintiff. This provision shall terminate upon the expiration of the period set forth in subsection a. of section 9 of this act for the filing with the council of the municipality's housing element.

For the purposes of this section, "final judgment" shall mean a judgment subject to an appeal as of right for which all right to appeal is exhausted.

For the purposes of this section, "exclusionary zoning litigation" shall mean lawsuits filed in courts of competent jurisdiction in this State challenging a municipality's zoning and land use regulations on the basis that the regulations do not make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people living within the municipality's housing region, including those of low and moderate income, who may desire to live in the municipality.

For the purposes of this section, "builder's remedy" shall mean a court imposed remedy for a litigant who is an individual or a profit-making entity in which the court requires a municipality to utilize zoning techniques such as mandatory set-asides or density bonuses which provide for the economic viability of a residential development by including housing which is not for low and moderate income households.

L. 1985, c. 222, s. 28, eff. July 2, 1985, operative July 2, 1985.

52:27D-329. Prior law applicable

Until August 1, 1988, any municipality may continue to regulate development pursuant to a zoning ordinance in accordance with section 49 of the "Municipal Land Use Law," P.L. 1975, c. 291 (C. 40:55D-62) as same read before the effective date of this act.

L. 1985, c. 222, s. 31, eff. July 2, 1985, operative July 2, 1985.

52:27D-329.1 Coordination, review of housing elements.

7. The council shall coordinate and review the housing elements as filed pursuant to section 11 of P.L.1985, c.222 (C.52:27D-311), and the housing activities under section 20 of P.L.1985, c.222 (C.52:27D-320), at least once every three years, to ensure that at least 13 percent of the housing units made available for occupancy by low-income and moderate income households will be reserved for occupancy by very low income households, as that term is defined pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304). Nothing in this section shall require that a specific percentage of the units in any specific project be reserved as very low income housing; provided, however, that a municipality shall not receive bonus credits for the provision of housing units reserved for occupancy by very low income households unless the 13 percent target has been exceeded within that municipality. The council shall coordinate all efforts to meet the goal of this section in a manner that will result in a balanced number of housing units being reserved for very low income households throughout all housing regions. For the purposes of this section, housing activities under section 20 of P.L.1985, c.222 (C.52:27D-320) shall include any project-based assistance provided from the "New Jersey Affordable Housing Trust Fund" pursuant to P.L.2004, c.140 (C.52:27D-287.1 et al.), regardless of whether the housing activity is counted toward the municipal obligation under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.).

L.2008, c.46, s.7.

52:27D-329.2 Authorization of municipality to impose, collect development fees.

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

A municipality may not spend or commit to spend any affordable housing development fees, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the council's approval of the expenditure. The council shall promulgate regulations regarding the establishment, administration and enforcement of the expenditure of affordable housing development fees by municipalities. The council shall have exclusive jurisdiction regarding the enforcement of these regulations, provided that any municipality which is not in compliance with the regulations adopted by the council may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so

forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

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

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

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

(3) 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 included in a municipal fair share plan, in accordance with rules of the council.

(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 municipal fair share plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall not entitle a municipality to bonus credits except as may be provided by the rules of the council.

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

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

d. The council shall establish a time by which all development fees collected within a calendar year shall be expended; provided, however, that all fees 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 section shall be required by the council 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), as amended by P.L.2008, c.46 (C.52:27D-329.1 et al.), to be used in the housing region of the transferring municipality for the authorized purposes of that fund.

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

This section shall not apply to the collection of a Statewide development fee imposed upon non-residential development pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 et seq.) by the State Treasurer, when such collection is not authorized to be retained by a municipality.

L.2008, c.46, s.8.

52:27D-329.3 Collection of payments-in-lieu authorized.

9. a. The council may authorize a municipality that has petitioned for substantive certification to impose and collect payments-in-lieu of constructing affordable units on site upon the construction of residential development, which payments may be imposed and collected as provided pursuant to the rules of the council. Payment-in-lieu fees shall be deposited into a trust fund, and accounted for separately from any other fees collected by a municipality. Whenever a payment-in-lieu is charged by a municipality pursuant to this subsection, a development fee authorized pursuant to section 8 of P.L.2008, c.46 (C.52:27D-329.2) shall not be charged in connection with the same development.

b. A municipality shall commit to expend collections from payments-in-lieu imposed pursuant to subsection a. of this section within four years of the date of collection. The council may extend this deadline if the municipality submits sufficient proof of building or other permits, or other efforts concerning land acquisition or project development. The council shall provide such administrative assistance as may be required to aid in the construction of affordable housing units. A municipality that fails to commit to expend the amounts collected pursuant to this section within the timeframes established shall be required to transfer any unexpended revenue collected pursuant to subsection a. of this section 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 within the same housing region for the authorized purposes of that fund, in accordance with regulations promulgated by the council.

L.2008, c.46, s.9.

52:27D-329.4 Maintenance, publication of up-to-date municipal status report.

10. The council shall maintain on its website, and also publish on a regular basis, an up-to-date municipal status report concerning the petitions for substantive certification of each municipality that has submitted to the council's jurisdiction, and shall collect and publish information concerning the number of housing units actually constructed, construction starts, certificates of occupancy granted, rental units maintained, and the number of housing units transferred or sold within the previous 12-month period. With respect to units actually

constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of bedrooms, and whether occupancy is reserved for families, senior citizens, or other special populations. No later than 60 months after the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), the council shall require each municipality, as a condition of substantive certification, to provide, in a standardized electronic media format as determined by the council, the details of the fair share plan as adopted by the municipality and approved by the council. The council shall publish and maintain such approved plans on its website.

L.2008, c.46, s.10.

52:27D-329.5 Short title.

11. Sections 11 through 14 of P.L.2008, c.46 (C.52:27D-329.5 through C.52:27D-329.8) shall be known and may be cited as the "Housing Rehabilitation and Assistance Program Act."

L.2008, c.46, s.11.

52:27D-329.6 Findings, declarations relative to housing rehabilitation and assistance.

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.).

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.

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.

L.2008, c.46, s.12.

52:27D-329.7 Urban Housing Assistance Program, "Urban Housing Assistance Fund"; rules, regulations.

13. a. There is established within the Department of Community Affairs an Urban Housing Assistance Program for the purposes of assisting certain municipalities in the provision of housing through the rehabilitation of existing buildings or the construction of affordable housing.

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

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

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

(3) any other funds made available through State or federal housing programs for the purposes of producing affordable housing, other than monies from the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

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

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

e. The commissioner shall promulgate rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of P.L.2008, c.46 (C.52:27D-329.1 et al.); provided that the regulations shall permit a municipality broad discretion in shaping its housing rehabilitation and construction program, but shall not permit a municipality to provide assistance to any household having an income greater than 120% of median household income for the housing region. The department may require a return of a grant upon its determination that a municipality is not performing in accordance with its grant or with the regulations.

L.2008, c.46, s.13.

52:27D-329.8 Annual appropriation.

14. a. There shall be appropriated annually from the amounts collected by the State Treasurer from the imposition of Statewide non-residential development fees and retained by the State pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.), the sum of \$20,000,000 for deposit into

the "Urban Housing Assistance Fund," established pursuant to section 13 of P.L.2008, c.46 (C.52:27D-329.7), to be used for the purposes authorized under that section. Any surplus amounts remaining after crediting the "Urban Housing Assistance Fund," in the amount required under this section from the collection of Statewide non-residential development fees, shall be annually appropriated to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).

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

L.2008, c.46, s.14.

52:27D-329.9 Developments, certain, in certain regional planning entities.

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 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.

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 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, 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 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.

(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.

L.2008, c.46, s.18.

52:27D-329.10 Short title.

21. Sections 21 through 30 of P.L.2008, c.46 (C.52:27D-329.10 through C.52:27D-329.19) shall be known and may be cited as the "Strategic Housing Plan Act."

L.2008, c.46, s.21.

52:27D-329.11 Findings relative to strategic housing plan.

22. The Legislature finds that:

a. High housing prices, escalating property taxes, increasing municipal fees, rising energy costs, and the costs to implement various State rules and regulations have put housing out

of the reach of many citizens;

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

c. As housing costs have increased in many parts of the State, and the process of urban revitalization has taken hold in many of the State's cities, these problems have become more severe and have come to affect a wide range of households at many income levels;

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

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

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

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

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

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

L.2008, c.46, s.22.

52:27D-329.12 Definitions relative to strategic housing planning.

23. 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-369.13).

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

"Department" means the Department of Community Affairs.

"Middle 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 or more than 80% but 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.

"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).

L.2008, c.46, s.23.

52:27D-329.13 State Housing Commission.

24. a. The State Housing Commission is created and established in the Executive Branch of the State Government. For the purposes of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the commission is allocated within the Department of Community Affairs, but notwithstanding this allocation, the commission shall be independent of any supervision or control by the department except as expressly authorized under P.L.2008, c.46 (C.52:27D-329.1 et al.). The commission shall consist of 15 public members and shall also include the Commissioner of Community Affairs, the Commissioner of Environmental Protection, the Commissioner of Human Services, the Commissioner of Transportation, the Commissioner of Education, the Chairman of the State Planning Commission, and the State Treasurer, who shall be nonvoting, ex-officio members of the commission. The non-public members may each designate a qualified employee to serve in their stead.

Thirteen of the public members shall be appointed by the Governor with the advice and consent of the Senate as follows: four members shall be individuals qualified by expertise in housing preservation, development, and management and who do not hold public office or public employment, and one of the four shall have particular experience in addressing the needs of the homeless; two of the four members shall be individuals qualified by expertise in urban revitalization and redevelopment and who do not hold public office, one of whom shall be a nonprofit builder, and another member of the four shall be a for-profit developer; two members shall be elected local officials at the time of initial appointment, one of whom shall be an elected official in a municipality having a population greater than 50,000; two members shall be individuals who do not hold public office and are qualified by their position and experience to represent the interests of low and moderate income and middle income families and individuals; one member shall be an individual who does not hold public office and who is qualified by expertise in planning and land use, one member who does not hold public office shall be a licensed real estate broker or a licensed real estate salesperson, and one member who shall be an executive director of a public housing authority within the State. Two additional public members who do not hold public office or public employment shall be appointed as follows: one member by the Speaker of the General Assembly and one member by the President of the Senate. The public members of the commission shall reflect the diversity of housing sector professionals.

b. The Governor shall nominate 13 public members of the commission, within 90 days following the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), and shall designate a public member to preside over the commission until a chair and vice-chair are elected by the members of the commission. The Speaker of the General Assembly and the President of the Senate shall each appoint a member, respectively, within 90 days following the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.).

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

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

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

e. The executive secretary of the commission shall be the Senior Deputy Commissioner for Housing. In the event the commissioner designates the Senior Deputy Commissioner for Housing to serve in his or her stead as a member of the commission, the Senior Deputy Commissioner for Housing shall designate a qualified employee of the department to serve as executive secretary of the commission. Eight of the voting members of the commission shall constitute a quorum and a vote of the majority of the members present shall be necessary for any action taken by the commission.

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

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

(2) To prepare and adopt the Annual Strategic Housing Plan as set forth in section 28 of P.L.2008, c.46 (C.52:27D-329.17).

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

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

L.2008, c.46, s.24.

52:27D-329.14 Department to provide staff services.

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

L.2008, c.46, s.25.

52:27D-329.15 Interdepartmental working group.

26. a. An interdepartmental working group is established for the purpose of supporting the activities of the commission and its preparation of the draft plan.

b. The membership of the working group shall consist of the commissioners or executive directors of the following departments or agencies of State government: the Department of Community Affairs, the Council on Affordable Housing, the New Jersey Housing and Mortgage Finance Agency, the Department of Human Services, the Department of Children and Families, the Department of Health and Senior Services, the Public Advocate, the Department of Education, the Department of Environmental Protection, the Department of

Transportation, the Office of Smart Growth, the Department of the Treasury, the Highlands Council, the Pinelands Commission, and the New Jersey Meadowlands Commission.

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

d. Each other commissioner or executive director may appoint a representative to serve on the working group, who shall be a senior employee of the department or agency with substantial background, experience, or training relevant to the mission of the working group.

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

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

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

L.2008, c.46, s.26.

52:27D-329.16 Annual Strategic Housing Plan.

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

The objectives of the plan shall be as follows:

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

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

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

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

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

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

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

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

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

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

(3) Low income persons with disabilities, including but not limited to physical disability, developmental disability, mental illness, co-occurring mental illness and substance abuse disorder, and HIV/AIDS;

(4) Homeless persons and families, and persons deemed at high risk of homelessness;

(5) Low and moderate income and middle income households unable to find housing near work or transportation;

(6) Low and moderate income and middle income persons and families in existing affordable housing that is at risk of becoming unaffordable or being lost for any reason;

(7) Any other part of the population that the commission finds to have significant housing needs, either Statewide or in particular areas of the State.

c. The plan shall include, but not be limited to, the following:

(1) The identification of all funds which any agency or department of the State controls and uses for housing construction, rehabilitation, preservation, operating or rental subsidies and supportive services, including bond proceeds, the allocation of federal Low Income Housing Tax Credits, and the use of administrative funds by the agency or the department;

(2) Goals for the number and type of housing units to be constructed, rehabilitated, or preserved each year for the underserved populations identified in subsection b. of this section, taking into account realistic assessments of financial resources and delivery capacity survey, and shall include an assessment aimed at identifying and estimating the number of substandard housing units within the State;

(3) Specific recommendations for the manner in which all funds identified in paragraph (1) of this subsection should be prioritized and used, either through new construction,

rehabilitation, preservation, rental subsidies, or other activities, to address the needs of the underserved populations set forth in subsection b. of this section;

(4) Specific actions needed to ensure the integrated use of State government resources that can be used to create or preserve affordable housing, provide supportive services, facilitate the use of housing for urban revitalization, and prevent homelessness, including an identification of the specific agencies and programs responsible for each action;

(5) An assessment of the State's performance during the preceding year;

(6) Recommendations for changes to any program or use of funds which the State controls available for land use planning, housing construction, rehabilitation, preservation, operating or rental subsidies and supportive services, including both procedural and substantive changes, and the specific agencies responsible for each change;

(7) Recommendations for State and local actions to promote the creation and preservation of subsidized affordable and market-rate housing by private sector, non-profit, and government agencies, with particular reference to changes to programs, regulations, and other activities that impede such activities;

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

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

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

L.2008, c.46, s.27.

52:27D-329.17 Plan drafted, adopted and transmitted by commission.

28. a. The commission shall complete a draft plan on or before October 1 of each year. The commission shall adopt the plan by a vote of a majority of its members and transmit the plan to the Governor and the Joint Committee on Housing Affordability, or its successor, on or before the next January 1. The plan shall cover the fiscal year from July 1 to June 30th, beginning with July 1 of the preceding year, except that the first annual plan shall be transmitted on the first January 1 that falls after the annual anniversary of the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.).

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

year following the initial plan, and every five years thereafter, the commission shall adopt and submit a complete plan de novo.

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

L.2008, c.46, s.28.

52:27D-329.18 Annual Housing Performance Report.

29. a. On or before January 1 of each year, beginning with the first January 1 that falls after the annual anniversary of the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), the department, in consultation with the commission and the working group, shall prepare and submit to the Governor and the Joint Committee on Housing Affordability, or its successor, an Annual Housing Performance Report. Within 30 days following receipt of the Annual Housing Performance Report, a hearing shall be held by the Joint Committee on Housing Affordability, or its successor, to provide an opportunity for public comment and discussion.

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

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

(a) Location;

(b) Affordability and income ranges of occupants;

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

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

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

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

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

(4) Municipal performance pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), including the number of units listed for the distinct populations as enumerated in subsection b. of section 27 of P.L.2008, c.46 (C.52:27D-329.16), and the monies collected and the use of all developer fee proceeds deposited into municipal housing trust funds.

(5) For every report issued subsequent to the end of the first year for which a plan has been prepared pursuant to sections 27 and 28 of P.L.2008, c.46 (C.52:27D-329.16 and C.52:27D-329.17):

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

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

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

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

L.2008, c.46, s.29.

52:27D-329.19 Senior Deputy Commissioner for Housing.

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 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.

L.2008, c.46, s.30.