

52:27D-307

LEGISLATIVE HISTORY CHECKLIST
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(Fair Housing -- credits)

NJSA: 52:27D-307

LAWS OF: 1993 **CHAPTER:** 104

BILL NO: S857

SPONSOR(S) Kyrillos and others

DATE INTRODUCED: May 18, 1992

COMMITTEE: **ASSEMBLY:** Housing
SENATE: Community Affairs

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

DATE OF PASSAGE: **ASSEMBLY:** February 25, 1993
SENATE: August 3, 1992

DATE OF APPROVAL: April 13, 1993

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:pp

[SECOND REPRINT]

SENATE, No. 857

STATE OF NEW JERSEY

INTRODUCED MAY 18, 1992

By Senators KYRILLOS, DORSEY, Corman, Dimon,
Haines, Connors and Ciesla

1 AN ACT concerning municipal fair share obligations under the
2 "Fair Housing Act," and amending P.L.1985, c.222.

3

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

6 1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
7 read as follows:

8 7. It shall be the duty of the council, seven months after the
9 confirmation of the last member initially appointed to the
10 council, or January 1, 1986, whichever is earlier, and from time
11 to time thereafter, to:

- 12 a. Determine housing regions of the State;
13 b. Estimate the present and prospective need for low and
14 moderate income housing at the State and regional levels;

15 c. Adopt criteria and guidelines for:

16 (1) Municipal determination of its present and prospective fair
17 share of the housing need in a given region. Municipal fair share
18 shall be determined after crediting on a one-to-one basis each
19 current unit of low and moderate income housing of adequate
20 standard, including any such housing constructed or acquired as
21 part of a housing program specifically intended to provide housing
22 for low and moderate income households. Notwithstanding any
23 other law to the contrary, a municipality shall be entitled to a
24 credit for a unit if it demonstrates that (a) the municipality
25 issued a certificate of occupancy for the unit¹, which was either
26 newly constructed or rehabilitated¹ between April 1, 1980 and
27 December 15, 1986; (b) a construction code official certifies,
28 based upon a visual exterior survey, that the unit is in compliance
29 with pertinent construction code standards with respect to
30 structural elements, roofing, siding, doors and windows; ¹[and]¹
31 ²and² (c) the household occupying the unit certifies in writing,
32 under penalty of perjury, that it receives no greater income than
33 that established pursuant to section 4 of P.L.1985, c.222
34 (C.52:27D-304) to qualify for moderate income housing. It shall
35 be sufficient if this certification is signed by one member of the
36 household. A certification submitted pursuant to this paragraph
37 shall be reviewable only by the council or its staff and shall not
38 be a public record¹ ²]; and (d) at the time the petition for
39 substantive certification is filed, the unit is affordable to low or
40 moderate income households under standards established by the
41 council¹]²;

42 (2) Municipal adjustment of the present and prospective fair
43 share based upon available vacant and developable land,

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCO committee amendments adopted June 8, 1992.

¹ Senate floor amendments adopted June 18, 1992.

1 infrastructure considerations or environmental or historic
2 preservation factors and adjustments shall be made whenever:

3 (a) The preservation of historically or important architecture
4 and sites and their environs or environmentally sensitive lands
5 may be jeopardized,

6 (b) The established pattern of development in the community
7 would be drastically altered,

8 (c) Adequate land for recreational, conservation or
9 agricultural and farmland preservation purposes would not be
10 provided,

11 (d) Adequate open space would not be provided,

12 (e) The pattern of development is contrary to the planning
13 designations in the State Development and Redevelopment Plan
14 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
15 (C.52:18A-196 et seq.),

16 (f) Vacant and developable land is not available in the
17 municipality, and

18 (g) Adequate public facilities and infrastructure capacities are
19 not available, or would result in costs prohibitive to the public if
20 provided; and

21 (3) Phasing of present and prospective fair share housing
22 requirements pursuant to section 23 of this act;

23 d. Provide population and household projections for the State
24 and housing regions;

25 e. May in its discretion, place a limit, based on a percentage
26 of existing housing stock in a municipality and any other criteria
27 including employment opportunities which the council deems
28 appropriate, upon the aggregate number of units which may be
29 allocated to a municipality as its fair share of the region's
30 present and prospective need for low and moderate income
31 housing.

32 In carrying out the above duties, including, but not limited to,
33 present and prospective need estimations the council shall give
34 appropriate weight to pertinent research studies, government
35 reports, decisions of other branches of government,
36 implementation of the State Development and Redevelopment
37 Plan prepared pursuant to sections 1 through 12 of P.L.1985,
38 c.398 and public comment. To assist the council, the State
39 Planning Commission established under that act shall provide the
40 council annually with economic growth, development and decline
41 projections for each housing region for the next six years. The
42 council shall develop procedures for periodically adjusting
43 regional need based upon the low and moderate income housing
44 that is provided in the region through any federal, State,
45 municipal or private housing program.

46 (cf: P.L.1985, c.222, s.7)

47 2. This act shall take effect immediately.

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51

52 Provides for method of certifying credits for existing affordable
53 housing under the "Fair Housing Act."

SENATE, No. 857

STATE OF NEW JERSEY

INTRODUCED MAY 18, 1992

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Haines and Connors

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23 other law to the contrary, a municipality shall be entitled to a
24 credit for a unit if it demonstrates that (a) the municipality
25 issued a certificate of occupancy for the unit between April 1,
26 1980 and December 15, 1986; (b) a construction code official
27 certifies, based upon a visual exterior survey, that the unit is in
28 compliance with pertinent construction code standards with
29 respect to structural elements, roofing, siding, doors and
30 windows; and (c) the household occupying the unit certifies in
31 writing, under penalty of perjury, that it receives no greater
32 income than that established pursuant to section 4 of P.L. 1985,
33 c. 222 (C.52:27D-304) to qualify for moderate income housing. It
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35 the household. A certification submitted pursuant to this
36 paragraph shall be reviewable only by the council or its staff and
37 shall not be a public record;

38 (2) Municipal adjustment of the present and prospective fair
39 share based upon available vacant and developable land,
40 infrastructure considerations or environmental or historic
41 preservation factors and adjustments shall be made whenever:

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43 and sites and their environs or environmentally sensitive lands
44 may be jeopardized,

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39 that is provided in the region through any federal, State,
40 municipal or private housing program.

41 (cf: P.L.1985, c.222, s.7)

42 2. This act shall take effect immediately.

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STATEMENT

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47 The Council on Affordable Housing adopted regulations which
48 required municipalities to demonstrate the existence of resale or
49 rent controls as a precondition to obtaining credits for
50 previously constructed affordable housing units. A court held
51 that it was beyond the powers of COAH to impose preconditions
52 on credits, and gave an example of the type of project that
53 COAH should credit. Pursuant to this decision, Brick Township

1 (Ocean County) persuaded COAH to revise its regulations on
2 credits and COAH adopted a regulation which would result in
3 credits for the type of project the court described. The Public
4 Advocate challenged the new regulation primarily because COAH
5 did not precondition credits on proof that the units for which
6 credits are sought are affordable. The Public Advocate's
7 argument rests largely upon its interpretation of the legislative
8 intent. By this amendment to the Fair Housing Act, the
9 Legislature will eliminate any questions as to its intent.

10 While the credit regulation the council adopted was consistent
11 with the example given by the court of units that should be
12 regarded as creditworthy, the regulation was onerous in that it
13 required municipalities to produce tax returns to prove that the
14 households who resided in the units for which credit was sought
15 actually earned less than the low and moderate income limits.
16 This bill permits municipalities to establish proof of income in a
17 more reasonable fashion.

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22 Provides for method of certifying credits for existing affordable
23 housing under the "Fair Housing Act."

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

[SECOND REPRINT]

SENATE, No. 857

STATE OF NEW JERSEY

DATED: JANUARY 11, 1993

The Assembly Housing Committee reports Senate Bill No. 857(2R) favorably, without amendment.

This bill would supersede the current requirement of the Council on Affordable Housing (COAH) that, in order to obtain credit towards its "fair share" of affordable housing built between April 1, 1980 and December 15, 1986, a municipality shall procure federal income tax returns to document the income levels of persons actually residing in the housing units in question.

Instead of the tax returns, a sworn statement by the housing occupant, certifying that the household income does not exceed the "moderate income" standard established under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), would suffice.

The COAH regulation (N.J.A.C.5:92-6.3) that this bill would alter was adopted, effective August 5, 1991, in response to a court ruling (*Bernards Township v. Department of Community Affairs*, 233 N.J.Super. 1) that invalidated a previous rule under which housing units created prior to December 15, 1986 would qualify for "fair share" credit only if subject to affordability controls restricting occupancy to persons of low and moderate income. The new rule provided that credit be given for units constructed between those dates and actually occupied by low/moderate income families if (1) the date was verified by a certificate of occupancy, (2) the soundness of the structure established by a licensed building inspector, and (3) current income of the occupant documented by "the most recent federal tax return."

In comments submitted to COAH between the publication and final adoption of the new rule, objection was raised to the third of the above requirements on the grounds that "municipalities will not be able to receive credit by requiring a tax return. Households are not likely to provide such a document." COAH responded that it believed the federal tax return "the most objective and unbiased measure of a household's income," and that it would be required except when, because of income below the level at which a return must be filed, a "certification from an appropriate government agency" would be "entertained" instead. (*Summary of Public Comments and Agency Responses*, 23 N.J.R. 2307) The sponsor's statement to this bill refers to this requirement as "onerous" to the municipalities.

This bill is identical to Assembly Bill No. 1487 Aca, also reported by the committee this day.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 857

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 1992

The Senate Community Affairs Committee favorably reports Senate Bill No. 857 with Senate committee amendments.

Senate Bill No. 857, as amended by the committee, provides a method whereby municipalities may receive credit for affordable housing built between 1980 and 1986 under the "Fair Housing Act."

Specifically, the bill allows credit for any unit for which a municipality demonstrates that: a) the municipality issued a certificate of occupancy for a unit that was rehabilitated or newly constructed between April 1, 1980 and December 15, 1986; b) a construction code official has certified that the unit is up to code; c) one member of the occupying household has certified that it does not exceed the moderate income housing guidelines established pursuant to the "Fair Housing Act"; and d) at the time the petition for substantive certification is filed, the unit is affordable to low or moderate income households under standards established by the council.

This bill is a response to a court decision in which it was held that it was beyond the power of the Council on Affordable Housing to impose preconditions on the granting of credits. The decision gave an example of the type of project that COAH should credit. In response to that decision, COAH adopted a regulation which would result in credits for the type of project the court described. The Public Advocate challenged the new regulation primarily because COAH did not precondition credits on proof that the units for which credits are sought are affordable.

The committee amended the bill to clarify that in order to be credited under its provisions: (1) a unit must have been newly constructed or rehabilitated between April 1, 1980 and December 15, 1986; and (2) at the time the petition for substantive certification is filed, the unit is affordable to low or moderate income households under standards established by the Council on Affordable Housing.