

STATE OF NEW YORK

6958

2025-2026 Regular Sessions

IN SENATE

March 27, 2025

Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the public housing law and the state finance law, in relation to enacting the New York fair housing act

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York fair housing act".

3 § 2. The public housing law is amended by adding a new article 16 to
4 read as follows:

ARTICLE XVI

NEW YORK FAIR HOUSING ACT

Section 700. Legislative findings and intent.

8 701. Definitions.

9 702. Housing regions.

10 703. Affordable housing committee.

11 704. Fair housing obligations.

12 705. Municipal housing element and fair share plan.

13 706. Municipal housing element; contents.

14 707. Calculation of available land for municipal adjustment;
15 certain land excluded.

16 708. Municipal housing element; techniques for providing fair
17 share of low and moderate income housing.

18 709. Accessibility requirement for new construction.

19 710. Prohibition of demolition of certain residential structures
20 for fair housing purposes.

21 711. Municipalities; provision for purchase of certain residen-
22 tial property.

23 712. Certification of housing element.

24 713. Affordable housing dispute resolution program.

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

LBD01029-01-5

1 714. Affordable housing programs.

2 715. Allocation of federal low-income tax credits.

3 716. Annual report on activities promoting affordable housing.

4 717. Administration of online portal for affordable housing
5 listings and searches.

6 718. Marketing of affordable housing units; posting; lottery;
7 proof of listing; penalties for noncompliance.

8 719. Contractual agreements with willing municipalities or
9 developers of inclusionary developments for adminis-
10 tration of resale and rent controls.

11 720. Purchase, lease or acquisition by gift of real property;
12 acquisition, construction and maintenance of buildings
13 and structures; private sale or lease by municipality.

14 721. Coordination and review of housing elements; reservation of
15 housing units made available for occupancy by very low-
16 income households.

17 722. Collection and expenditure of affordable housing develop-
18 ment fees by municipalities; exclusion from collection.

19 723. Status report concerning petitions for substantive certif-
20 ication; housing unit information; fair share plan infor-
21 mation.

22 § 700. Legislative findings and intent. New York state's housing
23 production has been insufficient to meet growing demand due to policies
24 that severely limit construction of housing. The National Low Income
25 Housing Coalition estimates that New York has a shortage of 656,000
26 housing units. The legislature finds that this shortage of affordable
27 housing is an emergency. It has made New York unaffordable to millions,
28 slowed economic growth, fueled gentrification, limited individuals'
29 freedom to choose where they live, and entrenched racial segregation and
30 inequality.

31 The Mount Laurel decisions by the New Jersey Supreme Court, S.
32 Burlington County N.A.A.C.P. v Mount Laurel Tp., 67 NJ 151, 336 A2d 713
33 (1975) and S. Burlington County N.A.A.C.P. v Mount Laurel Tp., 92 NJ
34 158, 456 A2d 390 (1983), a product of the commendable civil rights
35 activism of Ethel Lawrence, declared that each municipality must build
36 its fair share of the affordable housing units needed in the region. New
37 York seeks to emulate this justice-based, economically and morally sound
38 approach to housing.

39 New Jersey's Fair Housing Act, a result of the Mount Laurel decisions,
40 has proved to be an effective tool that balances local autonomy with the
41 region's housing needs. It has allowed for the construction of affor-
42 dable housing in New Jersey at a far higher rate than New York.

43 Recognizing the effectiveness of this model in our neighboring state,
44 the legislature finds that adopting it will serve as a crucial tool to
45 addressing New York's affordability crisis.

46 § 701. Definitions. As used in this article, the following terms shall
47 have the following meanings:

48 1. "Accessible" means constructed in compliance with all applicable
49 accessibility provisions of the New York state uniform fire prevention
50 and building code, and any local code or ordinance applicable to a
51 jurisdiction.

52 2. "Builder's remedy" means court-imposed site-specific relief for a
53 litigant who seeks to build affordable housing for which the court
54 requires a municipality to utilize zoning techniques, such as mandatory
55 set-asides, including techniques which provide for the economic viabil-

1 ity of a residential development by including housing that is not for
2 low- and moderate-income households.

3 3. "Committee" means the affordable housing committee established
4 pursuant to section seven hundred three of this article.

5 4. "Compliance certification" means the certification obtained by a
6 municipality pursuant to section seven hundred five of this article,
7 that protects the municipality from exclusionary zoning litigation,
8 which is also known as a "judgment of compliance" or "judgment of
9 repose." The term "compliance certification" shall include a judgment of
10 repose granted in an action filed pursuant to section seven hundred
11 twelve of this article.

12 5. "Conversion" means the conversion of existing commercial, indus-
13 trial, or residential structures for low- and moderate-income housing
14 purposes where a substantial percentage of the housing units are
15 provided for a reasonable income range of low- and moderate-income
16 households.

17 6. "County-level housing judge" means a judge appointed pursuant to
18 section seven hundred thirteen of this article, to resolve disputes over
19 the compliance of municipal fair share affordable housing obligations
20 and municipal fair share plans and housing elements, with the provisions
21 of this article.

22 7. "Deficient housing unit" means housing that: (a) is over fifty
23 years old and overcrowded; (b) lacks complete plumbing; or (c) lacks
24 complete kitchen facilities.

25 8. "Disability" shall have the same definition as such term is defined
26 in section two hundred ninety-two of the executive law.

27 9. "Division" means the division of housing and community renewal.

28 10. "Exclusionary zoning litigation" means litigation to challenge the
29 fair share plan, housing element, or ordinances or resolutions imple-
30 menting the fair share plan or housing element of a municipality based
31 on alleged noncompliance with the provisions of this article, which
32 litigation shall include, but shall not be limited to, litigation seek-
33 ing a builder's remedy.

34 11. "Fair share plan" means the plan or proposal that is in a form
35 which may readily be adopted, with accompanying ordinances and resol-
36 utions, pursuant to section seven hundred five of this article, by which
37 a municipality proposes to satisfy its obligation to create a realistic
38 opportunity to meet its fair share of low- and moderate-income housing
39 needs of its region and which details the affirmative measures the muni-
40 cipality proposes to undertake to achieve its fair share of low- and
41 moderate-income housing, as provided in the municipal housing element,
42 and addresses the development regulations necessary to implement the
43 housing element, including, but not limited to, inclusionary require-
44 ments and development fees, and the elimination of unnecessary housing
45 cost-generating features from the municipal land use ordinances and
46 regulations.

47 12. "Housing element" means that portion of a municipality's compre-
48 hensive plan consisting of reports, statements, proposals, maps,
49 diagrams, and text designed to meet the municipality's fair share of its
50 region's present and prospective housing needs, particularly with regard
51 to low- and moderate-income housing, and which shall contain the muni-
52 pal present and prospective obligation for affordable housing, deter-
53 mined pursuant to section seven hundred four of this article.

54 13. "Housing region" means a geographic area established pursuant to
55 section seven hundred two of this article.

1 14. "Inclusionary development" means a residential housing development
2 in which a substantial percentage of the housing units are provided for
3 a reasonable income range of low- and moderate-income households.

4 15. "Low-income housing" means housing affordable according to federal
5 Department of Housing and Urban Development or other recognized stand-
6 ards for home ownership and rental costs and occupied or reserved for
7 occupancy by households with a gross household income equal to fifty
8 percent or less of the median gross household income for households of
9 the same size within the housing region in which the housing is located.

10 16. "Moderate-income housing" means housing affordable according to
11 federal Department of Housing and Urban Development or other recognized
12 standards for home ownership and rental costs and occupied or reserved
13 for occupancy by households with a gross household income equal to more
14 than fifty percent but less than eighty percent of the median gross
15 household income for households of the same size within the housing
16 region in which the housing is located.

17 17. "Municipality" means a municipality within the state which has
18 zoning authority.

19 18. "Program" means the Affordable Housing Dispute Resolution Program,
20 established pursuant to section seven hundred thirteen of this article.

21 19. "Prospective need" means a projection of housing needs based on
22 development and growth which is reasonably likely to occur in a region
23 or a municipality, as the case may be, as a result of actual determi-
24 nation of public and private entities.

25 20. "Transitional housing" means temporary housing that:

26 (a) includes, but is not limited to, single-room occupancy housing or
27 shared living and supportive living arrangements;

28 (b) provides access to on-site or off-site supportive services for
29 very low-income households who have recently been homeless or lack
30 stable housing;

31 (c) is licensed by the division; and

32 (d) allows households to remain for a minimum of six months.

33 21. "Very low-income housing" means housing affordable according to
34 federal Department of Housing and Urban Development or other recognized
35 standards for home ownership and rental costs and occupied or reserved
36 for occupancy by households with a gross household income equal to thir-
37 ty percent or less of the median gross household income for households
38 of the same size within the housing region in which the housing is
39 located.

40 § 702. Housing regions. The commissioner shall divide the state into
41 eight to fifteen geographic regions for the purpose of establishing
42 housing obligations, in the discretion of such commissioner.

43 § 703. Affordable housing committee. The commissioner shall establish
44 an affordable housing committee to determine municipal housing obli-
45 gations in the state. Such committee shall be comprised of represen-
46 tatives of each region established pursuant to section seven hundred two
47 of this article. The membership of the committee shall be determined by
48 the commissioner and shall include representatives from each county
49 equal to one representative for every one hundred thousand residents of
50 such county over two hundred thousand residents, with a minimum of one
51 representative per county and one representative per city.

52 § 704. Fair housing obligations. 1. Regional and municipal fair hous-
53 ing obligations shall be determined on a ten-year basis running from the
54 first of April next succeeding the effective date of this article
55 through March thirty-first of the tenth year thereafter, and each
56 successive ten-year period.

1 2. For the purpose of determining regional need for the ten-year round
2 of low- and moderate-income housing obligations, the division shall
3 determine such need based on the provisions of subdivision three of this
4 section. Such regional need determinations shall be presented to the
5 committee representatives for such region, and such representatives in
6 conjunction with the division shall establish fair housing obligations
7 for each municipality within such region. Municipal obligations estab-
8 lished pursuant to this subdivision shall be made within sixty days of
9 receipt of the regional need determinations by the committee.

10 3. (a) Regional present need for each ten-year round of affordable
11 housing obligations shall be determined by the division estimating the
12 deficient housing units occupied by low- and moderate-income households
13 in the region, following a methodology promulgated by the commissioner,
14 through the use of the most recent datasets made available through the
15 federal decennial census and the American Community Survey, including
16 the Comprehensive Housing Affordability Strategy dataset thereof.

17 (b) Regional prospective need for a ten-year round of low- and moder-
18 ate-income housing obligations shall be determined by the division
19 utilizing the calculation provided in this subdivision. Projected house-
20 hold change for a ten-year round in a region shall be estimated by
21 establishing the household change experienced in the region between the
22 most recent federal decennial census, and the second-most recent federal
23 decennial census. This household change, if positive, shall be divided
24 by two and a half to estimate the number of low- and moderate-income
25 homes needed to address low- and moderate-income household change in the
26 region and to determine the regional prospective need for a ten-year
27 round of low- and moderate-income housing obligations. If household
28 change is zero or negative, the number of low- and moderate-income homes
29 needed to address low- and moderate-income household change in the
30 region and the regional prospective need shall be zero.

31 4. The division shall report its regional need for the ten-year round
32 of low- and moderate-income housing obligation determinations to the
33 governor and the legislature within thirty days of making such determi-
34 nations. Such determinations shall also be published on the public
35 website of the division.

36 § 705. Municipal housing element and fair share plan. 1. (a) A munici-
37 pality shall adopt a housing element and fair share plan, and propose
38 drafts of the appropriate zoning and other ordinances and resolutions to
39 implement its present and prospective obligation established in section
40 seven hundred four of this article within ninety days of the establish-
41 ment of such obligations. After adoption of the housing element and fair
42 share plan, and the proposal of drafts of the appropriate zoning and
43 other ordinances and resolutions, the municipality shall within forty-
44 eight hours, file the same with the program through the program's Inter-
45 net website. Any municipality that fails to adopt and file a housing
46 element and fair share plan within the timeframes set by this paragraph,
47 shall not retain immunity from exclusionary zoning litigation until such
48 time as the municipality is determined to have come into compliance with
49 the provisions of this article and shall be subject to review through
50 the declaratory judgment process as established in subdivision two of
51 this section. As part of its housing element and fair share plan, the
52 municipality shall include an assessment of the degree to which the
53 municipality has met its fair share obligation from the prior rounds of
54 affordable housing obligations as established by prior court approval,
55 or approval by the committee, and determine to what extent this obli-
56 gation is unfulfilled or whether the municipality has credits in excess

1 of its prior round obligations. If a prior round obligation remains
2 unfulfilled, or a municipality never received an approval from court or
3 the committee for any prior round, the municipality shall address such
4 unfulfilled prior round obligation in its housing element and fair share
5 plan. Units included as part of the municipality's unfulfilled prior
6 round obligation shall not count towards the cap on units in the muni-
7 city's prospective need obligation. In addressing prior round obli-
8 gations, the municipality shall retain any sites that, in furtherance of
9 the prior round obligation, are the subject of a contractual agreement
10 with a developer, or for which the developer has filed a complete appli-
11 cation seeking subdivision or site plan approval prior to the date by
12 which the housing element and fair share plan are required to be submit-
13 ted, and shall demonstrate how any sites that were not built in the
14 prior rounds continue to present a realistic opportunity, which may
15 include proposing changes to the zoning on the site to make its develop-
16 ment more likely, and which may also include the dedication of municipal
17 affordable housing trust fund dollars or other monetary or in-kind
18 resources. The municipality shall only plan to replace any sites planned
19 for development as provided by a prior court approval, settlement agree-
20 ment, or approval by the committee, with alternative development plans,
21 if it is determined that the previously planned sites no longer present
22 a realistic opportunity, and the sites in the alternative development
23 plan provide at least an equivalent number of affordable units and are
24 otherwise in compliance with this article. If a municipality proposes to
25 replace a site for which a complete application seeking subdivision or
26 site plan approval has not been filed prior to the date by which the
27 housing element and fair share plan is required to be submitted, there
28 shall be a rebuttable presumption in any challenge filed to the muni-
29 city's plan that any site for which a zoning designation was adopted
30 creating a realistic opportunity for the development of a site prior to
31 July first of every tenth year thereafter, as applicable, may be
32 replaced with one or more alternative sites that provide a realistic
33 opportunity for at least the same number of affordable units and is
34 otherwise in compliance with the provisions of this article. To the
35 extent a municipality has credits, from units created during a prior
36 round that are otherwise permitted to be allocated toward the muni-
37 city's unfulfilled prior round obligation or present or prospective
38 need obligation in an upcoming round, the municipality shall be entitled
39 to rely on the rules applicable for the round during which those credits
40 were accumulated. If a municipality has credits in excess of its prior
41 round obligations, and such excess credits represent housing that will
42 continue to be deed-restricted and affordable through the current round,
43 the municipality may include such housing towards addressing the muni-
44 city's new calculation of prospective need.

45 (b) Within ninety days following the filing of an adopted housing
46 element and fair share plan pursuant to paragraph (a) of this subdivi-
47 sion, the attorney general or an interested party may file in an action
48 a response alleging that the municipality's fair share plan and housing
49 element are not in compliance with the requirements of this article.
50 Such allegation shall not include a claim that a site on real property
51 proposed by the interested party is a better site than a site in the
52 plan, but rather shall be based on whether the housing element and fair
53 share plan as proposed is compliant with the provisions of this article.
54 To resolve a challenge, the program shall apply an objective assessment
55 standard to determine whether or not the municipality's housing element
56 and fair share plan is compliant with this article. The attorney general

1 or any interested party that files a challenge shall specify with parti-
2 cularity which sites or elements of the municipal fair share plan do not
3 comply with this article, and the basis for alleging such noncompliance.
4 The program shall establish procedures to summarily dismiss any
5 objection or challenge that does not meet these minimum standards. For
6 the purpose of efficiency, the program shall, in its own discretion,
7 permit multiple challenges to the same municipal housing element and
8 fair share plan to be consolidated. If a municipality's fair share plan
9 and housing element is not challenged within ninety days following the
10 filing of an adopted housing element and fair share plan pursuant to
11 paragraph (a) of this subdivision, then the program shall apply an
12 objective standard to conduct a limited review of the fair share plan
13 and housing element for consistency and to determine whether it enables
14 the municipality to satisfy the fair share obligation, applies compliant
15 mechanisms, meets the threshold requirements for rental and family
16 units, does not exceed limits on other unit or category types, and is
17 compliant with the provisions of this article. The program shall issue a
18 compliance certification unless these objective standards are not met.
19 The program shall facilitate communication between the municipality, the
20 attorney general and any interested parties for a challenge and provide
21 the municipality a period of ninety days to commit to revising its fair
22 share plan and housing element in compliance with the changes requested
23 in the challenge, or provide an explanation as to why it will not make
24 all of the requested changes, or both. Upon resolution of a challenge,
25 the program shall issue compliance certification, conditioned on the
26 municipality's commitment, as necessary, to revise its fair share plan
27 and housing element in accordance with the resolution of the challenge.
28 The program may also terminate immunity if it finds that the munici-
29 pality is not determined to come into compliance at any point in the
30 process. If by the conclusion of the ninety day revision period the
31 municipality, the attorney general and any interested party that filed a
32 response have resolved the issues raised in the response through agree-
33 ment or withdrawal of the filing, then the program shall review the fair
34 share plan and housing element for consistency and to determine whether
35 it is compliant with the provisions of this article and issue a compli-
36 ance certification unless these objective standards are not met.

37 (c) The program may permit a municipality that still has a remaining
38 dispute by interested parties to retain immunity from exclusionary
39 zoning litigation into the year following the year in which a new round
40 begins if the program, or county-level housing judge, determines that
41 the municipality has been unable to resolve the issues disputed despite
42 being determined to come into constitutional compliance. The chief
43 administrator of the courts shall develop procedures to enable a coun-
44 ty-level housing judge to resolve this dispute over the issuance of
45 compliance certification through a summary proceeding in supreme court
46 following the year in which the new round begins. A judge shall be
47 permitted to serve as a county-level housing judge for more than one
48 county in the same vicinage. The pendency of such a dispute shall not
49 stay the deadline for adoption of implementing ordinances and resol-
50 utions pursuant to this subdivision. The implementing ordinances and
51 resolutions adopted prior to the resolution of the dispute may be
52 subject to changes to reflect the results of the dispute. As an alterna-
53 tive to adopting all necessary implementing ordinances and resolutions
54 by the deadlines set in this section, a municipality involved in a
55 continuing dispute over the issuance of compliance certification may
56 adopt a binding resolution by such deadlines to commit to adopting the

1 implementing ordinances and resolutions following resolution of the
2 dispute, with necessary adjustments to reflect the resolution of the
3 dispute.

4 (d) A compliance certification, issued pursuant to this subdivision,
5 shall be accompanied by a written report that shall set forth the basis
6 of the issuance of the certification and shall be in a format to be
7 developed and approved by the chief administrator of the courts.

8 2. (a) If a municipality fails to materially adhere to any of the
9 deadlines established in subdivision one of this section due to circum-
10 stances beyond the control of the municipality, including, but not
11 limited to, an inability to meet a deadline due to an extreme weather
12 event, then the program, or the county level housing judge, in accord-
13 ance with court rules, may permit a municipality to have a grace period
14 to come into compliance with the timeline, the length of which, and
15 effect of which on later deadlines, shall be determined on a case-by-
16 case basis.

17 (b) A municipality that has not adopted and filed a housing element
18 and fair share plan pursuant to subdivision one of this section may seek
19 compliance certification by filing an action pursuant to section seven
20 hundred twelve of this article, provided that any exclusionary zoning
21 litigation filed by a plaintiff against such a municipality prior to
22 such time may proceed notwithstanding such filing. In a municipality
23 that has adopted and filed a housing element and fair share plan pursu-
24 ant to subdivision one of this section, a court shall not consider
25 exclusionary zoning litigation during the timeframe after the timely
26 submission of a binding resolution or fair share plan and housing
27 element of a municipality, or both, and before a challenge is submitted,
28 or during the timeframe of a challenge that is pending resolution with
29 the program pursuant to this section. A court may consider exclusionary
30 zoning litigation after such timeframe upon a finding that the munici-
31 pality: (i) is determined to be noncompliant with its responsibilities
32 pursuant to the provisions of this section or is participating in the
33 program in bad faith; (ii) has failed to meet the deadlines established
34 pursuant to this section; or (iii) has, after receiving compliance
35 certification, failed to comply with the terms of that certification by
36 not actually allowing for the development of the affordable housing as
37 provided for in its fair share plan and housing element through actions
38 or omissions, or both, of a municipality or its subordinate boards.

39 (c) All parties shall bear their own fees and costs in proceedings
40 before the program.

41 (d) A determination by the program as to the present and prospective
42 need obligation or as to issuance of compliance certification pursuant
43 to this section shall be considered a final decision, subject to appel-
44 late review.

45 3. (a) Once a municipality has received a compliance certification
46 pursuant to subdivision one of this section or otherwise has had its
47 fair share obligation and housing element and fair share plan finally
48 determined via judgment of repose or other judgment, the municipality
49 shall make the municipality's fair share plan and housing element, as
50 well as any subsequently adopted implementing ordinances and resol-
51 utions, or amendments thereto, available to the division and the program
52 for publication on the division's and program's respective Internet
53 websites.

54 (b) A municipality shall not be deemed out of compliance with the
55 deadlines of subdivision one of this section, or lose immunity from
56 exclusionary zoning litigation, due to a failure by the program to

1 promptly maintain and update its Internet website or other operational
2 failure of the program.

3 4. (a) A municipality shall have immunity from exclusionary zoning
4 litigation if the municipality complies with the deadlines established
5 in subdivision one of this section for adopting a housing element and
6 fair share plan to meet present and prospective fair housing obli-
7 gations.

8 (b) Immunity from exclusionary zoning litigation shall not limit the
9 ability of the attorney general or an interested party to challenge a
10 municipality for failure to comply with the terms of its compliance
11 certification. However, a municipality's actions to comply with the
12 terms of its compliance certification shall retain a presumption of
13 validity if challenged for an alleged failure described in this para-
14 graph.

15 (c) Immunity from exclusionary zoning litigation shall not limit the
16 ability of the attorney general or an interested party to bring a chal-
17 lenge before the program alleging that, despite the issuance of compli-
18 ance certification, a municipality's fair share obligation, fair share
19 plan, housing element, or ordinances implementing the fair share plan or
20 housing element are in violation of the provisions of this article.
21 However, the decisions of the program shall retain a presumption of
22 validity if challenged for an alleged violation described in this para-
23 graph.

24 § 706. Municipal housing element; contents. A municipality's housing
25 element shall be designed to achieve the goal of access to affordable
26 housing to meet present and prospective housing needs, with particular
27 attention to low- and moderate-income housing, and shall contain at
28 least:

29 1. An inventory of the municipality's housing stock by age, condition,
30 purchase or rental value, occupancy characteristics, and type, including
31 the number of units affordable to low- and moderate-income households
32 and substandard housing capable of being rehabilitated, and in conduct-
33 ing this inventory the municipality shall have access, on a confidential
34 basis for the sole purpose of conducting the inventory, to all necessary
35 property tax assessment records and information in the assessor's
36 office;

37 2. A projection of the municipality's housing stock, including the
38 probable future construction of low- and moderate-income housing, for
39 the next ten years, taking into account, but not necessarily limited to,
40 construction permits issued, approvals of applications for development
41 and probable residential development of lands;

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

45 4. An analysis of the existing and probable future employment charac-
46 teristics of the municipality;

47 5. A determination of the municipality's present and prospective fair
48 share for low- and moderate-income housing and its capacity to accommo-
49 date its present and prospective housing needs, including its fair share
50 for low- and moderate-income housing, as established pursuant to section
51 seven hundred four of this article; and

52 6. A consideration of the lands that are most appropriate for
53 construction of low- and moderate-income housing and of the existing
54 structures most appropriate for conversion to, or rehabilitation for,
55 low- and moderate-income housing, including a consideration of lands of

1 developers who have expressed a commitment to provide low- and moder-
2 ate-income housing.

3 § 707. Calculation of available land for municipal adjustment; certain
4 land excluded. 1. Any municipality that receives an adjustment of its
5 prospective need obligations based on a lack of vacant land shall as
6 part of the process of adopting and implementing its housing element and
7 fair share plan identify sufficient parcels likely to redevelop during
8 the current round of obligations to address at least twenty-five percent
9 of the prospective need obligation that has been adjusted, and adopt
10 realistic zoning that allows for such adjusted obligation, or demon-
11 strate why the municipality is unable to do so. When computing a municipi-
12 pal adjustment regarding available land resources as part of the deter-
13 mination of a municipality's fair share of affordable housing, the
14 municipality, in filing a housing element and fair share plan pursuant
15 to section seven hundred five of this article, shall exclude from desig-
16 nating as vacant land:

17 (a) any land that is owned by a local government entity that, has
18 adopted, prior to the institution of a lawsuit seeking a builder's reme-
19 dy or prior to the filing of a petition for substantive certification of
20 a housing element and fair share plan, a resolution authorizing an
21 execution of agreement that the land be utilized for a public purpose
22 other than housing;

23 (b) any land listed on a comprehensive plan of a municipality as being
24 dedicated, by easement or otherwise, for purposes of conservation, park
25 lands or open space and which is owned, leased, licensed, or in any
26 manner operated by a county, municipality or tax-exempt, nonprofit
27 organization including a local board of education, or by more than one
28 municipality by joint agreement, for so long as the entity maintains
29 such ownership, lease, license, or operational control of such land;

30 (c) any vacant contiguous parcels of land in private ownership of a
31 size which would accommodate fewer than five housing units based on
32 appropriate standards pertaining to housing density;

33 (d) historic and architecturally important sites listed on the state
34 register of historic sites and objects pursuant to section 19.03 of the
35 parks, recreation and historic preservation law;

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

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

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

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

44 3. Notwithstanding any law or regulation to the contrary, nothing
45 shall preclude a municipality which has reserved less than three percent
46 of its land area for conservation, park lands or open space from reserv-
47 ing up to three percent of its land area for such purposes. Nothing
48 herein is intended to alter the responsibilities of municipalities with
49 respect to plans already approved which were based upon the right to a
50 vacant land adjustment.

51 § 708. Municipal housing element; techniques for providing fair share
52 of low- and moderate-income housing. 1. In adopting its housing element,
53 the municipality may provide for its fair share of low- and moderate-in-
54 come housing by means of any technique or combination of techniques
55 which provide a realistic opportunity for the provision of the fair
56 share. The housing element shall contain an analysis demonstrating that

1 it will provide such a realistic opportunity, and the municipality shall
2 establish that its land use and other relevant ordinances have been
3 revised to incorporate the provisions for low- and moderate-income hous-
4 ing. In preparing the housing element, the municipality shall consider
5 the following techniques for providing low- and moderate-income housing
6 within the municipality, as well as such other appropriate techniques as
7 have been established through applicable precedent and may be employed
8 by the municipality:

9 (a) Rezoning for densities necessary to assure the economic viability
10 of any inclusionary developments, either through mandatory set-asides,
11 as may be necessary to meet all or part of the municipality's fair share
12 in accordance with the provisions of subdivision seven of this section;

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

15 (c) Determination of measures that the municipality will take to
16 assure that low- and moderate-income units remain affordable to low- and
17 moderate-income households for an appropriate period of not less than
18 the period required by the regulations adopted by the division pursuant
19 to subdivision six of section seven hundred fourteen of this article;

20 (d) A plan for infrastructure expansion and rehabilitation and conver-
21 sion or redevelopment of unused or underutilized real property, includ-
22 ing existing structures, if necessary to assure the achievement of the
23 municipality's fair share of low- and moderate-income housing;

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

26 (f) Tax abatements for purposes of providing low- and moderate-income
27 housing;

28 (g) Utilization of funds obtained from any state or federal subsidy
29 toward the construction of low- and moderate-income housing;

30 (h) Utilization of municipally generated funds toward the construction
31 of low- and moderate-income housing; and

32 (i) The purchase of privately owned real property used for residential
33 purposes at the value of all liens secured by the property, excluding
34 any tax liens, notwithstanding that the total amount of debt secured by
35 liens exceeds the appraised value of the property, pursuant to regu-
36 lations promulgated by the commissioner pursuant to section seven
37 hundred eleven of this article.

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

40 3. Nothing in this article shall require a municipality to raise or
41 expend municipal revenues in order to provide low- and moderate-income
42 housing.

43 4. When a municipality's housing element includes the provision of
44 rental housing units in a community residence for persons with a disa-
45 bility, or in transitional housing, which will be affordable to persons
46 of low- and moderate-income, and for which adequate measures to retain
47 such affordability pursuant to paragraph (c) of subdivision one of this
48 section are included in the housing element, those housing units shall
49 be fully credited towards the fulfillment of the municipality's fair
50 share of low- and moderate-income housing. A municipality shall not
51 credit transitional housing units towards more than ten percent of the
52 municipality's fair share obligation.

53 5. It having been determined by the legislature that the provision of
54 housing under this article is a public purpose, a municipality or muni-
55 cipalities may utilize public monies to make donations, grants or loans
56 of public funds for the rehabilitation of deficient housing units and

1 the provision of new or substantially rehabilitated housing for low- and
2 moderate-income persons, providing that any private advantage is inci-
3 idental.

4 6. A municipality that has received approval of its housing element
5 and fair share plan for the current round, and that has actually
6 effected the construction of the affordable housing units it is obli-
7 gated to provide, may amend its affordable housing element or zoning
8 ordinances without losing immunity from exclusionary zoning litigation.

9 7. Whenever affordable housing units are proposed to be provided
10 through an inclusionary development, a municipality shall provide,
11 through its zoning powers, incentives to the developer, which shall
12 include increased densities and reduced costs.

13 8. A municipality and a developer may request a modification of a
14 compliance certification involving reduced affordable housing set-asides
15 or increased densities to ensure the economic feasibility of an inclu-
16 sionary development, if any such application demonstrates how any short-
17 fall in meeting the municipal fair share obligation will then be
18 addressed. Such a request may be granted only if the municipality and
19 developer have demonstrated that the project has been impacted by market
20 conditions beyond their reasonable control.

21 9. A municipality may enter into an agreement with a developer or
22 residential development owner to provide a preference for affordable
23 housing to low- and moderate-income veterans, as defined in section one
24 of the veterans' services law, of up to fifty percent of the affordable
25 units in that particular project. This preference shall be established
26 in the applicant selection process for available affordable units so
27 that applicants who are veterans who apply within ninety days of the
28 initial marketing period shall receive preference for the rental of the
29 agreed-upon percentage of affordable units. After the first ninety days
30 of the initial one hundred twenty-day marketing period, if any such
31 units subject to the preference remain available, then applicants from
32 the general public shall be considered for occupancy. Following the
33 initial one hundred twenty-day marketing period, previously qualified
34 applicants and future qualified applicants who are veterans shall be
35 placed on a special waiting list as well as the general waiting list.
36 The veterans on the special waiting list shall be given preference for
37 affordable units, as the units become available, whenever the percentage
38 of preference-occupied units falls below the agreed upon percentage. Any
39 agreement to provide affordable housing preferences for veterans pursu-
40 ant to this subdivision shall not affect a municipality's ability to
41 receive credit for the unit.

42 10. A municipality may not satisfy more than thirty percent of the
43 affordable housing units, to address its prospective need affordable
44 housing obligation through the creation of age-restricted housing. A
45 municipality shall satisfy a minimum of fifty percent of the actual
46 affordable housing units created to address its prospective need afford-
47 able housing obligation through the creation of housing available to
48 families with children and otherwise in compliance with the requirements
49 and controls established pursuant to subdivision six of section seven
50 hundred fourteen of this article. A municipality shall satisfy a minimum
51 of twenty-five percent of the actual affordable housing units to address
52 its prospective need affordable housing obligation, through rental hous-
53 ing, including at least half of that number available to families with
54 children. All units referred to in this section shall otherwise be in
55 compliance with the requirements and controls established pursuant to
56 subdivision six of section seven hundred fourteen of this article.

1 11. The provisions of this article shall not be construed to require a
2 municipality to fund infrastructure improvements for affordable housing
3 projects beyond any commitments made in a fair share plan and housing
4 element that has been provided with compliance certification. A munici-
5 pality may fund infrastructure improvements for affordable housing
6 projects, through the adoption of a development agreement with the
7 applicant, beyond any commitments made in a fair share plan and housing
8 element that has been provided with compliance certification.

9 § 709. Accessibility requirement for new construction. 1. Beginning
10 upon the effective date of this article, any new construction for which
11 credit is sought against a fair share obligation shall be accessible.
12 For the purposes of this section, "new construction" shall mean an
13 entirely new improvement not previously occupied or used for any
14 purpose.

15 2. A municipality may take such measures as are necessary to assure
16 compliance with the accessibility requirements imposed pursuant to this
17 section, including the inspection of those units which are newly
18 constructed and receive housing credit for accessibility, as part of the
19 monitoring which occurs pursuant to this article. If any units for which
20 credit was granted in accordance with the provisions of this article are
21 found not to conform to the requirements of this section, any party
22 representing the interests of households with disabilities may seek a
23 modification to the approval of the municipal fair share plan to require
24 the municipality to amend its fair share plan within ninety days of such
25 a finding, to address its fair share obligation pursuant to this arti-
26 cle. In the event that the municipality fails to amend its fair share
27 plan within ninety days of such a finding, the municipality shall lose
28 immunity to exclusionary zoning litigation for the portion of its obli-
29 gation that is found not to conform to the requirements of this section.

30 § 710. Prohibition of demolition of certain residential structures for
31 fair housing purposes. Nothing in this article shall be construed to
32 require that a municipality fulfill all or any portion of its fair share
33 housing obligation through permitting the development or redevelopment
34 of property within the municipality on which is located a residential
35 structure which has not been declared unfit, or which was within the
36 previous three years negligently or willfully rendered unfit, for human
37 occupancy or use, and which is situated on a lot of less than two acres
38 of land or on a lot formed by merging two or more such lots, if the
39 development or redevelopment would require the demolition of such struc-
40 ture.

41 § 711. Municipalities; provision for purchase of certain residential
42 property. 1. Notwithstanding the provisions of the eminent domain proce-
43 dure law, or of any other law, rule or regulation to the contrary, a
44 municipality may provide for the purchase of privately owned residential
45 property at the value of all liens secured by real property, excluding
46 any tax lien to which the property is subject and include those units
47 toward the fulfillment of its fair share housing obligation pursuant to
48 the provisions of this article. Any such purchase under this section
49 shall be made pursuant to and consistent with regulations promulgated by
50 the commissioner pursuant to subdivision two of this section.

51 2. The commissioner shall promulgate any rules and regulations neces-
52 sary to effectuate the provisions of this section.

53 § 712. Certification of housing element. 1. If a municipality has
54 adopted a housing element and fair share plan pursuant to section seven
55 hundred five of this article, but has failed to satisfy the deadlines
56 established in such section, for any round of affordable housing obli-

1 gations, the municipality may request and be provided with a grace peri-
2 od pursuant to subdivision two of section seven hundred five of this
3 article, if authorized by the program or county-level housing judge, as
4 determined by the rules of court. If a municipality that has not satis-
5 fied this deadline is not provided with a grace period, the municipality
6 may institute an action for declaratory judgment granting it repose in
7 the supreme court for the ten-year period constituting the current round
8 of fair share obligations. The municipality shall publish notice of its
9 filing of a declaratory judgment action in a newspaper of general circu-
10 lation within the municipality and county and shall make available to
11 the public information on the element and ordinances by submitting such
12 information to the program to be published on the Internet website of
13 the program in accordance with section seven hundred five of this arti-
14 cle.

15 2. (a) A municipality, the attorney general or any other interested
16 party may file an action through the program seeking a realistic oppor-
17 tunity review at the midpoint of the certification period and shall
18 provide for notice to the public, including a realistic opportunity
19 review of any inclusionary development site in the housing element and
20 fair share plan that has not received preliminary site plan approval
21 prior to the midpoint of the ten-year round. If such an action is initi-
22 ated by a municipality, the municipality may propose one or more alter-
23 native sites with an accompanying development plan or plans that provide
24 a realistic opportunity for the same number of affordable units and is
25 otherwise in compliance with the provisions of this article, provided
26 that if the facts demonstrate that the municipality or its subordinate
27 boards have prevented the site from receiving site plan approval, then
28 the program shall reject the municipality's challenge.

29 (b) Any party may file a request for information from the program
30 regarding the progress of development at any inclusionary development
31 site in the housing element and fair share plan of a municipality or at
32 any alternative site proposed by the municipality. The program may
33 respond to a request independently or in coordination with the division.

34 § 713. Affordable housing dispute resolution program. 1. There is
35 established an affordable housing dispute resolution program that shall
36 have the purpose of efficiently resolving disputes involving the
37 provisions of this article, to consist of an odd number of members, of
38 at least three and no more than seven members who shall lead the admin-
39 istration of the program. The chief administrator of the courts shall
40 update the assignment of designated housing judges to indicate which
41 current or retired and on-recall judges of the supreme court shall serve
42 as members, within sixty days following the effective date of this
43 section. The chief administrator of the courts may appoint other quali-
44 fied experts as members if sufficient current and retired judges are
45 unavailable. The chief administrator of the courts shall take into
46 consideration in making such appointments experience in the employment
47 of alternative dispute resolution methods and in relevant subject
48 matter.

49 2. The chief administrator of the courts shall designate a member to
50 serve as chair. The chief administrator of the courts shall make new
51 appointments as needs arise for new appointments.

52 3. The program, in its discretion and in accordance with applicable
53 court rules, may consult or employ the services of one or more special
54 masters or staff to assist it in rendering determinations, resolving
55 disputes, and facilitating communication as required in section seven
56 hundred five of this article. In addition, the program may incorporate

1 any existing or newly established court mediation or alternative dispute
2 resolution process to assist the program in resolving disputes and
3 facilitating communication among municipalities and interested parties.

4 4. The chief administrator of the courts shall establish a filing
5 system via an Internet website in which the public is able to access,
6 without cost, filings made pursuant to this article and such other
7 related filings as the chief administrator of the courts may include on
8 the filing system.

9 5. The chief administrator of the courts may assign additional respon-
10 sibilities to the program for resolving disputes arising out of or
11 related to the provisions of this article.

12 6. The chief administrator of the courts shall establish procedures
13 for the purpose of efficiently resolving disputes involving the
14 provisions of this section, for circumstances in which the program is
15 unable to address the dispute within the time limitations established
16 pursuant to section seven hundred five of this article. As a part of the
17 procedures established pursuant to this section, in order to facilitate
18 an appropriate level of localized control of affordable housing deci-
19 sions, for each vicinage, the chief administrator of the courts shall
20 designate a supreme court judge who sits within the vicinage, or a
21 retired judge who, during the judge's tenure as a judge, served within
22 the vicinage, to serve as county-level housing judge to resolve disputes
23 over the compliance, of fair share plans and housing elements of muni-
24 cipalities within their designated county or counties, with the provisions
25 of this article, as well as disputes that arise with respect to ongoing
26 compliance or noncompliance with obligations created by fair share
27 plans, housing elements, and the provisions of this article. A judge
28 shall be permitted to serve as a county-level housing judge for more
29 than one county in the same vicinage.

30 7. The chief administrator of the courts shall promulgate, maintain,
31 and apply a code of ethics that is modeled upon the Code of Judicial
32 Conduct of the American Bar Association, and may establish additional,
33 more restrictive ethical standards in order to meet the specific needs
34 of the program and of county-level housing judges.

35 § 714. Affordable housing programs. 1. The division shall establish
36 affordable housing programs to assist municipalities in meeting the
37 obligation of developing communities to provide low- and moderate-income
38 housing.

39 2. The division shall to the extent of available funds, award assist-
40 ance to affordable housing programs located in municipalities whose
41 housing elements have obtained compliance certification, or which have
42 been subject to a builder's remedy. During any period which the agency
43 may approve, the division may assist affordable housing programs that
44 have a pending request for compliance certification; provided the
45 affordable housing program will meet all or in part a municipal low- and
46 moderate-income housing obligation.

47 3. Assistance provided pursuant to this section may take the form of
48 grants or awards to municipalities, prospective home purchasers, or as
49 contributions to the issuance of mortgage revenue bonds or multi-family
50 housing development bonds which have the effect of achieving the goal of
51 producing affordable housing.

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

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

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

4 (c) Financial assistance for the conversion of nonresidential space to
5 residences;

6 (d) Other housing programs for low- and moderate-income housing,
7 including infrastructure projects directly facilitating the construction
8 of low- and moderate-income housing; and

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

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

15 (ii) Encouraging research in and demonstration projects to develop new
16 and better techniques and methods for increasing the supply, types and
17 financing of housing and housing projects in the state.

18 5. The division shall establish procedures and guidelines governing
19 the qualifications of applicants, the application procedures and the
20 criteria for awarding grants and loans for affordable housing programs
21 and the standards for establishing the amount, terms and conditions of
22 each grant or loan.

23 6. The division shall establish requirements and controls to ensure
24 the maintenance of housing assisted under this article as affordable to
25 low- and moderate-income households for a period of not less than forty
26 years for newly created rental units, thirty years for for-sale units,
27 and thirty years for housing units for which affordability controls are
28 extended for a new term of affordability, provided that the minimum
29 extension term may be limited to no less than twenty years as long as
30 the original and extended terms, in combination, total at least sixty
31 years. Any one hundred percent affordable rental property shall have a
32 right to extinguish a deed restriction regardless of original length,
33 beginning thirty years following the start of the deed restriction,
34 provided a refinancing or rehabilitation, or both, for the purpose of
35 preservation is commenced and that a new deed restriction of at least
36 thirty years is provided. A municipality shall be eligible to receive
37 credits for all preserved units pursuant to this subdivision, as long as
38 the original and extended terms total at least sixty years, and this
39 credit may be obtained at the time of preservation. All one hundred
40 percent affordable projects shall be eligible for any affordable housing
41 preservation program administered by the state, beginning thirty years
42 following the start of the deed restriction, regardless of original
43 length of the deed restriction. Any state administered preservation
44 program may allow a refinancing funding process to commence prior to the
45 thirtieth year of the deed restriction when such refinancing or rehabil-
46 itation funding is needed to preserve affordable housing. The controls
47 may include, among others, requirements for recapture of assistance
48 provided pursuant to this article or restrictions on return on equity in
49 the event of failure to meet the requirements of the program.

50 7. (a) The division shall promulgate processes and standards for the
51 certification of administrative agents and municipal housing liaisons in
52 the state, as well as standards for measuring performance of and enforc-
53 ing compliance by administrative agents and municipal housing liaisons
54 in implementing the affordable housing requirements and controls estab-
55 lished pursuant to subdivision six of this section.

1 (b) Administrative agents shall be responsible for implementing the
2 requirements and controls set by the regulations promulgated pursuant to
3 subdivision six of this section. The division may bring via summary
4 proceeding any findings of violation of the responsibilities set forth
5 in this section before a county-level housing judge to docket the
6 violation and issue corrective orders and levy fines.

7 (c) Municipal housing liaisons shall be responsible for monitoring
8 administrative agents within their municipality's jurisdiction to ensure
9 compliance with the requirements and controls set by regulation under
10 subdivision six of this section.

11 (d) Municipal housing liaisons, the division, and interested parties
12 may bring a challenge before a county-level housing judge to determine
13 whether properties subject to the regulations set forth by this section
14 are out of compliance with the regulations. A finding of deliberate
15 noncompliance may result in the division removing the administrative
16 agent's certification.

17 (e) A county-level housing judge may issue fines and order corrective
18 actions for violations and may consider patterns of violations in deter-
19 mining whether a municipality is meeting its obligations under the
20 compliance certification established by section seven hundred five of
21 this article.

22 (f) The division shall promulgate all rules and regulations necessary
23 to implement the provisions of this subdivision.

24 § 715. Allocation of federal low-income tax credits. Notwithstanding
25 any law, rule or regulation to the contrary, the allocation of federal
26 low-income tax credits shall be made to the full extent such credits are
27 permitted to be allocated under federal law, including allocations of
28 four percent or nine percent federal low-income tax credits and includ-
29 ing allocations allowable for partial credits. The affordable portion of
30 any mixed income or mixed-use development that is part of a fair share
31 housing plan that has obtained compliance certification, including a
32 court-approved judgment of repose or compliance, shall be permitted to
33 receive allocations of low-income tax credits, provided that the appli-
34 cant can conclusively demonstrate that the market rate residential or
35 commercial units are unable to internally subsidize the affordable
36 units, and the affordable units are developed contemporaneously with the
37 commercial or market rate residential units.

38 § 716. Annual report on activities promoting affordable housing. The
39 division shall maintain on its website and publish annually a report
40 concerning its activities during the year in promotion of affordable
41 housing, including any activity pursuant to section seven hundred four-
42 teen of this article and section ninety-nine-ss of the state finance
43 law. The report shall detail the number and amounts of grants, loans,
44 the average loan amount made, the amounts of low income tax credits
45 allocated by the division, by location, and the number of proposed
46 units, and any additional information which the division deems inform-
47 ative to the public.

48 § 717. Administration of online portal for affordable housing listings
49 and searches. The division shall establish a housing resource center, as
50 an online portal for income-restricted housing listings and searches.

51 § 718. Marketing of affordable housing units; posting; lottery; proof
52 of listing; penalties for noncompliance. 1. As used in this section, the
53 following terms shall have the following meanings:

54 (a) "Affirmative marketing plan" means a regional marketing strategy
55 designed to attract buyers, renters, or both to housing units which are
56 being marketed by a developer or sponsor of affordable housing. An

1 affirmative marketing plan shall target eligible persons who are least
2 likely to apply for affordable units in the region.

3 (b) "Development" means any residential development in which housing
4 for very low-, low-, or moderate-income households is required, includ-
5 ing developments receiving credit in a municipal housing element and
6 fair share plan or otherwise approved by the committee or court, or in
7 which such housing is required via land use approvals from any municipal
8 land use board.

9 (c) "Housing resource center" means the online portal for income-res-
10 tricted housing listings and searches established pursuant to section
11 seven hundred seventeen of this article.

12 2. Every municipality shall establish an affirmative marketing plan
13 and require owners, developers, property managers, or other administra-
14 tive entities which offer affordable housing within such municipality to
15 implement such affirmative marketing plan for their developments.

16 3. (a) The owner, developer, property manager, or other administrative
17 entity required to implement the affirmative marketing plan of a newly
18 constructed development where affordable housing units will be leased or
19 sold for the first time shall be required to post a listing on the hous-
20 ing resource center of the available affordable housing units, on or
21 before the earlier of: (i) at least sixty days prior to conducting a
22 lottery of the applicants; or (ii) within one day following when the
23 owner, developer, property manager, or other administrative entity
24 provides any information regarding how to apply for units to prospective
25 applicants or solicits any applications from potential applicants
26 through any other means. The posting shall include, at a minimum, the
27 date that the affordable housing units are expected to be completed, the
28 date of the lottery, the number of affordable housing units, an account-
29 ing of how many of the affordable housing units will be available to
30 very low-, low-, and moderate-income households, and each bedroom size
31 that will be available.

32 (b) A lottery shall not take place less than sixty days following
33 posting on the housing resource center. Any posting on the housing
34 resource center shall provide a link to an online fillable form or port-
35 able document format (PDF) form of the application for the affordable
36 housing units on the website of the owner, developer, property manager,
37 or other administrative entity and information on how to request a paper
38 copy of the application from the owner, developer, property manager, or
39 other administrative entity.

40 4. The owner, developer, property manager, or other administrative
41 entity required to implement the affirmative marketing plan of an exist-
42 ing development where one or more affordable housing units becomes
43 available shall post vacancies and waitlist openings for any such unit
44 on the housing resource center and the requirements set forth in the
45 affirmative marketing plan of the municipality where the development is
46 located. The posting shall be made within one day of accepting applica-
47 tions and shall include, at a minimum, the expected date that the
48 affordable housing units will become available, the number of affordable
49 housing units, an accounting of how many of the affordable housing units
50 will be available to very low-, low-, and moderate-income households,
51 and each bedroom size that will be available.

52 5. (a) From time to time the owner, developer, property manager, or
53 administrative entity required to implement the affirmative marketing
54 plan of an existing development may elect to conduct a new lottery to
55 generate or expand the pool of applicants, provided that applicants
56 already on a waitlist for a particular unit type are not displaced from

1 their place in the queue in the lottery. In such cases, the owner,
2 developer, property manager, or other administrative entity shall be
3 required to post a listing on the housing resource center website at
4 least sixty days prior to conducting the lottery of the applicants, or
5 within one day of when the owner, developer, property manager, or other
6 administrative entity provides any information regarding how to apply
7 for the lottery to prospective applicants or solicits any applications
8 from potential applicants through any other means, whichever is earlier.

9 (b) A lottery shall not take place less than sixty days following
10 posting on the housing resource center. Any posting on the housing
11 resource center shall provide a link to an online fillable form or port-
12 able document format (PDF) form of the application for the affordable
13 housing units on the website of the owner, developer, property manager,
14 or other administrative entity and information on how to request a paper
15 copy of the application from the owner, developer, property manager, or
16 other administrative entity.

17 6. The owner, developer, property manager, or other administrative
18 entity shall submit evidence of the listing of their available units and
19 waitlist openings, as required by this section, to the administrative
20 agent for the municipality.

21 7. (a) The administrative agent for the municipality and the municipal
22 housing liaison shall ensure compliance with the provisions of this
23 section.

24 (b) The administrative agent for the municipality and the municipal
25 housing liaison shall have the authority to levy fines against the owner
26 of the development for instances of noncompliance, following written
27 notice to the owner. The fine for the first offense of noncompliance
28 shall be five thousand dollars, the fine for the second offense of
29 noncompliance shall be ten thousand dollars, and the fine for each
30 subsequent offense of noncompliance shall be fifteen thousand dollars.

31 (c) The commissioner may adjust the fine schedule established in para-
32 graph (b) of this subdivision, but shall not adjust such fine schedule
33 until at least sixty months after the effective date of this section.

34 (d) All revenue generated from the fines levied pursuant to this
35 section shall be deposited into the municipality's affordable housing
36 trust fund.

37 (e) A fine shall not be issued pursuant to this subdivision unless the
38 administrative agent for the municipality or the municipal housing liai-
39 son first provides the owner with written notice no less than two months
40 prior to the date the fine is levied. A fine shall only be issued if the
41 offense has not been cured within that two-month timeframe. Issuance of
42 a written notice or a fine shall not provide exemption to the require-
43 ment of conducting a lottery no less than sixty days following posting
44 on the housing resource center.

45 (f) The administrative agent and the municipal housing liaison shall
46 have the authority to require the owner, developer, property manager, or
47 administrative entity to conduct a new lottery if the provisions of this
48 section are not implemented properly.

49 8. If a municipality fails to comply with the provisions of this
50 section, then the municipality shall be considered noncompliant with the
51 affirmative marketing plan requirements, except in cases in which the
52 municipality takes appropriate corrective action pursuant to this
53 section that such corrective action shall be construed as remaining in
54 compliance.

55 § 719. Contractual agreements with willing municipalities or develop-
56 ers of inclusionary developments for administration of resale and rent

1 controls. 1. The division shall establish procedures for entering into,
2 and shall enter into, contractual agreements with willing municipalities
3 or developers of inclusionary developments whereby the agency will
4 administer resale controls and rent controls in municipalities where no
5 appropriate administrative agency exists. The contractual agreements
6 shall be for the duration of the controls and shall involve eligibility
7 determinations, determination of initial occupants, the marketing of
8 units, maintenance of eligibility lists for subsequent purchasers or
9 renters, and determination of maximum resale prices or rents. The divi-
10 sion may charge the municipality or inclusionary developer a reasonable
11 per unit fee for entering into such an agreement, or may charge a
12 reasonable fee to a low- or moderate-income household at the time the
13 home is sold subject to the resale control or both.

14 2. Neither the division nor any other entity entering into an agree-
15 ment to provide services to a municipality under this section shall
16 require, as a condition of such agreement, that such services be
17 provided for all eligible housing units in the municipality. A munici-
18 pality, at its discretion, may enter into an agreement for the provision
19 of services for any reasonable portion of its eligible housing units.

20 § 720. Purchase, lease or acquisition by gift of real property; acqui-
21 sition, construction and maintenance of buildings and structures;
22 private sale or lease by municipality. 1. Notwithstanding any other law
23 to the contrary, a municipality may purchase, lease or acquire by gift
24 or through the exercise of eminent domain, real property and any estate
25 or interest therein, which the municipal governing body determines
26 necessary or useful for the construction or rehabilitation of low- and
27 moderate-income housing or conversion to low- and moderate-income hous-
28 ing.

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

35 3. Notwithstanding the provisions of any other law regarding the
36 conveyance, sale or lease of real property by municipalities, the munic-
37 ipal governing body may, by resolution, authorize the private sale and
38 conveyance or lease of a housing unit or units acquired or constructed
39 pursuant to this section, where the sale, conveyance or lease is to a
40 low- or moderate-income household or nonprofit entity and contains a
41 contractual guarantee that the housing unit will remain available to
42 low- and moderate-income households for a period of at least thirty
43 years.

44 § 721. Coordination and review of housing elements; reservation of
45 housing units made available for occupancy by very low-income house-
46 holds. Housing elements and fair share plans adopted pursuant to
47 section seven hundred five of this article shall ensure that at least
48 thirteen percent of the housing units made available for occupancy by
49 low- and moderate-income households to address a municipality's prospec-
50 tive need obligation will be reserved for occupancy by very low-income
51 households, with at least half of such units made available for families
52 with children. Such thirteen percent shall count towards the minimum
53 fifty percent of the housing units required to be made available for
54 occupancy by low-income households to address a municipality's prospec-
55 tive need obligation pursuant to subdivision ten of section seven
56 hundred eight of this article. Nothing in this section shall require

1 that a specific percentage of the units in any specific project be
2 reserved as very low-income housing.

3 § 722. Collection and expenditure of affordable housing development
4 fees by municipalities; exclusion from collection. 1. (a) A municipality
5 that is in the process of seeking compliance certification, has obtained
6 compliance certification, or that has been so authorized by a court of
7 competent jurisdiction, and which has adopted a municipal development
8 fee ordinance shall be authorized to impose and collect development fees
9 from developers of residential property, in accordance with rules
10 promulgated by the division. Each amount collected shall be deposited
11 and shall be accounted for separately, by payer and date of deposit.

12 (b) No later than one hundred eighty days following the effective date
13 of adopting a municipal development fee ordinance, any municipality that
14 is or has been authorized to impose and collect development fees from
15 developers of residential property, or payments in lieu of constructing
16 affordable housing, shall provide the division with a detailed account-
17 ing of all such fees that have been collected and expended since the
18 inception of the municipal authorization to collect such fees.

19 (c) Beginning with the year first succeeding the effective date of
20 this article, annually by February fifteenth, every municipality that is
21 or has been authorized to impose and collect development fees from
22 developers of residential property, or payments in lieu of constructing
23 affordable housing, shall provide the division with a detailed account-
24 ing of all such fees that have been collected and expended the previous
25 year.

26 (d) A municipality may not spend or commit to spend any affordable
27 housing development fees without first obtaining the approval of the
28 expenditure as part of its compliance certification or from the divi-
29 sion. A municipality shall include in its housing element and fair
30 share plan adopted pursuant to section seven hundred five of this arti-
31 cle a spending plan for current funds in the municipal affordable hous-
32 ing trust fund and projected funds through the current round. Review of
33 such spending plan for consistency with applicable law and the munici-
34 pality's housing element and fair share plan shall be part of the proc-
35 ess specified in section seven hundred five of this article. The divi-
36 sion shall promulgate updated regulations no later than nine months
37 following the effective date of this article regarding the establish-
38 ment, administration, reporting, and enforcement of the expenditure of
39 affordable housing development fees by municipalities, which shall
40 include establishing an expedited process for approving spending plan
41 expenditures for emergent opportunities to create affordable housing
42 after a municipality has obtained compliance certification and proce-
43 dures for monitoring the collection and expenditure of trust funds. The
44 division shall develop and publish on its Internet website a detailed
45 summary of the municipal affordable housing trust fund expenditures for
46 each municipality and shall update each summary on an annual basis. As
47 part of the regulations adopted pursuant to this section and section
48 seven hundred twenty-three of this article, the division shall adopt
49 reporting requirements applicable to municipal affordable housing trust
50 funds to facilitate fulfillment of the division's obligations pursuant
51 to this section.

52 (e) The governing body of a municipality which is spending or commit-
53 ting to spend affordable housing development fees may provide, by ordi-
54 nance, that the units of affordable housing being developed or preserved
55 pursuant to a housing project or program being funded, in whole or in
56 part, through affordable housing development fees shall be exempt from

1 real property taxation if the housing sponsor enters into an agreement
2 with the municipality for payments to the municipality in lieu of taxes
3 for municipal services. Any such agreement may require the housing spon-
4 sor to pay to the municipality an amount up to twenty percent of the
5 annual gross revenue from each housing project situated on such real
6 property for each year of operation of the agreement following the
7 substantial completion of the housing project. Any such agreement shall
8 require the housing sponsor to pay the municipality an amount not less
9 than the greater of four percent of the annual gross revenue or the
10 amount of the taxes attributable to the land value component of the
11 property comprising the project site for the year preceding the record-
12 ing of the mortgage, if applicable. For the purpose of this subdivision,
13 "annual gross revenue" means the total annual gross rental or carrying
14 charge and other income of a housing sponsor from a housing project. If
15 an agreement is entered into from the date of recording the mortgage on
16 the housing project to the date of substantial completion of the housing
17 project, the annual amount payable to the municipality as taxes or as
18 payments in lieu of taxes in respect of the project site shall not be in
19 excess of the amount of taxes on the project site for the year preceding
20 the recording of the mortgage. Within thirty calendar days following:
21 the effective date of an ordinance adopted by a municipal governing body
22 approving a tax exemption under this subdivision; or the execution of a
23 financial agreement between a housing sponsor and a municipality entered
24 into pursuant to this subdivision, whichever is later, the municipality
25 shall electronically transmit a certified copy of the ordinance and the
26 agreement to the applicable tax assessor in such a manner as may be
27 specified by such assessor. An exemption from taxation provided in
28 accordance with this subdivision shall not extend beyond the date on
29 which an eligible loan made for the project is paid in full.

30 (f) Notwithstanding the provisions of any law or regulation to the
31 contrary, the governing body of a municipality may agree to continue or
32 grant a new tax exemption for a state, federally, or municipally subsi-
33 dized housing project beyond the date on which an eligible loan made for
34 the project is fully paid, or beyond the date upon which a tax exemption
35 expires, for any period the project remains subject to affordability
36 controls pursuant to:

37 (i) project-based federal rental assistance, authorized pursuant to
38 section 8 of the United States Housing Act of 1937 (42 U.S.C. s.1437f),
39 or other federal or state project-based assistance;

40 (ii) section four hundred twenty-one-a of the real property tax law;
41 or

42 (iii) the rent and income limits established by the federal Low Income
43 Housing Tax Credit program pursuant to section 42 of the Internal Reven-
44 ue Code (26 U.S.C. s.42).

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

50 3. (a) A municipality may only spend development fees for an activity
51 approved by the division to address the municipal fair share obligation
52 or approved as part of compliance certification.

53 (b) Municipal development trust funds shall not be expended unless the
54 municipality has immunity from exclusionary zoning litigation at the
55 time of the expenditure, or said municipality has previously collected
56 such funds while under the protection of presumptive validity or immuni-

1 ty from exclusionary zoning litigation and in accordance with an
2 approved spending plan. Municipal development fee trust funds shall not
3 be expended:

4 (i) to reimburse municipalities for activities which occurred prior to
5 the authorization of a municipality to collect development fees; or

6 (ii)(1) on administrative costs, attorney fees or court costs to
7 obtain a judgment of repose; (2) to contest a determination of the
8 municipality's fair share obligation; or (3) on costs of any challenger
9 in connection to a challenge to the municipality's obligation, housing
10 element, or fair share plan.

11 (c) (i) A municipality shall set aside a portion of its development
12 fee trust fund for the purpose of providing affordability assistance to
13 low- and moderate-income households in affordable units included in a
14 municipal fair share plan, in accordance with rules of the division.

15 (ii) Affordability assistance programs may include down payment
16 assistance, security deposit assistance, low-interest loans, common
17 maintenance expenses for units located in condominiums, rental assist-
18 ance, and any other program authorized by the division.

19 (iii) Affordability assistance to households earning thirty percent or
20 less of median income may include buying down the cost of low-income
21 units in a municipal fair share plan to make them affordable to house-
22 holds earning thirty percent or less of median income.

23 (d) A municipality may contract with a private or public entity to
24 administer any part of its housing element and fair share plan, includ-
25 ing the requirement for affordability assistance, or any program or
26 activity for which the municipality expends development fee proceeds, in
27 accordance with rules of the division.

28 (e) Not more than twenty percent of the revenues collected from devel-
29 opment fees shall be expended on administration, in accordance with
30 rules of the division. Such administration may include expending a
31 portion of its affordable housing trust fund on actions and efforts
32 reasonably related to the determination of its fair share obligation and
33 the development of its housing element and fair share plan pursuant to
34 section seven hundred five of this article, and for expenses that are
35 reasonably necessary for compliance with the processes of the program,
36 including, but not limited to, the costs to the municipality of resolv-
37 ing a challenge under the program.

38 4. The division shall establish a time by which all development fees
39 collected within a calendar year shall be expended; provided, however,
40 that all fees shall be committed for expenditure within four years from
41 the date of collection. A municipality that fails to commit to expend
42 the balance required in the development fee trust fund by the time set
43 forth in this section shall be required by the committee to transfer the
44 remaining unspent balance at the end of the four-year period to the New
45 York affordable housing trust fund, established pursuant to section
46 ninety-nine-ss of the state finance law, to be used in the housing
47 region of the transferring municipality for the authorized purposes of
48 that fund.

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

53 § 723. Status report concerning petitions for substantive certifi-
54 cation; housing unit information; fair share plan information. 1. The
55 division shall maintain on its Internet website, and also publish on an
56 annual basis, an up-to-date municipal status report based on its

1 collection and publication of information concerning the number of
2 affordable housing units actually constructed, construction starts,
3 certificates of occupancy granted, the start and expiration dates of
4 deed restrictions, and residential and non-residential development fees
5 collected and expended, including purposes and amounts of such expendi-
6 tures, along with the current balance in the municipality's affordable
7 housing trust fund. With respect to units actually constructed, the
8 information shall specify the characteristics of the housing, including
9 housing type, tenure, affordability level, number of bedrooms, date and
10 expiration of affordability controls, and whether occupancy is reserved
11 for families, senior citizens, or other special populations.

12 2. Beginning with the year first succeeding the effective date of this
13 article, annually by February fifteenth, each municipality shall provide
14 the division with the information necessary to comply with this section.

15 3. The division may promulgate any rules and regulations necessary to
16 effectuate the provisions of this section, including, but not limited
17 to, rules and regulations to ensure that municipalities and developers
18 report any information as may be necessary for the division to fulfill
19 its obligations pursuant to this section.

20 § 3. The state finance law is amended by adding a new section 99-ss to
21 read as follows:

22 § 99-ss. New York affordable housing trust fund. 1. There is hereby
23 established in the joint custody of the comptroller and the commissioner
24 of housing and community renewal a fund to be known as the "New York
25 affordable housing trust fund".

26 2. Such fund shall consist of revenues received by the state pursuant
27 to section seven hundred twenty-two of the public housing law and all
28 other moneys, appropriated, credited, or transferred thereto from any
29 other fund or source pursuant to law.

30 3. (a) The division of housing and community renewal shall be permit-
31 ted to utilize annually up to seven and one-half percent of the moneys
32 available in the fund for the payment of any necessary administrative
33 costs related to the administration of article sixteen of the public
34 housing law.

35 (b) The commissioner shall award grants or loans from this fund for
36 housing projects and programs in municipalities whose housing elements
37 have obtained compliance certification pursuant to section seven hundred
38 five of the public housing law.

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

42 (d) The commissioner shall establish rules and regulations governing
43 the qualifications of applicants, the application procedures, and the
44 criteria for awarding grants and loans and the standards for establish-
45 ing the amount, terms, and conditions of each such grant or loan.

46 4. The governing body of a municipality in which a housing project or
47 program is located, and which is awarded a grant or loan from the fund
48 for a housing project or program, may provide, by ordinance, that the
49 units of affordable housing being developed or preserved pursuant to a
50 housing project or program being funded, in whole or in part, through
51 this fund shall be exempt from real property taxation if the housing
52 sponsor enters into an agreement with the municipality for payments to
53 the municipality in lieu of taxes for municipal services. Any such
54 agreement shall require the housing sponsor to pay to the municipality
55 an amount up to twenty percent of the annual gross revenue from each
56 housing project situated on such real property for each year of opera-

1 tion of the agreement following the substantial completion of the hous-
2 ing project. Any such agreement shall require the housing sponsor to
3 pay the municipality an amount not less than the greater of four percent
4 of the annual gross revenue or the amount of the taxes attributable to
5 the land value component of the property comprising the project site for
6 the year preceding the recording of the mortgage, if applicable. For the
7 purpose of this subdivision, "annual gross revenue" means the total
8 annual gross rental or carrying charge and other income of a housing
9 sponsor from a housing project. If an agreement is entered into from the
10 date of recording the mortgage on the housing project to the date of
11 substantial completion of the housing project, the annual amount payable
12 to the municipality as taxes or as payments in lieu of taxes in respect
13 of the project site shall not be in excess of the amount of taxes on the
14 project site for the year preceding the recording of the mortgage. With-
15 in thirty calendar days following: the effective date of an ordinance
16 adopted by a municipal governing body approving a tax exemption under
17 this subdivision, or the execution of a financial agreement between a
18 housing sponsor and a municipality entered into pursuant to this subdivi-
19 vision, whichever is later, the municipal clerk shall electronically
20 transmit a certified copy of the ordinance and the agreement to the
21 applicable tax assessor in such a manner as may be specified by such
22 assessor. An exemption from taxation provided pursuant to this subdivi-
23 sion shall not extend beyond the date on which an eligible loan made for
24 the project is paid in full.

25 5. Notwithstanding the provisions of any law or regulation to the
26 contrary, the governing body of a municipality may agree to continue a
27 tax exemption for a state, federally, or municipally subsidized housing
28 project beyond the date on which an eligible loan made for the project
29 is fully paid, or beyond the date upon which a tax exemption expires,
30 for any period the project remains subject to affordability controls
31 pursuant to:

32 (a) project-based federal rental assistance, authorized pursuant to
33 section 8 of the United States Housing Act of 1937 (42 U.S.C. s.1437f)
34 or other federal or state project-based assistance;

35 (b) section four hundred twenty-one-a of the real property tax law; or

36 (c) the rent and income limits established by the federal Low Income
37 Housing Tax Credit program pursuant to section 42 of the Internal Reven-
38 ue Code (26 U.S.C. s.42).

39 6. For any period which the commissioner of housing and community
40 renewal may approve, such commissioner may assist affordable housing
41 programs that are located in municipalities that have a pending request
42 for compliance certification pursuant to article sixteen of the public
43 housing law; provided that such affordable housing program will meet all
44 or part of a municipal low- and moderate-income housing obligation
45 pursuant to such article.

46 7. Amounts deposited in the fund shall be targeted to regions based on
47 the region's percentage of the state's low- and moderate-income housing
48 need as determined pursuant to the low- and moderate-income household
49 growth over the prior ten years, as calculated pursuant to article
50 sixteen of the public housing law. Amounts in the fund shall be applied
51 for the following purposes in designated neighborhoods:

52 (a) Rehabilitation of substandard housing units occupied or to be
53 occupied by low- and moderate-income households;

54 (b) Creation of accessory dwelling units to be occupied by low- and
55 moderate-income households;

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

4 (d) Acquisition of real property, demolition and removal of buildings,
5 or construction of new housing that will be occupied by low- and moder-
6 ate-income households, or any combination thereof;

7 (e) Grants of assistance to eligible municipalities for costs of
8 necessary studies, surveys, plans, and permits; engineering, architect-
9 tural, and other technical services; costs of land acquisition and any
10 buildings thereon; and costs of site preparation, demolition, and
11 infrastructure development for projects undertaken pursuant to an
12 approved regional contribution agreement;

13 (f) Assistance to a local housing authority for rehabilitation or
14 restoration of housing units which it administers which: (i) are unusa-
15 ble or in a serious state of disrepair; (ii) can be restored in an
16 economically feasible and sound manner; and (iii) can be retained in a
17 safe, decent, and sanitary manner, upon completion of rehabilitation or
18 restoration; and

19 (g) Other housing programs for low- and moderate-income housing, as
20 defined in section seven hundred one of the public housing law, includ-
21 ing, without limitation, (i) infrastructure projects directly facilitat-
22 ing the construction of low- and moderate-income housing not to exceed a
23 reasonable percentage of the construction costs of the low- and moder-
24 ate-income housing to be provided and (ii) alteration of dwelling units
25 occupied or to be occupied by households of low- or moderate-income and
26 the common areas of the premises in which they are located in order to
27 make them accessible to persons with disabilities.

28 8. Any grant or loan agreement entered into pursuant to this section
29 shall incorporate contractual guarantees and procedures by which the
30 division of housing and community renewal shall ensure that any unit of
31 housing provided for low- and moderate-income households shall continue
32 to be occupied by low- and moderate-income households for a period that
33 conforms to the requirements of article sixteen of the public housing
34 law following the award of the loan or grant, except that the division
35 may approve a guarantee for a period of less duration where necessary to
36 ensure project feasibility.

37 9. Notwithstanding the provisions of any other law, rule, or regu-
38 lation to the contrary, in making grants or loans under this section,
39 the division of housing and community renewal shall not require that
40 tenants be certified as low- or moderate-income or that contractual
41 guarantees or deed restrictions be in place to ensure continued low- and
42 moderate-income occupancy as a condition of providing housing assistance
43 from any program administered by the division, when that assistance is
44 provided for a project of moderate rehabilitation if the project: (a)
45 contains thirty or fewer rental units and (b) is located in a census
46 tract in which the median household income is sixty percent or less of
47 the median income for the housing region in which the census tract is
48 located, as determined for a three-person household by the division in
49 accordance with the latest federal decennial census. A list of eligible
50 census tracts shall be maintained by the division of housing and commu-
51 nity renewal and shall be adjusted upon publication of median income
52 figures by census tract after each federal decennial census.

53 10. In addition to other grants or loans awarded pursuant to this
54 section, and without regard to any limitations on such grants or loans
55 for any other purposes herein imposed, the commissioner of housing and
56 community renewal shall annually allocate such amounts as may be neces-

1 sary in the commissioner's discretion, to fund rental assistance grants.
2 Such rental assistance grants shall be deemed necessary and authorized
3 pursuant to article sixteen of the public housing law, in order to meet
4 the housing needs of certain low-income households who may not be eligi-
5 ble to occupy other housing produced pursuant to such article.

6 11. Moneys shall be payable from the fund on the audit and warrant of
7 the comptroller on vouchers approved and certified by the commissioner
8 of housing and community renewal.

9 § 4. This act shall take effect on the first of July next succeeding
10 the date on which it shall have become a law.