

A4/S50 Fact Sheet: Details of the New Law

A4/S50 amends New Jersey's Fair Housing Act to protect the Mount Laurel Doctrine and keep New Jersey on track to address its affordable housing deficit by implementing a new affordable housing compliance process. The legislation was signed into law on March 20.

A Streamlined Process (New Section 3 a-e; 3 f (1)(a)-(c))

This new law abolishes the Council on Affordable Housing (COAH). It implements a streamlined process where municipalities determine their affordable housing obligations in accordance with a specific methodology and post their determinations on the Affordable Housing Dispute Resolution Program website. The Department of Community Affairs (DCA) will provide initial guidance numbers for affordable housing obligations. Once a determination is made about the specific affordable housing obligations, municipalities will be required to adopt a Housing Element and Fair Share Plan, which is a plan that outlines the mechanisms a municipality uses to meet its obligations. (Some examples of these mechanisms are a redevelopment plan, partnering with a non-profit affordable housing developer, or an inclusionary zoning ordinance.)

Sections 3 f (1) (b) and (c) provide two mechanisms that prevent delays to this new process: Under 3 f (1) (b), a municipality would lose immunity from exclusionary zoning lawsuits if it misses the deadline to adopt its affordable housing determination. The same protocol exists in the bill for the adoption of the municipal Housing Element and Fair Share Plan. 3 f (1) (c) sets forth objective steps utilizing the Jacobson methodology (discussed below) to assess challenges to a municipality's determination. Thus, if a municipality's adopted determination for its obligation is inaccurate, that would be resolved by analyzing and comparing its determination to the Jacobson methodology. A similar process would be implemented for the adoption of a municipality's Housing Element and Fair Share Plan.

Municipal Housing Obligations (New Section 7a-c)

Municipal obligations must be compliant with the methodology codified in the bill. The bill adopts In re Application of Municipality of Princeton, a decision by Judge Jacobson widely applied throughout the state during the Third Round (the "Jacobson Methodology"), as the framework for obligations going forward, with specific language in the bill that all interested parties can rely upon to get certainty sooner rather than later on municipal obligations. The Jacobson Methodology allocates housing needs to places with more jobs, more land that is not environmentally sensitive, and where there is the least existing affordability.

Under the bill, the DCA will publish guidance for municipal obligations by applying the Jacobson Methodology. For the last five years, most towns have been using this methodology to calculate affordable housing obligations. The Jacobson methodology was established in a 2018 decision after input from municipalities, advocates, and builders as a middle ground between the various positions. No town has gone to trial over its methodology since then.

Codifying the methodology would allow municipalities to more effectively and efficiently determine their obligation without prolonged judicial involvement and would reduce legal costs associated with the affordable housing process.

Timelines for Municipal Compliance (New Section 3b, 3 f(1) (b), 3(2)(a)-(c))

The bill incentivizes municipalities to participate in this process, starting at the beginning of the fourth round on July 1, 2025¹, by continuing the immunity they have from the third round if they participate in the new process. Municipalities would adopt the determination of their obligation by January 31, 2025. Any interested party may challenge the municipal determination by February 28, 2025, and a decision on the challenge will be issued no later than March 31, 2025. (Otherwise, a municipality's determination shall be established by default beginning on March 1, 2025.)

Municipal Housing Elements and Fair Share Plans, including proposed drafts of zoning and other ordinances and resolutions, are required to be adopted by June 30, 2025. Interested parties are permitted to file responses by August 31, 2025. Municipalities would have until December 31, 2025 to address a challenge to its plan, and until March 15, 2026 to adopt a revised Housing Element and Fair Share Plan.

Affordable Housing Dispute Resolution Special Master Process (New Section 5a-g).

The Affordable Housing Dispute Resolution Program would resolve disputes to municipal determinations of affordable housing obligations and challenges to Housing Elements and Fair Share Plans. The Program would consist of an odd number of members, of at least 3 and no more than 7 members. The Administrative Office of the Courts would update assignments of designated Mount Laurel Judges to serve as program leaders and would appoint other qualified experts if there is an insufficient number of available judges.

A filing system would be available online with free access for the public.

DCA and HMFA Oversight of Trust Funds and Affordability Controls (C.40:55D-8.2, C.52:27D-320, C.52:27D-321)

The bill authorizes the Department of Community Affairs (DCA) to adopt rules on the collection of residential and non-residential development fees. These fees are placed in an interest-bearing account called a municipal affordable housing trust fund. Municipalities currently seek Court approval for the use of these trust funds in a municipal spending plan. Under this bill, DCA will also adopt rules for the review, monitoring, and enforcement of municipal spending plans in addition to trust funds. DCA also would have the power to approve expenditures for emergent housing opportunities. In addition, DCA would make municipal trust fund monitoring available to the public online annually. DCA already administers the New Jersey Affordable Housing Trust Fund, a state fund available for projects in a municipal affordable housing plan, which it would continue to do under this new law.

The bill also requires the New Jersey Housing and Mortgage Finance Agency to update the Uniform Housing Affordability Controls, which regulate the construction and administration of Mount Laurel units (including the length of time units remain affordable) set forth specific income and bedroom distributions for projects, and require units to be affirmatively marketed.

The bill requires minimum deed restrictions for the length of housing that has to remain affordable after being built of 40 years for rental housing and 30 years for for-sale housing.

¹ Section 3b, 3c, 3fb, 3(2)(a), and 3(2)(b) address the deadlines for subsequent rounds.

Changes to Bonus Credits and Age-Restricted Caps (C.52:27D-311)

Starting with the fourth round of compliance, the scope of bonus credits will be changed to focus on certain types and locations of housing that reflect many of the greatest housing needs in the state and incentivize redeveloping existing developed land and placing affordable homes near transit. Currently, municipal obligations are trimmed down when they receive two credits for one rental unit, something that they are already required to do by law. This new law would allow municipalities to receive one-half to one bonus credit for certain types of special needs housing, very low income housing, and housing near transit, among other bonuses, and bonuses would no longer be available simply for any rental housing. The law also changes the cap for age-restricted units to 30 percent of the affordable homes in the plan, exclusive of any bonuses.