

ASSEMBLY BILL NO. 1907

ADVANCE COPY

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1907 with my recommendations for reconsideration.

This bill would retroactively reinstate the moratorium on non-residential development fees and extend the moratorium until December 31, 2014. The non-residential development fee was designed to help fund affordable housing development without stifling commercial economic growth. I support efforts that facilitate commercial development and economic growth in New Jersey, and for that reason have approved extensions of this moratorium in the past.

However, the moratorium on the non-residential fee cannot be considered in isolation. Instead, as a component of the existing patchwork of affordable housing laws, our approach to funding affordable housing must operate in concert with concrete reforms to improve affordable housing policies and assist municipalities in meeting their affordable housing goals. As I have said since I conditionally vetoed Senate Bill No. 1 in January of 2011, our State needs broad affordable housing reform that is simple, direct, and predictable so that municipalities can develop organically, expanding the availability of affordable housing as they grow.

Regrettably, since I outlined my recommendations for reform and improvement of our housing law in 2011, the Legislature has taken no action. During their silence, I continued to stress the urgent need to reform New Jersey's affordable housing policies and to create more meaningful opportunities for affordable housing across the State, without imposing additional burdens on local infrastructure and property taxpayers. While

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the Legislature sat on the sidelines, I sought to simplify State oversight of affordable housing through an Executive Reorganization Plan; streamline State review of affordable housing plans through new regulations; and provide for real affordable housing opportunities through grants, loans, and other financial support, contributing to thousands of new or rehabilitated affordable housing units across all 21 counties.

But meaningful, long-term affordable housing reform cannot be realized as long as the Legislature refuses to fix the Fair Housing Act. Accordingly, the action I take today in conditionally vetoing this bill, reinforced with additional mechanisms to encourage growth and reform, is a stepping stone to achieving that change. My conditional veto today is largely based on a compromise on affordable housing policy my Administration reached with the Senate in 2011. The key to this approach, which the Senate approved with bipartisan support over three years ago, is the migration of power away from the State and toward an affirmative, locally controlled system that focuses on future development of both residential and commercial assets. As I have said in the past, these types of measures will help fix a broken system and promote sensible, predictable, and achievable planning to implement change. Affordable housing goals should be considered as part of the natural development process, with an appreciation for the market-based factors driving private-sector investment, and must retain flexibility consistent with our State's unique economic, community, and housing needs. I call on the Senate to pick up where we left off, and I challenge the Assembly to join us in achieving sensible affordable housing reform.

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Accordingly, I herewith return Assembly Bill No. 1907 and recommend that it be amended as follows:

Page 2, Title, Line 1:

After "concerning" insert
"affordable housing and"

Page 2, Title, Line 2:

Delete in its entirety and
insert "and amending,
supplementing and repealing
various parts of the
statutory law."

Page 6, Line 41:

Insert new sections 3-29 to
read as follows:

"3. (New section) The Council on Affordable Housing established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) is abolished, and all of its powers, functions, and duties that are not repealed herein are continued in the Department of Community Affairs established pursuant to section 1 of P.L.1966, c.293 (C.52:27D-1), except as herein otherwise provided. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding, or otherwise, reference is made to the Council on Affordable Housing, the same shall mean and refer to the Department of Community Affairs. All appropriations and other moneys available, and to become available, to the Council on Affordable Housing are hereby continued in the Department of Community Affairs, and shall be available for the objects and purposes for which such moneys are appropriated, subject to any terms, restriction, limitations, or other requirements imposed by State or federal law.

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

4. Section 47 of P.L.1975, c.291 (C.40:55D-60) is amended to read as follows:

47. Whenever the proposed development requires approval pursuant to this act

of a subdivision, site plan or conditional use, but not a variance pursuant to subsection d. of section 57 of [this act] P.L.1975, c.291 (C. 40:55D-70), the planning board shall have the power to grant to the same extent and subject to the same restrictions as the board of adjustment:

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

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

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

d. Variances pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70), requested pursuant to section 23 of P.L. , c. (C.) (pending before the Legislature as this bill) for a proposed development in which at least 10 percent of the units are reserved for low- and moderate-income households, in a municipality that has not been determined to be inclusionary.

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

The developer may elect to submit a separate application requesting approval of the variance or direction of the issuance of a permit and a subsequent application for any required

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

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

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

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

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

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

c. (1) Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of

[this act] P.L.1975, c.291 would result in peculiar and exceptional difficulties to, or practical difficulties and undue hardship upon, the developer of such property, grant, upon an application or an appeal relating to such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship; (2) where in an application or appeal relating to a specific piece of property the purposes of this act or the purposes of the "Educational Facilities Construction and Financing Act," P.L.2000, c.72 (C.18A:7G-1 et al.), would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to article 8 of [this act] P.L.1975, c.291; provided, however, that the fact that a proposed use is an inherently beneficial use shall not be dispositive of a decision on a variance under this subsection and provided that no variance from those departures enumerated in subsection d. of this section shall be granted under this subsection; and provided further that the proposed development does not require approval by the planning board of a subdivision, site plan or conditional use, in conjunction with which the planning board has power to review a request for a variance pursuant to subsection a. of section 47 of [this act] P.L.1975, c.291; and

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

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

(2) an expansion of a nonconforming use,¹ ;

(3) deviation from a specification or standard pursuant to section 54 of P.L.1975, c.291 (C.40:55D-67) pertaining solely to a conditional use,¹ ;

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

(5) an increase in the permitted density as defined in section 3.1 of P.L.1975, c.291 (C.40:55D-4), except as applied to the required lot area for a lot or lots for detached one or two dwelling unit buildings, which lot or lots are either an isolated undersized lot or lots resulting from a minor subdivision;² or

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

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

No variance or other relief may be granted under the terms of this section, including a variance or other relief involving an inherently beneficial use, without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not

substantially impair the intent and the purpose of the zone plan and zoning ordinance.

In a municipality that has been deemed inclusionary pursuant to section 19 of P.L. , c. (C.) (pending before the Legislature as this bill), the board shall not be required to review variances requested pursuant to this subsection for the development of affordable housing under inherently beneficial use standards, and a denial of a variance under such circumstances shall be presumptively valid.

e. In respect to any airport safety zones delineated under the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et seq.), no variance or other relief may be granted under the terms of this section, permitting the creation or establishment of a nonconforming use which would be prohibited under standards promulgated pursuant to that act, except upon issuance of a permit by the Commissioner of Transportation. An application under this section may be referred to any appropriate person or agency for its report; provided that such reference shall not extend the period of time within which the zoning board of adjustment shall act.

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

(cf: P.L.2007, c.137, s.60)

6. Section 9 of
P.L.1966, c.293 (C.52:27D-9)

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is amended to read as follows:

9. The department shall, in addition to other powers and duties invested in it by this act, or by any other law:

(a) Assist in the coordination of State and Federal activities relating to local government;

(b) Advise and inform the Governor on the affairs and problems of local government and make recommendations to the Governor for proposed legislation pertaining thereto;

(c) Encourage cooperative action by local governments, including joint service agreements, regional compacts and other forms of regional cooperation;

(d) Assist local government in the solution of its problems, to strengthen local self-government;

(e) Study the entire field of local government in New Jersey;

(f) Collect, collate, publish and disseminate information necessary for the effective operation of the department and useful to local government;

(g) Maintain an inventory of data and information and act as a clearing house and referral agency for information on State and Federal services and programs;

(h) Stimulate local programs through publicity, education, guidance and technical assistance concerning Federal and State programs;

(i) Convene meetings of municipal, county or other local officials to discuss ways of cooperating to provide service more efficiently and economically;

(j) Maintain and make available on request a list of persons qualified to mediate or arbitrate disputes between local units of government arising from joint service projects or other cooperative activities, and further to prescribe rates of compensation for all such mediation, factfinding or arbitration services; [and]

(k) Post on the department's website the annual budget and three immediately preceding adopted budgets of any municipality or county that does not maintain its own website pursuant to the requirements of N.J.S.40A:4-10; and

(l) Assume the duties of the Council on Affordable Housing that are not repealed by P.L. , C. (pending before the Legislature as this bill) and are transferred to the department pursuant to section 3 of P.L. , C. (C.) and section 17 of P.L. , C. (C.) (pending before the Legislature as this bill).

(cf: P.L.2011, c.7, s.2)

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

4. As used in this act:

a. "Council" means the Council on Affordable Housing established [in this act] by section 5 of P.L.1985, c.222 (C.52:27D-305), [which shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State] and, pursuant to section 3 of P.L. , C. (C.) (pending before the Legislature as this bill) and subsequent to the effective date of section P.L. , C. (C.) (pending before the Legislature as this bill), the Department of Community Affairs.

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

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

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

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

f. "Inclusionary development" means a market rate residential housing development in which a substantial percentage of the

housing units are provided for a reasonable income range of] that includes units set aside as housing affordable to low and moderate income households.

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

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

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

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

k. "Disabled person" means a person with a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, aging or illness including epilepsy and other

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

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

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

n. "Price restricted unit" means a residential dwelling unit that is price restricted, including: units that are deed restricted for occupancy by residents of low or moderate income; price restricted pursuant to covenants established for units financed by federal Low Income Housing Tax Credits; price restricted pursuant to covenants established for units developed pursuant to the "Neighborhood Revitalization State Tax Credit Act," P.L.2001, c.415 (C.52:27D-490 et seq.); units rehabilitated as either a sending or receiving municipality under a regional contribution agreement, and

subject to price controls; units built or rehabilitated as part of a Community Development Block Grant, and subject to price controls; housing units operated by a Public Housing Authority; units constructed, rehabilitated, or receiving project-based assistance under the program authorized pursuant to section 8 of the United States Housing Act of 1937.

o. "Developable land" means undeveloped property having reasonable access to sewer service, having a slope of less than 15 percent, that is not property owned by a municipality or county and designated by resolution or ordinance as open space, and located where development is not prohibited pursuant to the "Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.), or the Federal Clean Water Act, 33 U.S.C. ss.1251 through 1376, "Hackensack Meadowlands Reclamation and Development Act" P.L.1968, c.404 (C.13:17-1 et seq.).

p. "Special needs housing" means housing, or the residential portion of a development that is permanent supportive housing, as defined in section 2 of P.L.2004, c.70 (C.34:1B-21.24), or a community residence that is primarily for occupancy by individuals with special needs who shall occupy such housing as their usual and permanent residence.

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

r. "Inclusionary municipality" means a municipality deemed, pursuant to section 19 of P.L. c. (C.) (pending before the Legislature as this bill), to have provided a variety and choice of housing as evidenced by the quantity of price-restricted units or amount of other units, the characteristics of which demonstrate an opportunity for low-income or moderate-income housing.

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

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

u. "Small residential development project" means new construction resulting in the production of fewer than five residential dwelling units, whether attached or detached, and shall not mean any construction or reconstruction of a single-family dwelling that is occupied by, or intended to be occupied by, the owner.

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

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

1. As used in [this act] P.L.1991, c.479 (C.52:27D-307.1 et al.):

"Agency" means the Housing and Mortgage Finance Agency established pursuant

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

"Commissioner" means the Commissioner of Community Affairs.

"Council" means the Council on Affordable Housing created by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and, pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill) and subsequent to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the Department of Community Affairs.

"Department" means the Department of Community Affairs.

"Housing region" means a housing region as determined by the [Council on Affordable Housing] Department of Community Affairs pursuant to section 17 of P.L.1985, c.222 (C.52:27D-307) 1 17 of P.L. , c. (C.) (pending before the Legislature as this bill).

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

"Register" means the Register of Housing Projects directed by section 3 of [this act] P.L.1991, c.479 (C.52:27D-307.2) to be established and maintained by the commissioner.

(cf: P.L.1991, c.479, s.1)

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

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

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

(2) Desirability. Each project shall be evaluated with relation to its probable effect in meeting the affordable housing needs of the housing region in which it is to be located, in accordance with the standards and criteria of the [Council] Department of Community Affairs. Consideration shall be given to (a) the number of affordable dwelling units that the project would provide, (b) the proportion of affordable units to the total number of units envisaged in the project plan, (c) the distribution of those affordable units as between those affordable to persons and families of low income and those of moderate income, considered in relation to the needs of the housing region, (d) the appropriateness of the

proposed tenure of the affordable units, whether to be rental or owner-occupied, in relation to the needs of the housing region, and (e) appropriateness of the proposed distribution of units as to family size, in relation to the needs of the housing region.

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

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

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

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

4. a. Any officer or employee of the department, including any member, officer or employee of the agency [or the council], who receives from any person any solicitation, application, proposal or communication of any kind, whether oral or in writing, aimed at furthering the assistance of any project shall promptly report the same to the commissioner.

The report shall identify the person or persons making such communication. If any such person is not identified in the register in accordance with the requirements of subsection b. of section 2 of this act, the report shall state the person's relationship to the sponsor or developer of the project and the capacity in which the person represents himself or herself to be acting on behalf of the sponsor or developer; or if the person fails or refuses to supply that information, the report shall so state.

b. The commissioner shall develop a procedure or procedures by which reports required under subsection a. of this section shall be made either to the commissioner directly or through such administrative channels as the commissioner shall devise and direct. Notwithstanding the provisions of subsection 1. of section 4 of P.L.1983, c.530 (C.55:14K-4) [and subsection a. of section 5 of P.L.1985, c.222 (C.52:27D-305)], the regulations adopted by the commissioner in fulfillment of this subsection shall be of full force and application on and within the agency [and the council]; and all members, officers and employees of the agency [and council] shall give full compliance with and obedience to the rules and orders of the commissioner made in pursuance of his duties and responsibilities under this act.

c. Reports made to the commissioner shall be promptly forwarded by him, not later than 10 days after their receipt, to the Governor and to the presiding officers of the Houses of the Legislature, who shall cause all members of their respective Houses to be notified of the receipt of those reports and shall make adequate provision for the inspection of the commissioner's reports by members and committees of

either House, and for the dissemination of those reports to the public. The reports forwarded by the commissioner shall in each instance indicate the priority rating that has been assigned in the register to the project to which the report relates.

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

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

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

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

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

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

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

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

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

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

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

(9) The purchase of privately owned real property used for residential purposes at the value of all liens secured by the property; excluding any tax liens, notwithstanding that the total amount of debt secured by liens exceeds the appraised value of the property, pursuant to regulations promulgated by the Commissioner of Community Affairs pursuant to subsection b. of section 41 of P.L.2000, c.126 (C.52:27D-311.2).¹ (Deleted by amendment, P.L. , c.) (pending before the Legislature as this bill)

b. [The municipality may provide for a phasing schedule for the achievement of its fair share of low and moderate income housing.]¹ (Deleted by amendment,

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

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

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

e. [When a
municipality's housing
element includes the
provision of rental housing
units in a community
residence for the
developmentally disabled, as
defined in section 2 of
P.L.1977, c.448 (C.30:11B-2),
which will be affordable to
persons of low and moderate
income, and for which
adequate measures to retain
such affordability pursuant
to paragraph (3) of
subsection a. of this section
are included in the housing
element, those housing units
shall be fully credited as
permitted under the rules of
the council towards the
fulfillment of the
municipality's fair share of
low and moderate income
housing.1 (Deleted by
amendment, P.L. , c.)
(pending before the
Legislature as this bill)

f. [It having been
determined by the Legislature
that the provision of housing
under P.L.1985, c.222
(C.52:27D-301 et al.) is a
public purpose, a
municipality or
municipalities may utilize
public monies to make
donations, grants or loans of
public funds for the
rehabilitation of deficient
housing units and the
provision of new or
substantially rehabilitated
housing for low and moderate
persons, providing that any
private advantage is
incidental.1 (Deleted by
amendment, P.L. , c.)

(pending before the
Legislature as this bill)

g. [A municipality which has received substantive certification from the council, and which has actually effected the construction of the affordable housing units it is obligated to provide, may amend its affordable housing element or zoning ordinances without the approval of the council.] (Deleted by amendment, P.L. , C.)
(pending before the
Legislature as this bill)

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

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

j. A municipality may enter into an agreement with a developer or residential development owner to provide a preference for affordable housing to low to moderate income veterans who served in time of war or other emergency, as defined in section 1 of P.L.1963, c.171 (C.54:4-8.10), of up to 50 percent of the affordable units in that particular project. This preference shall be established in the applicant selection process for available affordable units so that applicants who

are veterans who served in time of war or other emergency, as referenced in this subsection, and who apply within 90 days of the initial marketing period shall receive preference for the rental of the agreed-upon percentage of affordable units. After the first 90 days of the initial 120-day marketing period, if any of those units subject to the preference remain available, then applicants from the general public shall be considered for occupancy. Following the initial 120-day marketing period, previously qualified applicants and future qualified applicants who are veterans who served in time of war or other emergency, as referenced in this subsection, shall be placed on a special waiting list as well as the general waiting list. The veterans on the special waiting list shall be given preference for affordable units, as the units become available, whenever the percentage of preference-occupied units falls below the agreed upon percentage. Any agreement to provide affordable housing preferences for veterans pursuant to this subsection shall not affect a municipality's ability to receive credit for the unit from the council, or its successor.

(cf: P.L.2013, c.6, s.1)

12. Section 1 of P.L.2005, c.350 (C.52:27D-31a) is amended to read as follows:

1. Beginning upon the effective date of P.L.2005, c.350 (C.52:27D-31a et al.), in order to be considered a price restricted unit for purposes of a determination pursuant to subsection a. of section 19 of P.L. , c. (C.) (pending before the Legislature as this bill), any new construction [for which credit is sought against a fair share obligation] shall be adaptable in accordance with the provisions of section 5

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of P.L.2005, c.350 (C.52:27D-123.15). For the purposes of P.L.2005, c.350 (C.52:27D-31a et al.), "new construction" shall mean an entirely new improvement not previously occupied or used for any purpose.

(cf: P.L.2005, c.350, s.1)

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

6. The [council] department may take such measures as are necessary to assure compliance with the adaptability requirements imposed pursuant to P.L.2005, c.350 (C.52:27D-311a et al.), including the inspection of those units which are newly constructed and receive housing credit as provided under section 1 of P.L.2005, c.350 (C.52:27D-311a) and section 21 of P.L. , c. (C.) (pending before the Legislature as this bill)

for adaptability, as part of the monitoring which occurs pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). If any units for which credit was granted in accordance with the provisions of P.L.2005, c.350 (C.52:27D-311a et al.) are found not to conform to the requirements of P.L.2005, c.350 (C.52:27D-311a et al.), the council may require the municipality to amend its fair share plan within 90 days of receiving notice from the council, to address its fair share obligation pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the municipality fails to amend its fair share plan within 90 days of receiving such notice, the council may revoke substantive certification.]

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

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

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, but not limited to, 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 Revolving Fund" shall mean the "New Jersey Affordable Housing Trust Fund." Not less than 13 percent of the total expenditures in any State fiscal year from the New Jersey Affordable Housing Trust Fund shall be used for housing projects and programs reserved for very low income households. 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.), or any costs related to administration of P.L.2008, c.46 (C.52:27D-329.1 et al.)

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

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

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. The commissioner shall prioritize funding for projects that include special needs units when making grants and awards from the "New Jersey Affordable Housing Trust Fund."

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.

i. The commissioner may award or grant the amount of any appropriation deposited in the "New Jersey Affordable Housing Trust Fund" pursuant to section 41 of P.L.2009, c.90 (C.52:27D-320.1) to municipalities pursuant to the provisions of section 39 of P.L.2009, c.90 (C.40:55D-8.8).

(cf: P.L.2013, c.253, s.49)

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

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41. a. Notwithstanding any law to the contrary, there is appropriated \$15 million to the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320) ¹, to replace the suspended non-residential development fee established under the provisions of the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) ¹.

b. (1) Municipalities authorized by the provisions of the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7) to directly receive and use development fees are permitted to petition the commissioner for the award of a grant or loan of any portion of the appropriation described in subsection a. of this section. The commissioner shall award grants or loans from the fund to municipalities that incorporated approve anticipated or existing housing projects and programs funded by a municipal development trust fund [in a housing element submitted to the council pursuant to section 7 of P.L.1985, c.222 (C.52:27D-307) ¹].

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

(cf: P.L.2009, c.90 s.41)

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

18. a. [Notwithstanding any rules of the council to the contrary, for developments consisting of

newly-constructed residential units located, or to be located, within the jurisdiction of any regional planning entity required to adopt a master plan or comprehensive management plan pursuant to statutory law, including the New 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.¹ (Deleted by amendment, P.L.)
(pending before the Legislature as this bill)

b. Subject to the provisions of subsection d. of this section, 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 and units constructed on State-owned property, shall be required to reserve at least 1201 10 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L.1985, c.222 (C.52:27D-304), with affordability controls as required under the rules of the [council] department, 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 or the municipality has received substantive certification from the council or has petitioned for substantive certification prior to the effective date of P.L. , C. (C.) (pending before the Legislature as this bill) and such petition has not been dismissed or otherwise determined to be invalid. A municipality may satisfy the set-aside requirements imposed by this subsection through any combination of the alternate means provided for in section 21 of P.L. , C. (C.) (pending before the Legislature as this bill).

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

(2) The regional planning entities identified in subsection a. of this section shall identify and coordinate regional affordable housing opportunities in cooperation

with municipalities in areas with convenient access to infrastructure, employment opportunities, and public transportation. Coordination of affordable housing opportunities may include methods to regionally provide housing in line with regional concerns, such as transit needs or opportunities, environmental concerns, or such other factors as the council may permit; provided, however, that such provision by such a regional entity may not result in more than a 50 percent change in the fair share obligation of any municipality; provided that this limitation shall not apply to affordable housing units directly attributable to development by the New Jersey Sports and Exposition Authority within the New Jersey Meadowlands District.

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

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

has been qualified to receive assistance under P.L.1978, c.14 (C.52:27D-178 et seq.) and that fall within the jurisdiction of any of the regional entities specified in subsection a. of this section.] (Deleted by amendment, P.L. , C.)
(pending before the Legislature as this bill)

d. Notwithstanding the provisions of subsection b. of this section, or any other law or regulation to the contrary, for purposes of mixed use projects or qualified projects in which a business receives a tax credit pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) or a tax credit pursuant to section 35 of P.L.2009, c.90 (C.34:1B-209.3), or both, an "eligible municipality," as defined in section 2 of P.L.2007, c.346 (C.34:1B-208), shall have the option of deciding the percentage of newly-constructed residential units within the project, up to ~~20~~ 10 percent of the total, required to be reserved for occupancy by low or moderate income households. For a mixed use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of P.L.2011, c.89, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for low or moderate income households in accordance with the terms and conditions of such approval.

(cf: P.L.2011, c.89, s.5)

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

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families. The department shall:

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

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

c. Pursuant to subsection a. of section 19 of P.L. , c. (C.) (pending before the Legislature as this bill), make a determination of whether a municipality is an inclusionary municipality;

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

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

f. Review and grant approval or disapprove any petition for substantive certification filed prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). The department may apply the regulations of the Council on Affordable Housing in effect at the time a petition for substantive certification was filed, or may adopt new regulations, or revisions or amendments to existing regulations, for concerning petitions for substantive certification. The department shall conduct an interim review of the housing plan of any municipality

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granted substantive certification.

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

Pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Department of Community Affairs may promulgate any rules and regulations necessary to effectuate the purposes of this section, or may adopt new regulations, or revisions or amendments to existing regulations, concerning petitions for substantive certification, and, any such regulation, revision, or amendment shall be effective upon filing with the Office of Administrative Law.

18. (New section) a. Within 60 days following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), a municipality shall apply to the department for a determination of whether the municipality is an inclusionary municipality that shall be deemed to have provided for its portion of the region's opportunity for low- and moderate-income housing.

b. (1) A municipality that has not met the criteria in section 19 of P.L. c. (C.) (pending before the Legislature as this bill) may reapply to the department at any time during the ten-year planning cycle, based upon additional evidence that those criteria have been satisfied.

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

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

(2) at least 33 percent of the housing stock is: single-family attached housing; or mobile homes located in a mobile home park as defined in subsection d. of section 3 of P.L.1983, c.386 (C.40:55D-102); or multiple dwellings as defined pursuant to subsection k. of section 3 of P.L.1967, c.76 (C.55:13A-3), provided no less than one-half of the housing stock described in this paragraph is rental housing; or

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

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

(b) a plan pertaining to how the municipality will satisfy the obligation pursuant to Section 20 of P.L. , c. (C.) (pending before the Legislature as this bill), which may include, the provision of funding sources and other incentives to encourage the development of on-site and off-site low and moderate income housing developments; construction by non-profit developers of 100 percent low and moderate income housing developments; the construction of accessory apartments; programs to purchase and mark down existing units; construction of supportive and special needs housing; extension of existing affordability controls; and other innovative means to provide for a variety and choice of housing opportunities for low and moderate income citizens.

(c) a detailed analysis of the municipality's existing low and moderate income housing stock; and

(d) a detailed plan providing for any municipal

action, including rehabilitation, necessary to address the needs of a municipality's low- and moderate-income households residing in dilapidated or unsuitable housing;

b. (1) In making a determination pursuant to subsection a., paragraph (1) or (2), the department shall give special needs housing units newly constructed following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) twice as much weight as their actual proportion of a municipality's housing stock when making a determination of whether a municipality is an inclusionary municipality.

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

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

c. For units constructed following the effective date of P.L.2005, c.350 (C.52:27D-31a et al.), to be considered price restricted for purposes of a determination pursuant to this section, a unit shall be adaptable as described in section 5 of P.L.2005, c.350 (C.52:27D-123.15) and section 1 of P.L.2005, c.350 (C.52:27D-311a).

d. A municipality that received substantive certification under N.J.A.C.5:96 and N.J.A.C.5:97, the rules of the Council on Affordable Housing for the period beginning June 2, 2008, shall be considered an inclusionary municipality pursuant to this section until the end of its approved certification period; provided that the municipality continues to fully and faithfully implement the provisions of its fair-share plan.

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

f. A determination by the Commissioner or department pursuant to this section shall be deemed a final agency action appealable to the Appellate Division of the Superior Court.

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

20. (New section) a.
(1) For any new residential development project, as defined in subsection t. of section 4 of P.L.1985, c.222 (C.52:27D-304), and any redevelopment, rehabilitation, or adaptive reuse of a residential

development project that would qualify as a residential development project if it was new construction, a municipality shall require that one out of every 10 residential housing units proposed as part of that project be reserved for occupancy as low income or moderate income housing. For the purposes of this reservation, one special needs housing unit shall count as two housing units.

(2) For any new small residential development project, as defined in subsection u. of section 4 of P.L.1985, c.222 (C.52:27D-304), and any redevelopment, rehabilitation, infill development, or adaptive reuse of a residential or small residential development project that would qualify as a small residential development project if it was new construction, a municipality shall require that one out of every 20 residential housing units proposed as part of that project be reserved for occupancy as low-income or moderate-income housing. For the purposes of this reservation, one special needs housing unit shall count as two housing units. Nothing in this paragraph shall be construed to require the developer of a small residential development project to pay a development fee when the developer is providing for the on-site construction of affordable units.

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

c. A municipality, in evaluating the economic viability of an application for an inclusionary development, may be guided by the applicable provisions of

N.J.A.C.5:96 and
N.J.A.C.5:97, the regulations
of the Council on Affordable
Housing for the housing round
beginning June 2, 2008.

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

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

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

g. A municipality that
has petitioned for
substantive certification
prior to the effective date
of P.L. 2007 (C. 2007-
(pending before the
legislature as this bill), or
that has received substantive
certification from the former
Council on Affordable Housing
or the State Planning
Commission, pursuant to
section 17 of P.L. 2007
(C. 2007-) (pending
before the Legislature as
this bill), shall be exempt
from the requirements of this
section for the duration of
the housing round for which

the municipality is certified. This section shall not be construed to apply to a municipality whose petition for substantive certification is dismissed or otherwise determined to be invalid.

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

21. (New section) a. A municipality may authorize the following alternate means to satisfy the set-aside requirements imposed by section 20 of P.L. , c. (C.) (pending before the Legislature as this bill):

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

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

(3) Permitting a developer to pay a development fee in lieu of constructing a portion of the inclusionary units into the New Jersey Affordable Housing Trust Fund established pursuant to section 19 of P.L.1985, c.222 (C.52:27D-320) for the construction of affordable housing;

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

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

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

(7) Permitting the purchase or subsidization of units that are subsequently sold or rented to low- and moderate-income households at affordable sale prices or rents ("buy down, write down"); and

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

b. Any person engaging in a residential development project shall file an application to the zoning board of adjustment for approval of alternate means of satisfying the set-aside requirements imposed by section 20 of P.L. , C. (C.) (pending before the Legislature as this bill). In the case of an application, the board of adjustment shall limit its determination to approving and determining which, and to what extent alternate means may be employed, and shall include the reasons for its determination in the findings of its decision thereon.

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

22. (New section) A municipality may provide a preference for occupancy of up to one-half of the units required to be provided

pursuant to section 20 of P.L. , c. (C.) (pending before the Legislature as this bill), to those households that have at least one member who works in the municipality and to those households that have at least one member who resides in the municipality.

23. (New section) a. In any municipality not determined to be an inclusionary municipality by the department as described in section 19 of P.L. , c. (C.) (pending before the Legislature as this bill), when a proposed residential development project in which at least 10 percent of the dwelling units are set aside for low- or moderate-income households requires approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) of a subdivision, site plan or conditional use, or a variance, including a variance pursuant to subsection d. of section 57 of P.L.1975, c.291 (C.40:55D-70), the planning board shall, pursuant to section 47 of P.L.1975, c.291 (C.40:55D-60), review the request for a subdivision, site plan or conditional use, or a variance, and the development including an affordable housing unit shall be deemed to be an inherently beneficial use, and the developer shall be required to make only a showing that the variance or other relief can be granted without substantial detriment to the public good.

b. The provisions of this section shall only apply to a municipality's vacant, developable property.

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

access to sewer service, for residential use.

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

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

b. Notwithstanding subsection a. of this section, a municipality shall not alter the zoning classification of any inclusionary development site that is by judgment of repose, court order, or settlement in exclusionary zoning litigation, designated or reserved for purposes of satisfying a municipality's fair share of the region's housing opportunities.

c. Subsection b. of this section shall not apply to any property that is the subject of pending exclusionary litigation that has not reached final judgment through and

including all appeals, including an appeal to the Supreme Court of New Jersey.

26. (New section) a. No exclusionary zoning action naming a municipality as a defendant shall be filed for 365 days following the effective date of P.L. ' c. (C.) (pending before the Legislature as this bill).

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

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

27. (New section) The provisions of P.L. ' c. (C.) (pending before the Legislature as this bill) shall be severable, and if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect the validity of the remaining provisions of P.L. ' c. (C.) (pending before the Legislature as this bill).

28. Section 7 of P.L.1985, c.222 (C.52:27D-307) is repealed.

29. The following sections are repealed:

Section 5 of P.L.1985 c.222 (C.52:27D-305);

Section 6 of P.L.1985, c.222 (C.52:27D-306);

Section 6 of P.L.2001, c.435 (C.52:27D-307.6);

Section 8 of P.L.1985, c.222 (C.52:27D-308);

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Section 9 of P.L.1985,
c.222 (C.52:27D-309);

Section 1 of P.L.1995,
c.231 (C.52:27D-310.1);

Section 2 of P.L.1995,
c.231 (C.52:27D-310.2);

Section 40 of P.L.2009,
c.90 (C. 52:27D-311.3);

Section 13 of P.L.1985
c.222 (C.52:27D-313);

Section 2 of P.L.1989,
c.142 (C.52:27D-313.1);

Section 14 of P.L.1985
c.222 (C.52:27D-314);

Section 15 of P.L.1985
c.222 (C.52:27D-315);

Section 16 of P.L.1985,
c.222 (C.52:27D-316);

Section 17 of P.L.1985,
c.222 (C.52:27D-317);

Section 18 of P.L.1985,
c.222 (C.52:27D-318);

Section 19 of P.L.1985
c.222 (C.52:27D-319);

Section 7 of P.L.2008,
c.46 (C.52:27D-329.1);

Section 8 of P.L.2008,
c.46 (C.52:27D-329.2);

Section 9 of P.L.2008,
c.46 (C.52:27D-329.3);

Section 10 of P.L.2008,
c.46 (C.52:27D-329.4);

Section 12 of P.L.2008,
c.46 (C.52:27D-329.6); and

Section 14 of P.L.2008,
c.46 (C.52:27D-329.8). "

Page 6, Section 3, Line 42:

Page 6, Section 3, Line 42:

After "immediately" insert "
except that sections 3 and 28
shall be inoperative until
the first day of the seventh
month following enactment"

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Respectfully,

[seal]

/s/ Chris Christie
Governor

Attest:

/s/ Christopher S. Porrino

Chief Counsel to the Governor