

# STATE OF NEW YORK

316

2017-2018 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, the public housing law, the town law, the village law and the general city law, in relation to creation of a fair share housing act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 31 of the executive law is amended by adding a new  
2 subdivision 11 to read as follows:

3 11. Council on affordable housing.

4 § 2. The executive law is amended by adding a new article 13-B to read  
5 as follows:

### ARTICLE 13-B

#### COUNCIL ON AFFORDABLE HOUSING

8 Section 268. Council on affordable housing.

9 § 268. Council on affordable housing. The chairperson of the council  
10 on affordable housing appointed pursuant to the provisions of article  
11 twelve-A of the public housing law, shall be the head of the council on  
12 affordable housing and shall have and exercise all the functions, powers  
13 and duties vested in him or her by such article or any other provision  
14 of law. The chairperson of the council on affordable housing shall  
15 receive a salary to be fixed by the governor within the amount appropri-  
16 ated therefor.

17 § 3. The public housing law is amended by adding a new article 12-A to  
18 read as follows:

### ARTICLE XII-A

#### FAIR SHARE HOUSING ACT

21 Section 320. Short title.

22 321. Legislative findings.

23 322. Legislative declarations and intention.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD00109-01-7

323. Definitions.

324. Council on affordable housing; creation.

325. Council on affordable housing; organization.

326. Council on affordable housing; duties.

327. Procedural rules.

328. Notice of intent to submit fair share housing plan.

329. Housing element of municipality.

330. Housing element; provision of low and moderate income housing.

331. Regional contribution agreement.

332. Certification of housing element.

333. Review of petition.

334. Mediation and review process by council.

335. Jurisdiction of litigation.

336. Presumption of validity of approved housing element.

337. Obligation to exhaust remedies.

338. Failure of council to complete review process in timely manner.

339. State affordable housing programs.

340. Municipality with settlement in exclusionary zoning litigation.

341. Phase-in of obligation for fair share of low and moderate income housing; order of court.

342. Purchase, lease or acquisition by gift of real property.

343. Annual report of council.

§ 320. Short title. This article shall be known and may be cited and referred to as the "fair share housing act".

§ 321. Legislative findings. The legislature hereby finds it to be in the interests of the general welfare of the regional communities of New York state to increase to the maximum extent possible and feasible the opportunities for all residents to secure, consistent with their choice and means, adequate housing in a safe and healthy environment, within convenient access to their places of employment and to necessary community facilities.

The legislature finds that discriminatory and exclusionary zoning regulations enforced in municipalities throughout the state deny large numbers of citizens of this state access to adequate and decent housing accommodations. The legislature further finds that such zoning abuses hinder the development of rational regional planning and growth; discriminate against persons of moderate and low income; inhibit the economic opportunities of private developers by directly making unprofitable the construction of low and moderate income housing; and create an inequitable distribution of costs to local areas for providing services to citizens of this state.

The legislature therefore declares it to be the objective and policy of the state to prohibit local zoning regulations which are discriminatory or exclusionary in purpose or effect, in order to encourage greater diversity and a better distribution of housing opportunities throughout the state.

§ 322. Legislative declarations and intention. The legislature declares that the statutory scheme set forth in this article is in the public interest in that it comprehends a low and moderate income housing planning mechanism in accordance with regional considerations and sound planning concepts. The legislature declares that the state's preference for resolution of existing and future disputes involving exclusionary zoning is the mediation and review process created in this article and

1 not litigation, and that it is the intention of this article to provide  
2 a legislative solution for achieving fair share housing.

3 § 323. Definitions. For the purposes of this article the following  
4 words and phrases shall have the following meanings, unless a different  
5 meaning clearly appears from the context:

6 1. "Conversion" means the conversion of existing commercial, indus-  
7 trial or residential structures for low and moderate income housing  
8 purposes where a substantial percentage of the housing units are  
9 provided for a reasonable income range of low and moderate income house-  
10 holds.

11 2. "Council" means the council on affordable housing established in  
12 section three hundred twenty-four of this article, which shall have  
13 primary jurisdiction for the administration of housing obligations in  
14 accordance with sound regional planning considerations within the state.

15 3. "Development" means any development of real property for which  
16 permission may be required pursuant to local zoning ordinances.

17 4. "Division" means the division of housing and community renewal  
18 created by section ten of this chapter.

19 5. "Exclusionary zoning litigation" means actions or proceedings  
20 brought in a court of competent jurisdiction challenging a munici-  
21 pality's zoning and land use ordinances on the basis that such ordi-  
22 nances do not make realistically possible the opportunity for an appro-  
23 priate variety and choice of housing for all categories of people living  
24 within the municipality's housing region, including those of low and  
25 moderate income, who may desire to live in the municipality.

26 6. "Housing region" means a geographic area of not less than two nor  
27 more than five contiguous, whole counties which exhibit significant  
28 social, economic and income similarities, and which constitute to the  
29 greatest extent practicable the primary metropolitan statistical areas  
30 as last defined by the United States Census Bureau prior to the effec-  
31 tive date of this article.

32 7. "Inclusionary development" means a residential housing development  
33 in which a substantial percentage of housing units are provided for a  
34 reasonable income range of low and moderate income households.

35 8. "Low income housing" means housing which is affordable according to  
36 the federal Department of Housing and Urban Development or other recog-  
37 nized standards for home ownership and rental costs and occupied or  
38 reserved for occupancy by households with a gross household income equal  
39 to fifty percent or less of the median gross household income for house-  
40 holds of the same size within the housing region in which the housing is  
41 located.

42 9. "Moderate income housing" means housing which is affordable accord-  
43 ing to the federal Department of Housing and Urban Development or other  
44 recognized standards for home ownership and rental costs and occupied or  
45 reserved for occupancy by households with a gross household income equal  
46 to more than fifty percent but less than eighty percent of the median  
47 gross household income for households of the same size within the hous-  
48 ing region in which the housing is located.

49 10. "Prospective need" means a projection of housing needs based on  
50 development and growth which is reasonably likely to occur in a region  
51 or municipality as a result of actual determination of public and  
52 private entities. In determining prospective need, consideration shall  
53 be given to approvals of development applications, real property trans-  
54 fers and economic projections.

1 11. "Resolution of participation" means a resolution adopted by a  
2 municipality in which the municipality prepares a fair share plan and  
3 housing element pursuant to this article.

4 § 324. Council on affordable housing; creation. 1. There shall be  
5 established within the executive department, a council on affordable  
6 housing to consist of nine members appointed by the governor; of whom  
7 four shall be elected public officers representing interests of local  
8 government, one of whom shall be representative of an urban munici-  
9 pality having a population in excess of seventy-five thousand persons  
10 and a population density in excess of three thousand persons per square  
11 mile, one of whom shall be representative of the interests of county  
12 government, one of whom shall be representative of the interests of town  
13 government, and one of whom shall be representative of the interests of  
14 village government; four shall represent the interests of households in  
15 need of low and moderate income housing, at least one of whom shall  
16 represent the interests of the builders of low and moderate income hous-  
17 ing, and shall have an expertise in land use practices and housing  
18 issues; and one shall be the commissioner, serving ex officio. The  
19 membership shall be balanced to the greatest extent practicable among  
20 the various housing regions of the state.

21 2. The non ex officio members shall serve for terms of six years,  
22 except that of the members first appointed, three shall serve for terms  
23 of four years, three for terms of five years, and three for terms of six  
24 years. All members shall serve until their respective successors are  
25 appointed and shall have qualified. Vacancies shall be filled in the  
26 same manner as the original appointments, but for the remainders of the  
27 unexpired terms only.

28 3. The members, excluding the commissioner, shall be compensated at a  
29 rate to be determined by the governor and all members shall be reim-  
30 bursed for all necessary expenses incurred in the discharge of their  
31 lawful duties.

32 4. The governor shall nominate the members within thirty days of the  
33 effective date of this article and shall designate a member to serve as  
34 chairperson throughout the member's term of office and until his or her  
35 successor shall have been appointed and qualified.

36 5. Any member may be removed from office by the governor for miscon-  
37 duct in office, willful neglect of duty, or other conduct evidencing  
38 unfitness for the office, or for incompetence. A member or employee of  
39 the council shall automatically forfeit his office or employment upon  
40 conviction of any crime.

41 § 325. Council on affordable housing; organization. 1. The council may  
42 establish, and from time to time alter, such plan of organization as it  
43 may deem expedient, and may incur expenses within the limits of funds  
44 available to it.

45 2. The council shall elect annually by a majority of its members one  
46 of its members, other than the chairperson, to serve as vice-chairperson  
47 for a term of one year and until his or her successor is elected. The  
48 vice-chairperson shall carry out all of the responsibilities of the  
49 chairperson as prescribed in this article during the chairperson's  
50 absence, disqualification or inability to serve.

51 3. The council shall appoint and fix the salary of an executive direc-  
52 tor who shall serve at its pleasure. The council may employ such other  
53 personnel as it deems necessary. The council may employ legal counsel  
54 who shall represent it in any proceeding to which it is a party, and who  
55 shall render legal advice to the council. The council may contract for

1 the services of other professional, technical and operational personnel  
2 and consultants as may be necessary to the performance of its duties.

3 § 326. Council on affordable housing; duties. It shall be the duty of  
4 the council, six months after the confirmation of the last member  
5 initially appointed to the council and from time to time thereafter, to:

6 1. determine housing regions of the state;

7 2. estimate the present and prospective need for low and moderate  
8 income housing at the state and regional levels;

9 3. adopt criteria and guidelines for:

10 a. determination by the council of each municipality's present and  
11 prospective fair share of the housing need in a given region; and

12 b. phasing of present and prospective fair share housing requirements  
13 pursuant to section three hundred forty-one of this article;

14 4. provide population and household projections for the state and  
15 housing regions; or

16 5. may in its discretion, place a limit, based on a percentage of  
17 existing housing stock in a municipality and any other criteria includ-  
18 ing employment opportunities which the council deems appropriate, upon  
19 the aggregate number of units which may be allocated to a municipality  
20 as its fair share of the region's present and prospective need for low  
21 and moderate income housing.

22 In carrying out the above duties, including, but not limited to, pres-  
23 ent and prospective need estimations, the council shall give appropriate  
24 consideration to pertinent research studies, government reports, deci-  
25 sions of other branches of government and public comment. The council  
26 shall develop procedures for periodically adjusting regional need based  
27 upon the low and moderate income housing that is provided in the region  
28 through any federal, state, municipal or private housing program.

29 § 327. Procedural rules. Within four months after the confirmation of  
30 the last member of the initially appointed council, the council shall  
31 adopt its own procedural rules with the consent of the attorney general.

32 § 328. Notice of intent to submit fair share housing plan. 1. Within  
33 four months after the effective date of this article, each municipality  
34 shall, by a duly adopted resolution of participation, notify the council  
35 of its intent to submit to the council its fair share housing plan.  
36 Within five months after the council's adoption of its criteria and  
37 guidelines, the municipality shall prepare and file with the council a  
38 housing element and any fair share housing ordinances adopted which  
39 implement the housing element based on the council's criteria and guide-  
40 lines.

41 2. The council shall and any person affected thereby may bring an  
42 action in supreme court against any municipality failing to submit a  
43 fair share housing plan to the council pursuant to subdivision one of  
44 this section. Such cause of action shall demand a court order to the  
45 municipality to submit a fair share housing plan to the council.

46 § 329. Housing element of municipality. A municipality's housing  
47 element shall be designed to achieve the goal of access to affordable  
48 housing to meet present and prospective housing needs, with particular  
49 attention to low and moderate income housing. Such housing element shall  
50 provide specifically for housing units affordable to the income levels  
51 of the households in need, and shall contain at least:

52 1. an inventory of the municipality's housing stock by age, condition,  
53 purchase or rental value, occupancy characteristics, and type, including  
54 the number of units affordable to low and moderate income households and  
55 substandard housing capable of being rehabilitated, and in conducting  
56 this inventory the municipality shall have access, on a confidential



1 basis for the sole purpose of conducting the inventory, to all necessary  
2 property tax assessment records and information in the assessor's  
3 office, including but not limited to the property record cards;

4 2. a projection of the municipality's housing stock, including the  
5 probable future construction of low and moderate income housing, for the  
6 next six years, taking into account, but not necessarily limited to,  
7 construction permits issued, approvals of applications for development  
8 and probable residential development of lands;

9 3. an analysis of the municipality's demographic characteristics,  
10 including but not necessarily limited to, household size, income level  
11 and age;

12 4. an analysis of the existing and probable future employment charac-  
13 teristics of the municipality;

14 5. a determination of the municipality's present and prospective fair  
15 share for low and moderate income housing and its capacity to accommo-  
16 date its present and prospective housing needs, including its fair share  
17 for low and moderate income housing; and

18 6. a consideration of the lands that are most appropriate for  
19 construction of low and moderate income housing and of the existing  
20 structures most appropriate for conversion to, or rehabilitation for,  
21 low and moderate income housing, including a consideration of lands of  
22 developers who have expressed a commitment to provide low and moderate  
23 income housing.

24 § 330. Housing element; provision of low and moderate income housing.

25 1. In adopting its housing element, the municipality may provide for its  
26 fair share of low and moderate income housing by means of any technique  
27 or combination of techniques which provide a realistic opportunity for  
28 the provision of the fair share. The housing element shall contain an  
29 analysis demonstrating that it will provide such a realistic opportu-  
30 nity, and the municipality shall establish that its land use and other  
31 relevant ordinances have been revised to incorporate the provisions for  
32 low and moderate income housing. In preparing the housing element, the  
33 municipality shall consider the following techniques for providing low  
34 and moderate income housing within the municipality, as well as such  
35 other techniques as may be published by the council or proposed by the  
36 municipality:

37 a. rezoning for densities necessary to assure the economic viability  
38 of any inclusionary developments, either through mandatory set-asides or  
39 density bonuses, as may be necessary to meet all or part of the munici-  
40 pality's fair share;

41 b. determination of the total residential zoning necessary to assure  
42 that the municipality's fair share is achieved;

43 c. determination of measures that the municipality will take to assure  
44 that the low and moderate income units remain affordable to low and  
45 moderate income households for a period of at least thirty years;

46 d. a plan for infrastructure expansion and rehabilitation if necessary  
47 to assure the achievement of the municipality's fair share of low and  
48 moderate income housing;

49 e. donation or use of municipally owned land or land condemned by the  
50 municipality for purposes of providing low and moderate income housing;

51 f. tax abatements for purposes of providing low and moderate income  
52 housing;

53 g. utilization of funds obtained from any state or federal subsidy  
54 toward the construction of low and moderate income housing; and

55 h. utilization of municipally generated funds toward the construction  
56 of low and moderate income housing.

2. The municipality may provide for a phasing schedule for the achievement of its fair share of low and moderate income housing which is not inconsistent with section three hundred forty-one of this article.

3. The municipality may propose that a portion of its fair share be met through a regional contribution agreement. The housing element shall demonstrate, however, the manner in which that portion will be provided within the municipality if the regional contribution agreement is not entered into. The municipality shall provide a statement of its reasons for the proposal.

4. Nothing in this article shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.

§ 331. Regional contribution agreement. 1. A municipality may propose the transfer of up to twenty-five percent 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 proposing to transfer to another municipality shall provide the council with the housing element and statement required under subdivision three of section three hundred thirty of this article, and shall request the council to determine a match with a municipality filing a statement of intent pursuant to subdivision five of this section. Except as provided in subdivision two of this section, the agreement may be entered into upon obtaining substantive certification under section three hundred thirty-three of this article, 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.

2. A municipality which is a defendant in an exclusionary zoning suit and which has not obtained substantive certification pursuant to this article 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 this article 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 one hundred twenty days after this article 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.

3. 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

1 provision of low and moderate income housing within convenient access to  
2 employment opportunities. The council shall refer the agreement to the  
3 county planning board or agency which shall review whether or not the  
4 transfer agreement is in accordance with sound, comprehensive regional  
5 planning. In its review, the county planning board or agency shall  
6 consider the master plan and zoning ordinance of the sending and receiv-  
7 ing municipalities and its own county master plan. In the event that  
8 there is no county planning board or agency in the county in which the  
9 receiving municipality is located, the council shall determine whether  
10 or not the agreement is in accordance with sound, comprehensive regional  
11 planning. After it has been determined that the agreement provides a  
12 realistic opportunity for low and moderate income housing within conven-  
13 ient access to employment opportunities, and that the agreement is  
14 consistent with sound, comprehensive regional planning, the council  
15 shall approve the regional contribution agreement by resolution. All  
16 determinations of a county planning board or agency shall be in writing  
17 and shall be made within such time limits as the council may prescribe,  
18 beyond which the council shall make those determinations and no fee  
19 shall be paid to the county planning board or agency pursuant to this  
20 subdivision.

21 4. In approving a regional contribution agreement, the council shall  
22 set forth in its resolution a schedule of the contributions to be appro-  
23 priated annually by the sending municipality.

24 5. The council shall maintain current lists of municipalities which  
25 have stated an intent to enter into regional contribution agreements as  
26 receiving municipalities, and shall establish procedures for filing  
27 statements of intent with the council. No receiving municipality shall  
28 be required to accept a greater number of low and moderate income units  
29 through an agreement than it has expressed a willingness to accept in  
30 its statement, but the number stated shall not be less than a reasonable  
31 minimum number of units, not to exceed one hundred, as established by  
32 the council. The council shall require a project plan from a receiving  
33 municipality prior to the entering into of the agreement, and shall  
34 submit the project plan to the division for its review as to the feasi-  
35 bility of the plan prior to the council's approval of the agreement. The  
36 division may recommend and the council may approve as part of the  
37 project plan a provision that the time limitations for contractual guar-  
38 antees or resale controls for low and moderate income units included in  
39 the project shall be less than thirty years, if it is determined that  
40 modification is necessary to assure the economic viability of the  
41 project.

42 6. The council shall establish guidelines for the duration and amount  
43 of contributions in regional contribution agreements. In doing so, the  
44 council shall give substantial consideration to the average of:

45 a. the median amount required to rehabilitate a low and moderate  
46 income unit up to code enforcement standards;

47 b. the average internal subsidization required for a developer to  
48 provide a low income housing unit in an inclusionary development; and

49 c. the average internal subsidization required for a developer to  
50 provide a moderate income housing unit in an inclusionary development.

51 Contributions may be prorated in municipal appropriations occurring  
52 over a period not to exceed three years and may include an amount agreed  
53 upon to compensate or partially compensate the receiving municipality  
54 for infrastructure or other costs generated to the receiving municipi-  
55 pality by the development. Appropriations shall be made and paid direct-  
56 ly to the receiving municipality or municipalities.



7. The council shall require receiving municipalities to file annual reports with the division setting forth the progress in implementing a project funded under a regional contribution agreement, and the division 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.

§ 332. Certification of housing element. A municipality which has filed a housing element shall, at any time during a three year period following the filing of the housing element, petition the council for a substantive certification of its element and ordinances or institute an action for declaratory judgment granting it a one year repose in supreme court. The municipality shall publish notice of its petition in a newspaper of general circulation within the municipality and county and shall make available to the public information on the element and ordinances in accordance with such procedures as the council shall establish. The council shall also establish a procedure for providing public notice of each petition which it receives.

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

1. The municipality's fair share plan is consistent with the rules and criteria adopted by the council and not inconsistent with achievement of the low and moderate income housing needs of the region as adjusted pursuant to the council's criteria and guidelines adopted pursuant to subdivision three of section three hundred twenty-six of this article; and

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

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

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

§ 334. Mediation and review process by council. 1. The council shall engage in a mediation and review process in the following situations:

a. if an objection to the municipality's petition for substantive certification is filed with the council within the time specified in section three hundred thirty-three of this article; or

b. if a request for mediation and review is made pursuant to section three hundred thirty-five of this article.

2. In cases in which an objection is filed to substantive certification the council shall meet with the municipality and the objectors

1 and attempt to mediate a resolution of the dispute. If the mediation is  
2 successful, the council shall issue a substantive certification if it  
3 finds that the criteria of section three hundred thirty-three of this  
4 article have been met.

5 3. If the mediation efforts are unsuccessful, the matter shall be  
6 appealed to supreme court pursuant to article seventy-eight of the civil  
7 practice law and rules.

8 § 335. Jurisdiction of litigation. 1. For those exclusionary zoning  
9 cases instituted more than sixty days before the effective date of this  
10 article, any party to the litigation may file a motion with the court to  
11 seek a transfer of the case to the council. In determining whether or  
12 not to transfer, the court shall consider whether or not the transfer  
13 would result in a manifest injustice to any party to the litigation. If  
14 the municipality fails to file a housing element and fair share plan  
15 with the council within five months from the date of transfer, or  
16 promulgation of criteria and guidelines by the council pursuant to  
17 section three hundred twenty-six of this article, whichever occurs  
18 later, jurisdiction shall revert to the court.

19 2. Any person who institutes litigation less than sixty days before  
20 the effective date of this article or after the effective date of this  
21 article challenging a municipality's zoning ordinance with respect to  
22 the opportunity to provide for low or moderate income housing, shall  
23 file a notice to request review and mediation with the council pursuant  
24 to sections three hundred thirty-three and three hundred thirty-four of  
25 this article. In the event that the municipality adopts a resolution of  
26 participation within the period established in subdivision one of  
27 section three hundred twenty-eight of this article, the person shall  
28 exhaust the review and mediation process of the council before being  
29 entitled to a trial on his complaint.

30 § 336. Presumption of validity of approved housing element. 1. In any  
31 exclusionary zoning case filed against a municipality which has a  
32 substantive certification and in which there is a requirement to exhaust  
33 the review and mediation process pursuant to section three hundred thir-  
34 ty-five of this article, there shall be a presumption of validity  
35 attaching to the approved housing element and ordinances implementing  
36 the housing element. To rebut the presumption of validity, the complain-  
37 ant shall have the burden of proof to demonstrate by clear and convinc-  
38 ing evidence that the approved housing element and ordinances implement-  
39 ing the housing element do not provide a realistic opportunity for the  
40 provision of the municipality's fair share of low and moderate income  
41 housing after allowing for the implementation of any regional contrib-  
42 ution agreement approved by the council.

43 2. There shall be a presumption of validity attaching to any regional  
44 contribution agreement approved by the council. To rebut the presumption  
45 of validity, the complainant shall have the burden of proof to demon-  
46 strate by clear and convincing evidence that the agreement does not  
47 provide for a realistic opportunity for the provision of low and moder-  
48 ate income housing within the housing region.

49 3. The council shall be made a party to any exclusionary zoning suit  
50 against a municipality which receives substantive certification, and  
51 shall be empowered to present to the court its reasons for granting  
52 substantive certification.

53 § 337. Obligation to exhaust remedies. If a municipality which has  
54 adopted a resolution of participation pursuant to section three hundred  
55 twenty-eight of this article fails to meet the deadline for submitting  
56 its housing element to the council prior to the institution of exclu-

1 sionary zoning litigation, the obligation to exhaust administrative  
2 remedies contained in subdivision two of section three hundred thirty-  
3 five of this article automatically expires. The obligation also expires  
4 if the council rejects the municipality's request for substantive  
5 certification or conditions its certification upon changes which are not  
6 made within the period established in this article or within an exten-  
7 sion of that period agreed to by the council and all litigants.

8 § 338. Failure of council to complete review process in timely manner.  
9 If the council has not completed its review and mediation process for a  
10 municipality within six months of receipt of a request by a party who  
11 has instituted litigation, the party may file a motion with a court of  
12 competent jurisdiction to be relieved of the duty to exhaust administra-  
13 tive remedies. In the case of review and mediation requests filed within  
14 nine months after the effective date of this article, the six-month  
15 completion date shall not begin to run until nine months after the  
16 effective date of this article.

17 § 339. State affordable housing programs. Notwithstanding any  
18 provisions of law to the contrary, the division, the office of temporary  
19 and disability assistance, the New York state housing finance agency,  
20 the New York state urban development corporation and the state of New  
21 York mortgage agency shall, to the extent practicable and consistent  
22 with existing statutes and regulations governing programs which seek to  
23 directly or indirectly increase the supply of affordable housing, seek  
24 to award grants, loans, payments or subsidies pursuant to such programs  
25 within municipalities whose housing elements have received substantive  
26 certification from the council, within receiving municipalities in cases  
27 where the council has approved a regional contribution agreement and a  
28 project plan developed by the receiving municipality.

29 § 340. Municipality with settlement in exclusionary zoning litigation.  
30 Any municipality which has reached a settlement of any exclusionary  
31 zoning litigation prior to the effective date of this article shall not  
32 be subject to any exclusionary zoning suit for a six year period follow-  
33 ing the effective date of this article. Any such municipality shall be  
34 deemed to have a substantively certified housing element and ordinances,  
35 and shall not be required during that period to take any further actions  
36 with respect to provisions for low and moderate income housing in its  
37 land use ordinances or regulations.

38 § 341. Phase-in of obligation for fair share of low and moderate  
39 income housing; order of court. 1. A municipality which has an action  
40 pending or a judgment entered against it after the effective date of  
41 this article, or which had a judgment entered against it prior to that  
42 date and from which an appeal is pending, or which brings an action for  
43 declaratory judgment pursuant to section three hundred thirty-two of  
44 this article, shall upon municipal request be allowed to phase-in its  
45 obligation for a fair share of low and moderate income housing. If such  
46 a phase-in is requested by the municipality, the court shall implement a  
47 phase-in for the issuance of final approvals for low and moderate income  
48 housing, which shall be based on an analysis of the following factors:

- 49 a. the size of the municipal fair share;  
50 b. the present and projected capacity of the community's infrastruc-  
51 ture, taking into account expansion and rehabilitation of existing  
52 facilities;  
53 c. vacant developable land;  
54 d. likely absorption rate for housing in light of market forces;  
55 e. reasonable development priorities among areas of the community; and

1 f. past performance in providing low and moderate income housing,  
2 including credit for low and moderate income senior or disabled citizen  
3 housing.

4 2. The court shall, where appropriate, also implement a phase-in sche-  
5 dule for the market units in the inclusionary development which are not  
6 low and moderate income, giving due consideration to the plan for low  
7 and moderate income housing established in this section and the need to  
8 maintain the economic viability of the development.

9 3. In entering the phase-in order, the court shall consider whether or  
10 not it is necessary to condition the phase-in order upon a phase-in  
11 schedule for the construction of other developments in the municipality  
12 to minimize an imbalance between available housing units and available  
13 jobs, or to prevent the sites which are the most appropriate or the only  
14 possible sites for the construction of low and moderate income housing  
15 from being used for other purposes, or to prevent limited public infras-  
16 tructure capacities from being entirely utilized for other purposes.

17 4. In entering a phasing order, the court, upon municipal request,  
18 shall implement a specific phasing schedule for the issuance of final  
19 approvals in inclusionary developments. The court shall take into  
20 account the six analysis factors enumerated in subdivision one of this  
21 section, giving particular attention to:

22 a. the size of the municipal fair share which is to be provided in  
23 inclusionary developments;

24 b. the extent and projected capacity of the community's infrastruc-  
25 ture, taking into account expansion and rehabilitation of existing  
26 facilities; and

27 c. the extent and pattern of growth within the municipality and region  
28 during the six years prior to the implementation of the phase-in plan.

29 The following time periods shall be guidelines for a phasing schedule  
30 for the issuance of final approvals in inclusionary developments,  
31 subject, however, to upward or downward modification based upon a review  
32 of the analysis factors:

33 Any municipality which has a fair share obligation to provide five  
34 thousand or more low and moderate income units in inclusionary develop-  
35 ments shall be entitled to consideration of a phase-in schedule for the  
36 issuance of final approvals in inclusionary developments of at least  
37 twenty years from the effective date of this article.

38 Any municipality which has a fair share obligation to provide between  
39 thirty-five hundred and forty-nine hundred ninety-nine low and moderate  
40 income units in inclusionary developments shall be entitled to consider-  
41 ation of a phase-in schedule for the issuance of final approvals in  
42 inclusionary developments of at least fifteen years from the effective  
43 date of this article.

44 Any municipality which has a fair share obligation to provide between  
45 two thousand and thirty-four hundred ninety-nine low and moderate income  
46 units in inclusionary developments shall be entitled to consideration of  
47 a phase-in schedule for the issuance of final approvals in inclusionary  
48 developments of at least ten years from the effective date of this arti-  
49 cle.

50 Any municipality which has a fair share obligation to provide between  
51 five hundred and one thousand nine hundred ninety-nine low and moderate  
52 income units in inclusionary developments shall be entitled to consider-  
53 ation of a phase-in schedule for the issuance of final approvals in  
54 inclusionary developments of at least six years from the effective date  
55 of this article.

1 Any municipality which has a fair share obligation to provide less  
2 than five hundred low and moderate income units in inclusionary develop-  
3 ments shall be entitled to consideration of a phase-in schedule for the  
4 issuance of final approvals in inclusionary developments for such period  
5 of time, including a period of at least six years, as is determined to  
6 be reasonable pursuant to the analysis factors.

7 5. As part of a phasing order concerning inclusionary developments,  
8 the court may approve a municipal plan, or implement another plan,  
9 concerning priorities among developers and sites, and the timing in the  
10 issuance of final approvals to particular developers. Any plan concern-  
11 ing priorities and the timing of final approvals shall take into consid-  
12 eration:

13 a. the location of various sites and their suitability for development  
14 pursuant to environmental protection and sound planning criteria,  
15 including their consistency with reasonable provisions of municipal  
16 master plans;

17 b. infrastructure capacity or the ability to provide the capacity for  
18 the site, and the readiness of a particular developer to commence  
19 construction; and

20 c. any settlements or court orders establishing priorities among  
21 developers.

22 Consistent with the overall phasing schedule adopted pursuant to the  
23 analysis factors, the municipality shall make a good faith effort to  
24 time the issuance of final approvals for particular developments which  
25 it approves in a manner which enables the realistic and economically  
26 viable construction of the development. To this end, the municipality  
27 shall take into consideration the need for sufficient development in a  
28 particular project to permit timely recovery of infrastructure costs,  
29 and, in the case of a development which will have a homeowners' associ-  
30 ation, to prevent the imposition of excessive homeowners' fees because  
31 of the failure to achieve economies of scale. In the case of developers  
32 who have previously constructed residential developments in this state,  
33 a municipality shall also take into consideration the greatest number of  
34 units which the developer has constructed in any one development in the  
35 state within any one year period; this factor shall be considered if the  
36 municipality seeks to phase the issuance of final approvals for the  
37 inclusionary development over a period greater than one year.

38 § 342. Purchase, lease or acquisition by gift of real property.  
39 Notwithstanding any other law to the contrary, a municipality may  
40 purchase, lease or acquire by gift real property and any estate or  
41 interest therein, which the municipal governing body determines neces-  
42 sary or useful for the construction or rehabilitation of low and moder-  
43 ate income housing or conversion to low and moderate income housing.

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

50 Notwithstanding the provisions of any other law regarding the convey-  
51 ance, sale or lease of real property by municipalities, the municipal  
52 governing body may, by resolution, authorize the private sale and  
53 conveyance or lease of a housing unit or units acquired or constructed  
54 pursuant to this section, where the sale, conveyance or lease is to a  
55 low or moderate income household or nonprofit entity and contains a



1 contractual guarantee that the housing unit will remain available to low  
2 and moderate income households for a period of at least thirty years.

3 § 343. Annual report of council. Within twelve months after the effec-  
4 tive date of this article and every year thereafter, the council shall  
5 report to the governor and the legislature on the effect of this article  
6 in promoting the provision of low and moderate income housing in the  
7 several housing regions of this state. The report may include recommen-  
8 dations for any revisions or changes in this article which the council  
9 believes necessary to more nearly effectuate this end.

10 Within thirty-six months after the effective date of this article, the  
11 council shall report to the governor and the legislature concerning the  
12 actions necessary to be taken at the state, regional, county and municip-  
13 al levels to provide for the implementation and administration of this  
14 article on a regional basis, including any revisions or changes in the  
15 law necessary to accomplish that end. The council may include in the  
16 report any recommendations or considerations it may wish to provide  
17 regarding the advisability of implementing and administering this arti-  
18 cle on a regional basis.

19 § 4. Section 261 of the town law, as amended by chapter 458 of the  
20 laws of 1997, is amended to read as follows:

21 § 261. Grant of power; appropriations for certain expenses incurred  
22 under this article. For the purpose of promoting the health, safety,  
23 morals, or the general welfare of the regional community, the town board  
24 is hereby empowered by local law or ordinance to regulate and restrict  
25 the height, number of stories and size of buildings and other struc-  
26 tures, the percentage of lot that may be occupied, the size of yards,  
27 courts, and other open spaces, the density of population, and the  
28 location and use of buildings, structures and land for trade, industry,  
29 residence or other purposes; provided that such regulations shall apply  
30 to and affect only such part of a town as is outside the limits of any  
31 incorporated village or city; provided that such regulations do not  
32 inhibit and make economically infeasible the development of affordable  
33 housing for low and moderate income persons as provided in article  
34 twelve-A of the public housing law; and provided further, that all  
35 charges and expenses incurred under this article for zoning and planning  
36 shall be a charge upon the taxable property of that part of the town  
37 outside of any incorporated village or city. The town board is hereby  
38 authorized and empowered to make such appropriation as it may see fit  
39 for such charges and expenses, provided however, that such appropriation  
40 shall be the estimated charges and expenses less fees, if any,  
41 collected, and provided, that the amount so appropriated shall be  
42 assessed, levied and collected from the property outside of any incorpo-  
43 rated village or city. Such regulations may provide that a board of  
44 appeals may determine and vary their application in harmony with their  
45 general purpose and intent, and in accordance with general or specific  
46 rules therein contained.

47 § 5. Section 263 of the town law, as amended by chapter 602 of the  
48 laws of 2003, is amended to read as follows:

49 § 263. Purposes in view. Such regulations shall be made in accordance  
50 with a comprehensive plan and designed to lessen congestion in the  
51 streets; to secure safety from fire, flood, panic and other dangers; to  
52 promote health and general welfare of the regional community; to provide  
53 adequate light and air; to prevent the overcrowding of land; to avoid  
54 undue concentration of population; to make provision for, so far as  
55 conditions may permit, the accommodation of solar energy systems and  
56 equipment and access to sunlight necessary therefor; to facilitate the

1 practice of forestry; to facilitate the adequate provision of transpor-  
2 tation, water, sewerage, schools, parks and other public requirements.  
3 Such regulations shall be made with reasonable consideration, among  
4 other things, as to the character of the district and its peculiar suit-  
5 ability for particular uses, and with a view to conserving the value of  
6 buildings and encouraging the most appropriate use of land throughout  
7 such municipality.

8 § 6. Section 282 of the town law, as amended by chapter 310 of the  
9 laws of 1962 and the opening paragraph as amended by chapter 459 of the  
10 laws of 1991, is amended to read as follows:

11 § 282. Court review. ~~[Any]~~ Except as provided in article twelve-A of  
12 the public housing law in relation to the development of low and moder-  
13 ate income housing, any person or persons, jointly or severally  
14 aggrieved by any decision of the planning board concerning such plat or  
15 the changing of the zoning regulations of such land, or any officer,  
16 department, board or bureau of the town, may have the decision reviewed  
17 by a special term of the supreme court in the manner provided by article  
18 seventy-eight of the civil practice law and rules provided the proceed-  
19 ing is commenced within thirty days after the filing of the decision in  
20 the office of the town clerk.

21 Commencement of the proceeding shall stay proceedings upon the deci-  
22 sion appealed from.

23 If, upon the hearing, it shall appear to the court that testimony is  
24 necessary for the proper disposition of the matter, it may take evidence  
25 or appoint a referee to take such evidence as it may direct and report  
26 the same to the court with his findings of fact and conclusions of law,  
27 which shall constitute a part of the proceedings upon which the determi-  
28 nation of the court shall be made. The court may reverse or affirm,  
29 wholly or partly, or may modify the decision brought up for review.

30 Costs shall not be allowed against the planning board, unless it  
31 shall appear to the court that it acted with gross negligence or in bad  
32 faith or with malice in making the decision appealed from.

33 All issues in any proceeding under this section shall have preference  
34 over all other civil actions and proceedings.

35 § 7. Section 7-700 of the village law is amended to read as follows:

36 § 7-700 Grant of power. For the purpose of promoting the health,  
37 safety, morals, or the general welfare of the regional community, the  
38 board of trustees of a village is hereby empowered, by local law, to  
39 regulate and restrict the height, number of stories and size of build-  
40 ings and other structures, the percentage of lot that may be occupied,  
41 the size of yards, courts and other open spaces, the density of popu-  
42 lation, and the location and use of buildings, structures and land for  
43 trade, industry, residence or other purposes. As a part of the compre-  
44 hensive plan and design, the village board is empowered by local law, to  
45 regulate and restrict certain areas as national historic landmarks,  
46 special historic sites, places and buildings for the purpose of conser-  
47 vation, protection, enhancement and perpetuation of these places of  
48 natural heritage. Such regulations shall not inhibit or make econom-  
49 ically infeasible the development of affordable housing for low and  
50 moderate income persons as provided in article twelve-A of the public  
51 housing law. Such regulations shall provide that a board of appeals may  
52 determine and vary their application in harmony with the general purpose  
53 and intent, and in accordance with general or specific rules therein  
54 contained.

55 § 8. Section 7-704 of the village law, as amended by chapter 742 of  
56 the laws of 1979, is amended to read as follows:

§ 7-704 Purposes in view. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, floods and other dangers; to promote health and the general welfare of the regional community; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, as to the regional need for affordable housing for low and moderate income persons and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

§ 9. Section 7-740 of the village law, as amended by chapter 391 of the laws of 2000, is amended to read as follows:

§ 7-740 Review of decisions of planning board. ~~[Any]~~ Except as provided in article twelve-A of the public housing law in relation to development of low and moderate income housing, any officer, department, board or bureau of the village, with the approval of the board of trustees, or any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, may bring a proceeding to review in the manner provided by article seventy-eight of the civil practice law and rules in a court of record on the ground that such decision is illegal, in whole or in part. Such proceeding must be commenced within thirty days after the filing of the decision in the office of the village clerk.

Commencement of the proceeding shall stay proceedings upon the decision appealed from.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

§ 10. Subdivisions 24 and 25 of section 20 of the general city law, subdivision 24 as amended by chapter 742 of the laws of 1979 and subdivision 25 as added by chapter 483 of the laws of 1917, are amended to read as follows:

24. To regulate and limit the height, bulk and location of buildings hereafter erected, to regulate and determine the area of yards, courts and other open spaces, and to regulate the density of population in any given area, and for said purposes to divide the city into districts. Such regulations shall be uniform for each class of buildings throughout any district, but the regulations in one or more districts may differ from those in other districts. Such regulations shall be designed to secure safety from fire, flood and other dangers and to promote the public health and general welfare of the regional community, including,

1 so far as conditions may permit, provision for adequate light, air,  
2 convenience of access, and the accommodation of solar energy systems and  
3 equipment and access to sunlight necessary therefor, and shall be made  
4 with reasonable regard to the character of buildings erected in each  
5 district, the value of land and the use to which it may be put, to the  
6 end that such regulations may promote public health, safety and general  
7 welfare of the regional community and the most desirable use for which  
8 the land of each district may be adapted and may tend to conserve the  
9 value of buildings and enhance the value of land throughout the city.  
10 Such regulations shall not inhibit or make economically infeasible the  
11 development of affordable housing for low and moderate income persons as  
12 provided in article twelve-A of the public housing law.

13 25. To regulate and restrict the location of trades and industries  
14 and the location of buildings, designed for specified uses, and for said  
15 purposes to divide the city into districts and to prescribe for each  
16 such district the trades and industries that shall be excluded or  
17 subjected to special regulation and the uses for which buildings may not  
18 be erected or altered. Such regulations shall be designed to promote  
19 the public health, safety and general welfare of the regional community  
20 and shall be made with reasonable consideration, among other things, to  
21 the character of the district, its peculiar suitability for particular  
22 uses, the conservation of property values and the direction of building  
23 development, in accord with a well considered plan. Such regulations  
24 shall not inhibit or make economically infeasible the development of  
25 affordable housing for low and moderate income persons as provided in  
26 article twelve-A of the public housing law.

27 § 11. This act shall take effect on the one hundred eightieth day  
28 after it shall have become a law.