

52:27D-325

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 52:27D-325

(Fair housing--
allow
municipalities to
acquire thru
condemnation)

LAWS OF: 1990

CHAPTER: 109

Bill No: A211

Sponsor(s): Schwartz and Smith

Date Introduced: Pre-filed

Committee: Assembly: Housing

Senate: State Government

Amended during passage: No

Date of Passage: Assembly: March 8, 1990

Senate: October 1, 1990

Date of Approval: November 16, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/SLJ

1 **AN ACT** authorizing municipalities to acquire property by
2 condemnation in connection with the provision of low and
3 moderate income housing, amending the "Fair Housing Act,"
4 P.L.1985, c.222.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the
7 *State of New Jersey*:

8 1. Section 25 of P.L.1985, c.222 (C.52:27D-325) is amended to
9 read as follows:

10 25. Notwithstanding any other law to the contrary, a
11 municipality may purchase, lease or acquire by gift or through
12 the exercise of eminent domain, real property and any estate or
13 interest therein, which the municipal governing body determines
14 necessary or useful for the construction or rehabilitation of low
15 and moderate income housing or conversion to low and moderate
16 income housing.

17 The municipality may provide for the acquisition, construction
18 and maintenance of buildings, structures or other improvements
19 necessary or useful for the provision of low and moderate income
20 housing, and may provide for the reconstruction, conversion or
21 rehabilitation of those improvements in such manner as may be
22 necessary or useful for those purposes.

23 Notwithstanding the provisions of any other law regarding the
24 conveyance, sale or lease of real property by municipalities, the
25 municipal governing body may, by resolution, authorize the
26 private sale and conveyance or lease of a housing unit or units
27 acquired or constructed pursuant to this section, where the sale,
28 conveyance or lease is to a low or moderate income household or
29 nonprofit entity and contains a contractual guarantee that the
30 housing unit will remain available to low and moderate income
31 households for a period of at least 30 years.

32 (cf: P.L.1985, c.222 s.25)

33 2. This act shall take effect immediately.

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HOUSING AND CONSTRUCTION

37

38 Authorizes municipalities to acquire property by condemnation
39 for low and moderate income housing.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

ASSEMBLY, No. 211
STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Assemblymen SCHWARTZ and SMITH

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STATEMENT

37 At the enactment of the "Fair Housing Act" in 1985, the
38 Legislature concurred in several amendments recommended by

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1 the Governor. Among these was to delete from section 25 of the
2 bill (Senate Committee Substitute for Senate Bills Nos. 2046 and
3 2334) "condemnation" as one of the means by which a
4 municipality was authorized to acquire real property which its
5 governing body deemed "necessary or useful" for the
6 development of low and moderate income housing. At that time
7 the Governor observed that condemnation was a "drastic power"
8 that should not be granted "without some evidence of its
9 necessity in resolving our State's housing needs."

10 Evidence of such necessity has recently been furnished in
11 Morris County, where a court decision (Twp. of Denville v.
12 McGreevy, Docket No. MRS� 2402-88E, August 26, 1988), based
13 on the law as enacted, has debarred the Township of Denville
14 from proceeding with acquisition of a 45-acre tract which is part
15 of a fair-housing plan to produce 388 units of low and moderate
16 income housing. The plan, which includes assistance from
17 Denville to produce 174 units in Newark and Boonton, has been
18 approved by the State Council on Affordable Housing, and would
19 terminate 10 years of litigation and negotiation regarding the
20 township's fair-housing obligation and means of attaining it. The
21 township, unable to bring negotiations for purchase of the
22 45-acre tract to a satisfactory conclusion, proposed to acquire it
23 through the exercise of eminent domain, but has been thwarted
24 by a court decision based on the existing law.

25 Accordingly, this bill would restore to the "Fair Housing Act"
26 the authority for a municipality to acquire property through
27 condemnation in order to attain its "fair share" of affordable
28 housing as determined pursuant to the act. This will assist
29 Denville immediately, and any municipalities which may
30 hereafter face the same difficulties.

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ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

ASSEMBLY, No. 211

STATE OF NEW JERSEY

DATED: FEBRUARY 26, 1990

The Assembly Housing Committee reports Assembly Bill No. 211 favorably, without amendment.

This bill amends the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) to clarify the authority of a municipality to use its power of condemnation to acquire real property to be used for the provision of low and moderate income housing.

At the enactment of the "Fair Housing Act" in 1985, the Legislature concurred in several amendments recommended by the Governor. Among these was to delete from section 25 of the bill (Senate Committee Substitute for Senate Bills Nos. 2046 and 2334) "condemnation" as one of the means by which a municipality was authorized to acquire real property which its governing body deemed "necessary or useful" for the development of low and moderate income housing. At that time the Governor observed that condemnation was a "drastic power" that should not be granted "without some evidence of its necessity in resolving our State's housing needs."

Evidence of such necessity was furnished in Morris County, where a court decision (*Twp. of Denville v. McGreevy*, Docket No. MRSL 2402-88E, August 26, 1988), based on the law as enacted, debarred the Township of Denville from proceeding with acquisition by condemnation of a 45-acre tract which was part of a fair-housing plan to produce 388 units of low and moderate income housing. The plan, which included assistance from Denville to produce 174 units in Newark and Boonton, had been approved by the State Council on Affordable Housing, terminating 10 years of litigation and negotiation regarding the township's fair-housing obligation and means of attaining it. The township, unable to bring negotiations for purchase of the 45-acre tract to a satisfactory conclusion, proposed to acquire it through the exercise of eminent domain, but was thwarted by a court decision based on the existing law.

Subsequently, the township and the property owners arrived at a mutually satisfactory agreement, and the township's appeal of the court decision was accordingly dismissed "without prejudice;" so that the Morris County Law Division decision remains uncontradicted, although still subject to challenge.

Accordingly, this bill would, in effect, override that decision and restore to the "Fair Housing Act" the authority for a municipality to acquire property through condemnation in order to attain its "fair

share" of affordable housing as determined pursuant to the act. Although the Denville situation has apparently been satisfactorily resolved, this would assist any municipalities which may hereafter face the same difficulties.

This bill was pre-filed for introduction in the 1990 Session pending technical review. As reported, the bill incorporates the changes indicated by technical review, which has been performed.

SENATE STATE GOVERNMENT AND FEDERAL
AND INTERSTATE RELATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 211

STATE OF NEW JERSEY

DATED: MAY 21, 1990

The Senate State Government and Federal and Interstate Relations Committee reports favorably Assembly, No. 211.

This bill amends the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) to specify that a municipality has the power to acquire real property through the exercise of eminent domain when its governing body determines that such property is necessary or useful for the provision of low and moderate income housing.

This legislation is a response to a Superior Court decision, Twp. of Denville v. McGreevy, Docket No. MRS� 2402-88E, August 26, 1988. In that decision, the Township of Denville was prohibited from exercising the power of condemnation to acquire a 45-acre tract of land in order to implement its fair housing plan. The court ruled that since condemnation power had been specifically deleted from the bill prior to its enactment into law, "a determination by the Governor and the Legislature" had been made "that municipalities should not use the power of Eminent Domain in order to acquire lands that might be used...for low and moderate income housing." Subsequently, the township and the property owners arrived at an agreement and the township's appeal was dismissed "without prejudice." The court decision stands.