

52:27D-310.1

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 52:27D-310.1 (Affordable housing--fair share)

LAWS OF: 1997 CHAPTER: 49

BILL NO: A2309

SPONSOR(S): Bagger and Augustine

DATE INTRODUCED: September 16, 1996

COMMITTEE: ASSEMBLY: Housing
SENATE: State Government

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
Third reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: February 20, 1997 Re-enacted 3-24-97
SENATE: March 10, 1997 Re-enacted 3-24-97

DATE OF APPROVAL: March 27, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: statement adopted 2-20-97

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: ~~Yes~~ No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

[Third Reprint]
ASSEMBLY, No. 2309

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 16, 1996

By Assemblymen BAGGER, AUGUSTINE and Bateman

1 AN ACT concerning affordable housing and amending ³[²and
2 supplementing²]³ P.L.1995, c.231 ³[²(C.52:27D-310.1 et
3 seq.)²]³.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended to
9 read as follows:

10 1. When computing a municipal adjustment regarding available
11 land resources as part of the determination of a municipality's fair
12 share of affordable housing, the Council on Affordable Housing shall
13 exclude from designating as vacant land ²(a) any land that is owned by
14 a local government entity that ³as of January 1, 1997, ³ has adopted,
15 prior to the institution of a lawsuit seeking a builder's remedy or prior
16 to the filing of a petition for substantive certification of a housing
17 element and fair share plan, a resolution authorizing an execution of
18 agreement that the land be utilized for a public purpose other than
19 housing; (b)² any land listed on a master plan of a municipality as
20 being dedicated, by easement or otherwise, for purposes of
21 conservation, park lands or open space and which is owned, leased,
22 licensed, or in any manner operated by a county, municipality or
23 tax-exempt, nonprofit organization ¹including a local board of
24 education¹, or by more than one municipality by joint agreement
25 pursuant to P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the
26 entity maintains such ownership, lease, license, or operational control
27 of such land ²; and (c) any vacant contiguous parcels of land in private
28 ownership of a size which would accommodate fewer than five
29 housing units if current standards of the council were applied

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AHO committee amendments adopted January 23, 1997.

² Assembly floor amendments adopted February 20, 1997.

³ Assembly amendments adopted in accordance with Governor's recommendations March 20, 1997.

1 pertaining to housing density. No municipality shall be required to
2 utilize for affordable housing purposes land that is excluded from
3 being designated as vacant land².

4 (cf: P.L.1995, c.231, s.1)

5
6 ³[²2. (New section) P.L. , c. (C.)(now pending before the
7 Legislature as this bill) shall be applied retroactively concerning vacant
8 land determinations in those matters in which a judicial determination
9 has not been made or substantive certification has not been granted as
10 of the effective date of that act. A municipality which has received
11 substantive certification from the council on or before the effective
12 date of P.L. , c. (C.)(now pending before the Legislature as
13 this bill) may apply, in its discretion, to the council for a
14 redetermination of its vacant land inventory in accordance with the
15 provisions of that act.²³

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17 ²[2.] ³[3. ²] 2.³ This act shall take effect immediately .

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22 Changes definition of vacant land for purposes of determining
23 municipality's fair share of affordable housing.

ASSEMBLY, No. 2309

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 16, 1996

By Assemblymen BAGGER and AUGUSTINE

1 AN ACT concerning affordable housing and amending P.L.1995,
2 c.231.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
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7 1. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended to
8 read as follows:

9 1. When computing a municipal adjustment regarding available
10 land resources as part of the determination of a municipality's fair
11 share of affordable housing, the Council on Affordable Housing shall
12 exclude from designating as vacant land any land listed on a master
13 plan of a municipality as being dedicated, by easement or otherwise,
14 for purposes of conservation, park lands or open space and which is
15 owned, leased, licensed, or in any manner operated by a county,
16 municipality or tax-exempt, nonprofit organization, or by more than
17 one municipality by joint agreement pursuant to P.L.1964, c.185
18 (C.40:61-35.1 et seq.), for so long as the entity maintains such
19 ownership, lease, license, or operational control of such land.
20 (cf: P.L.1995, c.231, s.1)

21
22 2. This act shall take effect immediately .

23
24
25 STATEMENT

26
27 Under current law, when computing a municipal adjustment
28 regarding available land resources as part of the determination of a
29 municipality's fair share of affordable housing, the Council on
30 Affordable Housing (COAH) must exclude from designating as vacant
31 land any land that is dedicated for conservation, park lands or open
32 space purposes and which is owned by a county, municipality, or tax-
33 exempt nonprofit organization. This bill would provide for the
34 exclusion of such sites if they are owned, leased, licensed, or in any

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1 manner operated by a municipality or by more than one municipality
2 by joint agreement pursuant to P.L.1964, c.185 (C.40:61-35.1 et seq.).
3 The bill would further the Legislature's directive to COAH to adopt
4 criteria and guidelines which provide for adequate land for recreational
5 purposes.

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10 Changes definition of vacant land for purposes of determining
11 municipality's fair share of affordable housing.

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2309

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 23, 1997

The Assembly Housing Committee reports favorably Assembly Bill No. 2309, with committee amendments.

This bill, as amended, would provide for the exclusion of sites dedicated for conservation, park lands or open space purposes and which is owned, leased, licensed, or in any manner operated by a municipality or by more than one municipality by joint agreement pursuant to P.L.1964, c.185 (C.40:61-35.1 et seq.), or by a county, municipality, or tax-exempt nonprofit organization, including a local board of education, when computing a municipal adjustment regarding available land resources as part of the determination of a municipality's fair share of affordable housing by the Council on Affordable Housing (COAH). COAH currently must exclude from designating as vacant land any land that is dedicated for conservation, park lands or open space purposes and which is owned by a county, municipality, or tax-exempt nonprofit organization. This bill would provide for the exclusion of such sites if they are owned, leased, licensed, or in any manner operated by a municipality or by more than one municipality by joint agreement pursuant to P.L.1964, c.185 (C.40:61-35.1 et seq.). The bill would further the Legislature's directive to COAH to adopt criteria and guidelines which provide for adequate land for open space and recreational purposes.

The committee amended the bill to specify that land owned or operated by a local board of education would also be considered exempt from the definition of vacant land.

SENATE STATE GOVERNMENT COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 2309

STATE OF NEW JERSEY

DATED: MARCH 3, 1997

The Senate State Government Committee reports favorably Assembly Bill No. 2309 (2R).

This bill provides for the exclusion of certain sites when computing a municipal adjustment regarding available land resources as part of the determination of a municipality's fair share of affordable housing by the Council on Affordable Housing (COAH).

COAH currently must exclude from designating as vacant land any land that is dedicated for conservation, park lands or open space purposes and which is owned by a county, municipality, or tax-exempt nonprofit organization.

This bill provides for the exclusion of: 1) land that is dedicated for conservation, park lands or open space purposes and which is owned, leased, licensed, or in any manner operated by a county, municipality, or tax-exempt nonprofit organization, including a local board of education, or by more than one municipality by joint agreement pursuant to P.L.1964, c.185 (C.40:61-35.1 et seq.); 2) land which was designated by resolution by a local government as reserved for a public purpose other than housing; and 3) vacant contiguous parcels of land in private ownership of a size which would accommodate fewer than five housing units if current standards of COAH were applied pertaining to housing density.

In addition, the bill requires that its provisions be applied retroactively to those matters in which a judicial determination has not been made or substantive certification has not been granted by the effective date of the bill.

The bill furthers the Legislature's directive to COAH to adopt criteria and guidelines which provide for adequate land for open space and recreational purposes.

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2309

with Assembly Floor Amendments
(Proposed By Assemblyman BAGGER)

ADOPTED: FEBRUARY 20, 1997

These amendments would exclude small sites from the definition of vacant land under the rules of the Council on Affordable Housing (COAH). In addition, the amendments would permit the exclusion of sites which were designated by resolution of a local government as reserved for a public purpose other than housing. The amendments also require that the provisions of the bill be applied retroactively to those matters in which a judicial determination has not been made or substantive certification has not been granted by the effective date of the bill.

March 20, 1997

ASSEMBLY BILL NO. 2309
(Second Reprint)

To the General Assembly

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2309 (Second Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill makes several amendments to the Fair Housing Act, N.J.S.A. 52:27D-310.1 et. seq. Currently, the Council on Affordable Housing ("COAH") excludes from its fair share affordable housing calculation any land listed on a municipality's master plan as being dedicated, by easement or otherwise, for purposes of conservation, park lands or open space, and which is owned by a county, municipality or tax-exempt, non-profit organization. This bill changes current law by also excluding from the calculation land that is leased, licensed, or in any manner operated by a municipality, more than one municipality, or a local board of education.

This bill also changes current law by excluding from the affordable housing calculation land that is authorized, by resolution, to be utilized for a public purpose other than housing. The bill requires that the resolution be adopted prior to the institution of a lawsuit seeking a builder's remedy prior to the filing of a petition for substantive certification of a housing element and fair share plan. The bill also provides that undersized lots are not relevant under the affordable housing calculation. Section 2 of the bill makes these provisions retroactive.

B. Recommended Action

I commend the sponsors of this bill for introducing this bill and presenting New Jersey municipalities with opportunities to balance a municipality's interest in land preservation with the State's need for affordable housing. The bill's retroactivity provision, however, is too broad. The bill allows municipalities to enact resolutions protecting certain vacant land from affordable housing litigation. As worded, the retroactivity provision may be interpreted as allowing municipalities to enact resolutions in the future, insulating some municipalities from their affordable housing obligations. This interpretation would create an unacceptable imbalance between municipalities and builders by allowing municipalities to use resolutions as shields protecting them from builder's remedy litigation.

Municipalities should be able to protect their vacant spaces. The breadth of the retroactivity provision, however, might adversely affect the affordable housing calculation in the future. To help those municipalities which have already adopted the types of resolutions identified in the bill, and to maintain the integrity of the affordable housing calculation, I recommend that the bill's language be amended to address only those resolutions passed by January 1, 1997.

Therefore, I herewith return Assembly Bill No. 2309 (Second Reprint) and recommend that it be amended as follows:

<u>Page 1, Title, Lines 1-2:</u>	Delete "and supplementing"
<u>Page 1, Title, Line 2:</u>	Delete "(C. 52:27D-310.1 et. seq.)"
<u>Page 1, Section 1, Line 13:</u>	After "that" insert "as of January 1, 1997,"

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

3

Page 2, Section 2, Lines 1-10: Delete in entirety

Page 2, Section 3, Line 12: Delete "3." and insert "2."

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ Michael P. Torpey

Chief Counsel to the Governor