

**CHAPTER 46**  
**(CORRECTED COPY)**

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

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

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

C.40A:12A-3 Definitions.

3. As used in this act:

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

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

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

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

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

“Housing project” means a project, or distinct portion of a project, which is designed and intended to provide decent, safe and sanitary dwellings, apartments or other living accommodations for persons of low and moderate income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare or other purposes. The term “housing project” also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith.

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

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

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

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

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

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

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

“Redevelopment agency” means a redevelopment agency created pursuant to subsection a. of section 11 of P.L.1992, c.79 (C.40A:12A-11) or established heretofore pursuant to the “Redevelopment Agencies Law,” P.L.1949, c.306 (C.40:55C-1 et seq.), repealed by this act, which has been permitted in accordance with the provisions of this act to continue to exercise its redevelopment functions and powers.

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

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

“Redevelopment plan” means a plan adopted by the governing body of a municipality for the redevelopment or rehabilitation of all or any part of a redevelopment area, or an area in need of rehabilitation, which plan shall be sufficiently complete to indicate its relationship to

definite municipal objectives as to appropriate land uses, public transportation and utilities, recreational and municipal facilities, and other public improvements; and to indicate proposed land uses and building requirements in the redevelopment area or area in need of rehabilitation, or both.

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

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

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

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

C.40A:12A-7 Adoption of redevelopment plan.

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

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

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

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

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

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

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

(6) As of the date of the adoption of the resolution finding the area to be in need of redevelopment, an inventory of all housing units affordable to low and moderate income households, as defined pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), that are to

be removed as a result of implementation of the redevelopment plan, whether as a result of subsidies or market conditions, listed by affordability level, number of bedrooms, and tenure.

(7) A plan for the provision, through new construction or substantial rehabilitation of one comparable, affordable replacement housing unit for each affordable housing unit that has been occupied at any time within the last 18 months, that is subject to affordability controls and that is identified as to be removed as a result of implementation of the redevelopment plan. Displaced residents of housing units provided under any State or federal housing subsidy program, or pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), provided they are deemed to be eligible, shall have first priority for those replacement units provided under the plan; provided that any such replacement unit shall not be credited against a prospective municipal obligation under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), if the housing unit which is removed had previously been credited toward satisfying the municipal fair share obligation. To the extent reasonably feasible, replacement housing shall be provided within or in close proximity to the redevelopment area. A municipality shall report annually to the Department of Community Affairs on its progress in implementing the plan for provision of comparable, affordable replacement housing required pursuant to this section.

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

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

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

e. Prior to the adoption of a redevelopment plan, or revision or amendment thereto, the planning board shall transmit to the governing body, within 45 days after referral, a report containing its recommendation concerning the redevelopment plan. This report shall include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. The governing body, when considering the adoption of a redevelopment plan or revision or amendment thereof, shall review the report of the planning board and may approve or disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following the recommendations. Failure of the planning board to transmit its

report within the required 45 days shall relieve the governing body from the requirements of this subsection with regard to the pertinent proposed redevelopment plan or revision or amendment thereof. Nothing in this subsection shall diminish the applicability of the provisions of subsection d. of this section with respect to any redevelopment plan or revision or amendment thereof.

f. The governing body of a municipality may direct the planning board to prepare a redevelopment plan or an amendment or revision to a redevelopment plan for a designated redevelopment area. After completing the redevelopment plan, the planning board shall transmit the proposed plan to the governing body for its adoption. The governing body, when considering the proposed plan, may amend or revise any portion of the proposed redevelopment plan by an affirmative vote of the majority of its full authorized membership and shall record in its minutes the reasons for each amendment or revision. When a redevelopment plan or amendment to a redevelopment plan is referred to the governing body by the planning board under this subsection, the governing body shall be relieved of the referral requirements of subsection e. of this section.

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

C.52:14B-4 Adoption, amendment, repeal of rules.

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

(1) Give at least 30 days' notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and in addition to other public notice required by law shall be published in the New Jersey Register. Notice shall also be distributed to the news media maintaining a press office to cover the State House Complex, and made available electronically through the largest nonproprietary cooperative public computer network. Each agency shall additionally publicize the intended action and shall adopt rules to prescribe the manner in which it will do so, and inform those persons most likely to be affected by or interested in the intended action. Methods that may be employed include publication of the notice in newspapers of general circulation or in trade, industry, governmental or professional publications, distribution of press releases to the news media and posting of notices in appropriate locations. The rules shall prescribe the circumstances under which each additional method shall be employed;

(2) Prepare for public distribution at the time the notice appears in the Register a statement setting forth a summary of the proposed rule, a clear and concise explanation of the purpose and effect of the rule, the specific legal authority under which its adoption is authorized, a description of the expected socio-economic impact of the rule, a regulatory flexibility analysis, or the statement of finding that a regulatory flexibility analysis is not required, as provided in section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement which shall include an assessment of the number of jobs to be generated or lost if the proposed rule takes effect, an agriculture industry impact statement as provided in section 7 of P.L.1998, c.48 (C.4:1C-10.3), and a housing affordability impact statement and a smart

growth development impact statement, as provided in section 31 of P.L.2008, c.46 (C.52:14B-4.1b);

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

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

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

(4) Prepare for public distribution a report listing all parties offering written or oral submissions concerning the rule, summarizing the content of the submissions and providing the agency's response to the data, views and arguments contained in the submissions.

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

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

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

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

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

- (1) The substance or nature of the rule-making which is requested;
- (2) The reasons for the request and the petitioner's interest in the request;
- (3) References to the authority of the agency to take the requested action.

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

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

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

(g) All public hearings shall be conducted by a hearing officer, who may be an official of the agency, a member of its staff, a person on assignment from another agency, a person from the Office of Administrative Law assigned pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent contractor. The hearing officer shall have the responsibility to make recommendations to the agency regarding the adoption, amendment or repeal of a rule. These recommendations shall be made public. At the beginning of each hearing, or series of hearings, the agency, if it has made a proposal, shall present a summary

of the factual information on which its proposal is based, and shall respond to questions posed by any interested party. Hearings shall be conducted at such times and in locations which shall afford interested parties the opportunity to attend. A verbatim record of each hearing shall be maintained, and copies of the record shall be available to the public at no more than the actual cost, which shall be that of the agency where the petition for rule-making originated.

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

**C.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.

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

C.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.

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

C.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.

#### C.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.).

C.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.

#### C.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.

**C.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.

**C.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."

**C.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.

C.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.

C.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.

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

C.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 provisions 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 income 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.

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

C.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 on 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.

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

C.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.

C.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 have 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.

C.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.

C.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.

C.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."

C.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 target 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.

C.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-329.13).

“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).

#### C.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.

C.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.

C.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.

C.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.

**C.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.

**C.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.

**C.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.

**C.52:14B-4.1b Housing affordability impact analysis.**

31. a. In proposing a rule for adoption, the agency involved shall issue a housing affordability impact analysis regarding the rule, which shall be included in the notice of a

proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4). Each housing affordability impact analysis shall contain:

- (1) A description of the types and an estimate of the number of housing units to which the proposed rule will apply; and
- (2) A description of the estimated increase or decrease in the average cost of housing which will be affected by the regulation.

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

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

- (1) A description of the types and an estimate of the number of housing units to which the proposed rule will apply;
- (2) A description of the estimated increase or decrease in the availability of affordable housing which will be affected by the regulation; and
- (3) A description as to whether the proposed rule will affect in any manner new construction within Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

This subsection shall not apply to any proposed rule which the agency finds would impose an insignificant impact, either because the scope of the regulation is minimal, or there is an extreme unlikelihood that the regulation would evoke a change in the housing production within Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The agency's finding and an indication of the basis for its finding shall be included in the notice of a proposed rule as required by subsection (a) of section 4 of P.L.1968, c.410 (C.52:14B-4).

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

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

#### C.40:55D-8.1 Short title.

32. Sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall be known and may be cited as the "Statewide Non-residential Development Fee Act."

#### C.40:55D-8.2 Findings, declarations relative to Statewide non-residential development fees.

33. The Legislature finds and declares:

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

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

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

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

**C.40:55D-8.3 Definitions relative to Statewide non-residential development fees.**

34. As used in sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7):

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

"Commissioner" means the Commissioner of Community Affairs.

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

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

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

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

"Non-residential development" means: (1) any building or structure, or portion thereof, including but not limited to any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code promulgated to effectuate the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), including any subsequent amendments or revisions thereto; (2)

hotels, motels, vacation timeshares, and child-care facilities; and (3) the entirety of all continuing care facilities within a continuing care retirement community which is subject to the "Continuing Care Retirement Community Regulation and Financial Disclosure Act," P.L.1986, c.103 (C.52:27D-330 et seq.).

"Non-residential development fee" means the fee authorized to be imposed pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

"Relating to the provision of housing" shall be liberally construed to include the construction, maintenance, or operation of housing, including but not limited to the provision of services to such housing and the funding of any of the above.

"Spending plan" means a method of allocating funds collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) for the purpose of meeting the housing needs of low and moderate income individuals.

"Treasurer" means the Treasurer of the State of New Jersey.

C.40:55D-8.4 Fee imposed on construction resulting in non-residential development; exemptions.

35. a. Beginning on the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.), a fee is imposed on all construction resulting in non-residential development, as follows:

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

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

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

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

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

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

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

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

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

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

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

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

c. (1) Unless authorized to pay directly to the municipality in which the non-residential construction is occurring in accordance with paragraph (2) of this subsection, developers shall pay non-residential development fees imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) to the Treasurer, in accordance with subsection g. of this section in a manner and on such forms as required by the Treasurer, provided that a certified proof concerning the payment shall be furnished by the Treasurer, to the municipality.

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

d. The payment of non-residential development fees required pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall be made prior to the issuance of a certificate of occupancy for such development. A final certificate of occupancy shall not be issued for any non-residential development until such time as the fee imposed pursuant to this section has been paid by the developer. A non-residential developer may deposit with the appropriate entity the development fees as calculated by the municipality under protest, and the local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy.

e. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which may be subject to a non-residential development fee. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the non-residential development. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection on property which may be subject to a non-residential development fee. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the non-residential

development in accordance with the regulations adopted by the Treasurer pursuant to P.L.1971, c.424 (C.54:1-35.35); calculate the non-residential development fee pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7); and thereafter notify the developer of the amount of the non-residential development fee. Should the municipality fail to determine or notify the developer of the amount of the non-residential development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6). Upon tender of the estimated non-residential development fee, provided the developer is in full compliance with all other applicable laws, the municipality shall issue a final certificate of occupancy for the subject property. Failure of the municipality to comply with the timeframes or procedures set forth in this subsection may subject it to penalties to be imposed by the commissioner; any penalties so imposed shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320).

A developer of a mixed use development shall be required to pay the Statewide non-residential development fee relating to the non-residential development component of a mixed use development subject to the provisions of P.L.2008, c.46 (C.52:27D-329.1 et al.). Non-residential construction which is connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed under this section to the extent of the increase in equalized assessed valuation in accordance with regulations to be promulgated by the Director of the Division of Taxation, Department of the Treasury.

f. Any municipality that is not in compliance with the requirements established pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), or regulations of the council adopted thereto, may be subject to forfeiture of any or all funds remaining within its municipal development 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 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320).

g. The Treasurer shall credit to the "Urban Housing Assistance Fund," established pursuant to section 13 of P.L.2008, c.46 (C.52:27D-329.7) annually from the receipts of the fees authorized to be imposed pursuant to this section an amount equal to \$20 million; all receipts in excess of this amount shall be deposited into the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 as amended by section 17 of P.L.2008, c.46 (C.52:27D-320), to be used for the purposes of that fund.

The Treasurer shall adopt such regulations as necessary to effectuate sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7), in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

#### C.40:55D-8.5 Regulations.

36. a. The commissioner, in consultation with the council, shall promulgate, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), such regulations as are necessary for the prompt and effective implementation of the provisions and purposes of P.L.2008, c.46 (C.52:27D-329.1 et al.), including, but not limited to, provisions for the payment of any necessary administrative costs related to the assessment of properties and collection of any development fees by a municipality.

b. Notwithstanding the authority granted to the commissioner herein, the council 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.), such regulations as are necessary for the effectuation of P.L.2008, c.46 (C.52:27D-329.1 et al.), including but not limited to, regulations necessary for the establishment, implementation, review, monitoring, and enforcement of a municipal affordable housing trust fund and spending plan.

C.40:55D-8.6 Inapplicability of C.40:55D-8.1 through C.40:55D-8.7.

37. a. The provisions of sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall not apply to:

(1) Non-residential property for which a certificate of occupancy has been issued prior to the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.); or

(2) A non-residential planned development which has received approval of a general development plan pursuant to section 5 of P.L.1987, c.129 (C.40:55D-45.3), or a nonresidential development for which the developer has entered into a developer's agreement pursuant to a development approval granted pursuant to P.L.1975, c.291 (C.40:55D-1 et seq.) or for which the redeveloper has entered into a redevelopment agreement pursuant to P.L.1992, c.79 (C.40A:12A-1 et al.) prior to the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.); provided, however, that the general development plan, developer's agreement, redevelopment agreement, or any development agreement pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) provides that the developer or redeveloper pay a fee for affordable housing of at least one percent of the equalized assessed value of the improvements which are the subject of the development plan, developer's agreement, or redevelopment agreement.

b. A developer may challenge non-residential development fees imposed pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the municipality or by the State, as the case may be. Appeals from a determination of the director may be made to the tax court in accordance with the provisions of the State Uniform Tax Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

c. Whenever non-residential development is situated on real property that has been previously developed with a building, structure, or other improvement, the non-residential development fee shall be equal to two and a half (2.5) percent of the equalized assessed value of the land and improvements on the property where the non-residential development is situated at the time the final certificate of occupancy is issued, less the equalized assessed value of the land and improvements on the property where the non-residential development is situated, as determined by the tax assessor of the municipality at the time the developer or owner, including any previous owners, first sought approval for a construction permit, including, but not limited to, demolition permits, pursuant to the State Uniform Construction Code, or approval under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

Whenever the developer of a non-residential development has made or committed itself to make a financial or other contribution relating to the provision of housing affordable to low and moderate income households prior to the enactment of P.L.2008, c.46 (C.52:27D-329.1 et al.), the non-residential development fee shall be reduced by the amount of the financial

contribution and the fair market value of any other contribution made by or committed to be made by the developer. For purposes of this section, a developer is considered to have made or committed itself to make a financial or other contribution, if and only if: (1) the contribution has been transferred, including but not limited to when the funds have already been received by the municipality; (2) the developer has obligated itself to make a contribution as set forth in a written agreement with the municipality, such as a developer's agreement; or (3) the developer's obligation to make a contribution is set forth as a condition in a land use approval issued by a municipal land use agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

d. Unless otherwise provided for by law, no municipality shall be required to return a financial or any other contribution made by or committed to be made by the developer of a non-residential development prior to the enactment of P.L.2008, c.46 (C.52:27D-329.1 et al.) relating to the provision of housing affordable to low and moderate income households, provided that the developer does not obtain an amended, modified, or new municipal land use approval with a substantial change in the non-residential development. If the developer obtains an amended, modified, or new land use approval for non-residential development, the municipality, person, or entity shall be required to return to the developer any funds or other contribution provided by the developer for the provision of housing affordable to low and moderate income households and the developer shall not be entitled to a reduction in the affordable housing development fee based upon that contribution.

e. The provisions of sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) shall not be construed in any manner as affecting the method or timing of assessing real property for property taxation purposes. The payment of a non-residential development fee shall not increase the equalized assessed value of any property.

#### C.40:55D-8.7 Certain local ordinances void.

38. a. Except as expressly provided in P.L.2008, c.46 (C.52:27D-329.1 et al.) including subsection b. of this section, any provision of a local ordinance which imposes a fee for the development of affordable housing upon a developer of non-residential property, including any and all development fee ordinances adopted in accordance with any regulations of the Council on Affordable Housing, or any provision of an ordinance which imposes an obligation relating to the provision of housing affordable to low and moderate income households, or payment in-lieu of building as a condition of non-residential development, shall be void and of no effect. A provision of an ordinance which imposes a development fee which is not prohibited by any provision of P.L.2008, c.46 (C.52:27D-329.1 et al.) shall not be invalidated by this section.

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

c. Whenever the developer of a non-residential development regulated under P.L.1977, c.110 (C.5:12-1 et seq.) has made or committed itself to make a financial or other contribution relating to the provision of housing affordable to low and moderate income households, the non-residential development fee authorized pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) shall be satisfied through the investment obligations made pursuant to P.L.1977, c.110 (C.5:12-1 et seq.).

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

C.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.

Repealer.

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

41. This act shall take effect immediately.

Approved July 17, 2008.