

13:19-11

LEGISLATIVE HISTORY CHECKLIST

NJSA: 13:19-11 (CAFRA permits--prohibit requiring low -moderate income as precondition)

LAWS OF: 1986 CHAPTER 145

BILL NO: A2203/720

Sponsor(s): Singer and others

Date Introduced: March 6, 1986

Committee: Assembly: Housing

Senate: Energy and Environment

Amended during passage: No Assembly Committee Substitute enacted.

Date of Passage: Assembly: June 9, 1986

Senate: September 29, 1986

Date of Approval: November 12, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

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ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2203 and 720

STATE OF NEW JERSEY

ADOPTED MAY 12, 1986

By Assemblymen SINGER and MILLER

AN Act concerning permits for the construction of low and moderate income housing in coastal areas and supplementing P. L. 1973, c. 185 (C. 13:19-1 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Notwithstanding the provisions of any rule or regulation to
2 the contrary, the department shall not require the provision for
3 low and moderate income housing as a condition for approval of
4 an application to construct a facility in the coastal area pursuant
5 to the provisions of P. L. 1973, c. 185 (C. 13:19-1 et seq.).

1 2. This act shall take effect immediately.

STATEMENT

This bill would prohibit the Department of Environmental Protection from requiring the provision of low and moderate income housing as a condition of receiving a CAFRA permit. Currently, under the Coastal Resource and Development Policies implemented by the Division of Coastal Resources in the department, applicants are required to so provide for low and moderate income housing.

The "Coastal Area Facility Review Act" was enacted to protect the coastal area from environmental degradation. Indeed, there is explicit authority for the department to take into account the full range of environmental factors when reviewing permit applications. There is, however, no authority given the department to impose any other requirement not related to the protection of the environment. It is the sponsor's belief that the requirement that applicants provide for low and moderate income housing is not one that was anticipated by the Legislature to provide that protection. Finally, with the enactment of the "Fair Housing Act," the provision for low and moderate income housing is the responsibility of the Council on Affordable Housing created therein.

ENVIRONMENT—GENERAL

Prohibits requiring provision of low and moderate income housing
as condition of receiving CAFRA permit.

ASSEMBLY, No. 2203

STATE OF NEW JERSEY

INTRODUCED MARCH 6, 1986

By Assemblymen SINGER, DOYLE, BENNETT, Assemblywoman DONOVAN, Assemblymen MORAN, HENDRICKSON, PALAIA, MUZIANI, AZZOLINA and Assemblywoman SMITH

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ENVIRONMENT—GENERAL

Prohibits requiring provision of low and moderate income housing as condition of receiving CAFRA permit.

ASSEMBLY, No. 720

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman MILLER

ASSEMBLY, No. 965

STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1984

By Assemblymen MILLER, MUZIANI, MEYER and ZECKER

AN ACT concerning coastal area facilities construction permits,
and amending P. L. 1973, c. 185.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 11 of P. L. 1973, c. 185 (C. 13:19-11) is amended to
2 read as follows:

3 11. Notwithstanding the applicant's compliance with the criteria
4 listed in section 10 of this act, if the commissioner finds that the
5 proposed facility would violate or tend to violate the purpose
6 and intent of this act as specified in section 2, or if the commis-
7 sioner finds that the proposed facility would materially contribute
8 to an already serious and unacceptable level of environmental
9 degradation or resource exhaustion, he may deny the permit
10 application, or he may issue a permit subject to such conditions
11 as he finds reasonably necessary to promote the public health,
12 safety and welfare, to protect public and private property, wild-
13 life and marine fisheries, and to preserve, protect and enhance
14 the natural environment. *The number of low or moderate income*
15 *housing units provided by the proposed facility is not a criterion*
16 *for the denial or approval of a permit.* In addition, the construc-
17 tion and operation of a nuclear electricity generating facility shall
18 not be approved by the commissioner unless he shall find that the
19 proposed method for disposal of radioactive waste material to be
20 produced or generated by such facility will be safe, conforms to
21 standards established by the Atomic Energy Commission and will
22 effectively remove danger to life and the environment from such
23 waste material.

1 2. This act shall take effect immediately.

Matter printed in italics thus is new matter.

STATEMENT

This bill would make clear the intent of the Legislature that no coastal area facility construction permit may be denied or approved on the grounds that the proposed facility does nor does not provide a sufficient number of low or moderate income housing units.

ASSEMBLY HOUSING COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2203 and 720

STATE OF NEW JERSEY

DATED: MAY 12, 1986

The Assembly Housing Committee reports Assembly Bills Nos. 2203 and 720 favorably by committee substitute.

This bill would prevent the Department of Environmental Protection from denying or conditioning a coastal area facility construction permit on the basis of the developer's presumed obligation to provide for low or moderate income housing.

On June 29, 1982 the Superior Court, Appellate Division, ruled that the Department of Environmental Protection had the authority, in issuing a permit for waterfront development including proposed housing units in Egg Harbor Township, Atlantic County, to impose "fair share" housing conditions, including a requirement that 10% of the housing units should be low income units and 10% moderate income units. The appellants had argued that "... the purpose of the CAFRA law is to protect the physical, chemical and biological environment from ... degradation and in no way has delegated to N. J. DEP the wide-ranging asserted authority to make socio-economic policy on the basis of considerations divorced from environmental concerns." (The essence of this argument is replicated in the sponsor's statement to Assembly Bill No. 2203.) The court, however, found this reading of CAFRA "too narrow" and further stated that the statute (P. L. 1973, c. 185; C. 13:19-1 et seq.) "clearly vests in DEP the authority to oversee and plan land development, including residential development, in the coastal area . . . (and) to utilize, in performing that statutory function, all relevant considerations of enlightened public policy." (185 N. J. Super. 507, 517, 519)

This decision was subsequently upheld by the Supreme Court.

This bill would add a supplementary section to the CAFRA statute, stating that, "Notwithstanding the provisions of any rule or regulation to the contrary, the department shall not require the provision for low

and moderate income housing as a condition for approval of an application to construct a facility in the coastal area pursuant to the provisions of P. L. 1973, c. 185 (C. 13:19-1 et seq.).”

The effect of the supplement would be to make explicit a legislative intent that low or moderate income housing requirements not be included in determining the granting or denying of a permit, thus invalidating the court’s reading of the statute in its present form.

SENATE ENERGY AND ENVIRONMENT COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2203 and 720
STATE OF NEW JERSEY

DATED: SEPTEMBER 22, 1986

The Senate Energy and Environment Committee favorably reports Assembly Bill Nos. 2203 and 720 ACS.

This bill would prohibit the Department of Environmental Protection from requiring the provision of low and moderate income housing as a condition of receiving a CAFRA permit. Currently, pursuant to regulations (N. J. A. C. 7:7E-7.2 (f)) adopted by the department, most applicants for CAFRA permits for housing construction are required to provide for low and moderate income housing.

As reported by the committee Assembly Bill Nos. 2203 and 720 ACS is identical and Senate Bill Nos. 849 and 1960 SCS.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625

Release: THUR., NOV. 13, 1986

Governor Thomas H. Kean today signed legislation prohibiting the Department of Environmental Protection (DEP) from requiring the provision of low and moderate income housing units as a condition for approval of an application to construct a facility in a coastal area.

The legislation, Assembly Committee Substitute for A-2203/720, sponsored by Assemblyman Robert W. Singer, R-Ocean and Assemblyman Newton Miller, R-Passaic, supplements the Coastal Area Facilities Review Act (CAFRA).

With the establishment of the Council on Affordable Housing to set low and moderate income housing levels for communities it was considered no longer appropriate to have DEP play a role in the setting of housing policy.

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