

52:27D-307

LEGISLATIVE HISTORY CHECKLIST
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(Fair Housing -- adjust fair housing obligations)

NJSA: 52:27D-307

LAWS OF: 1993 **CHAPTER:** 31

BILL NO: S858

SPONSOR(S) Kyrillos and others

DATE INTRODUCED: May 18, 1992

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

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 14, 1992
SENATE: October 19, 1992

DATE OF APPROVAL: January 29, 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: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: Yes

974.90 New Jersey. Legislature. Gneeral Assembly. Housing Committee.
H842 Committee meeting on S858, held 11-23-92. Trenton, 1992.
1992g

See newspaper clipping - attached:

"Towns' obligation to provide low-income housing is eased." 1-30-93.
Philadelphia Inquirer.

KBG:pp

[SECOND REPRINT]

SENATE, No. 858

STATE OF NEW JERSEY

INTRODUCED MAY 18, 1992

By Senators KYRILLOS, DORSEY, Corman, Inverso,
Dimon, Haines, Connors and Adler

1 AN ACT concerning municipal fair share obligations under the
2 "Fair Housing Act," amending P.L.1985, c.222, and repealing
3 section 23 of P.L.1985, c.222.

4

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

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

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

13 a. Determine housing regions of the State;

14 b. Estimate the present and prospective need for low and
15 moderate income housing at the State and regional levels;

16 c. Adopt criteria and guidelines for:

17 (1) Municipal determination of its present and prospective fair
18 share of the housing need in a given region. Municipal fair share
19 shall be determined after crediting on a one-to-one basis each
20 current unit of low and moderate income housing of adequate
21 standard, including any such housing constructed or acquired as
22 part of a housing program specifically intended to provide housing
23 for low and moderate income households;

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

28 (a) The preservation of historically or important architecture
29 and sites and their environs or environmentally sensitive lands
30 may be jeopardized,

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

33 (c) Adequate land for recreational, conservation or
34 agricultural and farmland preservation purposes would not be
35 provided,

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

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

41 (f) Vacant and developable land is not available in the

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 October 1, 1992.

² Senate floor amendments adopted October 15, 1992.

1 municipality, and

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

5 (3) [Phasing of present and prospective fair share housing
6 requirements pursuant to section 23 of this act] (Deleted by
7 amendment, P.L. , c.) (now pending before the Legislature as
8 this bill);

9 d. Provide population and household projections for the State
10 and housing regions;

11 e. [May in its discretion, place a limit, based on a percentage
12 of existing housing stock in a municipality and any other criteria
13 including employment opportunities which the council deems
14 appropriate, upon the aggregate number of units which may be
15 allocated to a municipality as its fair share of the region's
16 present and prospective need for low and moderate income
17 housing] ²In its discretion, place a limit, based on a percentage
18 of existing housing stock in a municipality and any other criteria
19 including employment opportunities which the council deems
20 appropriate, upon the aggregate number of units which may be
21 allocated to a municipality as its fair share of the region's
22 present and prospective need for low and moderate income
23 housing.² No ¹[municipality shall be required to address within
24 any given six year period a fair share beyond 50 percent of the
25 fair share assigned by the council for that six year period, unless
26 it is demonstrated, following objection by an interested party and
27 an evidentiary hearing, that based upon the facts and
28 circumstances of the affected municipality it is likely that the
29 municipality through its zoning powers can create a realistic
30 opportunity for more than 50 percent of its fair share within that
31 six year period. In any event, no]¹ municipality shall be required
32 to address a fair share beyond 1000 units within ¹[any given]¹ six
33 ¹[year period] years from the grant of substantive certification ,
34 unless it is demonstrated, following objection by an interested
35 party and an evidentiary hearing, based upon the facts and
36 circumstances of the affected municipality that it is likely that
37 the municipality through its zoning powers could create a
38 realistic opportunity for more than 1000 low and moderate
39 income units within that six year period. ¹[The facts and
40 circumstances sufficient to require a municipality to provide a
41 number of units greater than the number derived under these
42 limitations would be proof that the municipality can create a
43 realistic opportunity within that six year period for at least five
44 times the number of units so derived, based upon the past
45 residential building permit activity in the municipality.] For the
46 purposes of this section, the facts and circumstances which shall
47 determine whether a municipality's fair share shall exceed 1,000
48 units, as provided above, shall be a finding that the municipality
49 has issued more than 5,000 certificates of occupancy for
50 residential units in the six-year period preceding the petition for
51 substantive certification in connection with which the objection
52 was filed.¹

53 In carrying out the above duties, including, but not limited to,
54 present and prospective need estimations the council shall give

1 appropriate weight to pertinent research studies, government
2 reports, decisions of other branches of government,
3 implementation of the State Development and Redevelopment
4 Plan prepared pursuant to sections 1 through 12 of P.L.1985,
5 c.398 and public comment. To assist the council, the State
6 Planning Commission established under that act shall provide the
7 council annually with economic growth, development and decline
8 projections for each housing region for the next six years. The
9 council shall develop procedures for periodically adjusting
10 regional need based upon the low and moderate income housing
11 that is provided in the region through any federal, State,
12 municipal or private housing program.

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

14 2. Section 23 of P.L.1985, c.222 (C.52:27D-323) is repealed.

15 3. This act shall take effect immediately.

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20 Provides for adjustment of municipal fair share obligations under
21 the "Fair Housing Act."

STATEMENT

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Experience with the compliance mechanisms established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et seq.) demonstrates that the act places considerable planning and financial burdens upon municipalities and requires them to zone lands that will not result in the creation of additional affordable housing because the market cannot reasonably absorb all the housing needed to produce the additional affordable housing. The Council on Affordable Housing sought to avoid the imposition of onerous burdens on municipalities by adopting a regulation capping the fair share of each municipality at 1000. The courts declared the regulation illegal because it imposed a cap that was not based upon the facts and circumstances of the municipality. This bill seeks to establish a cap directly related to the facts and circumstances of the municipality. The legislation would also eliminate the potential for temporary taking claims under the phasing provisions of section 23 of P.L.1985, c.222 (C.52:27D-323) pursuant to which a municipality could zone a parcel for inclusionary development, but bar the owner from developing the parcel consistent with the inclusionary rezoning for some set period of time. That section of law is therefore repealed.

Provides for adjustment of municipal fair share obligations under the "Fair Housing Act."

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

[SECOND REPRINT]

SENATE, No. 858

STATE OF NEW JERSEY

DATED: NOVEMBER 23, 1992

The Assembly Housing Committee reports Senate Bill No. 858 [2R] favorably, without amendment.

This bill relieves certain municipalities of the burden of addressing a fair share allocation of affordable housing that exceeds 1,000 units.

Experience with the implementation of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) demonstrates that the act places considerable planning and financial burdens upon municipalities and requires them to zone lands for affordable housing that will not produce such housing because the market can not reasonably absorb additional housing to the magnitude desired. The Council on Affordable Housing sought to avoid the imposition of onerous burdens on municipalities by adopting a regulation capping the fair share of each municipality at 1,000 units. The courts declared the regulation illegal because it imposed a cap that was not based upon the facts and circumstances of the municipality.

This bill requires only those municipalities in which it can be demonstrated that 1,000 low and moderate income housing units can be accommodated through zoning to address a fair share of that number. The bill specifies the facts and circumstances which shall determine the municipality's ability to absorb that number of units. Specifically, the facts and circumstances which shall determine a municipality's fair share shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential development in the six-year period preceding its petition for substantive certification of its housing element.

This bill would also repeal section 23 of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-323), which allows municipalities to phase in their fair share obligations. In so doing, it is intended to eliminate the potential for temporary taking whereby a municipality could zone a parcel for inclusionary development, but bar the owner from developing the parcel consistent with the inclusionary rezoning for some set period of time.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 858

with Senate committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 1, 1992

The Senate Community Affairs Committee favorably reports Senate Bill No. 858 with Senate committee amendments.

Senate Bill No. 858, as amended by the committee, relieves certain municipalities of the burden of addressing a fair share of beyond 1,000 units.

Experience with the implementation of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) demonstrates that the act places considerable planning and financial burdens upon municipalities and requires them to zone lands that will not result in the creation of additional affordable housing because the market cannot reasonably absorb all the housing needed to produce the additional affordable housing. The Council on Affordable Housing sought to avoid the imposition of onerous burdens on municipalities by adopting a regulation capping the fair share of each municipality at 1000. The courts declared the regulation illegal because it imposed a cap that was not based upon the facts and circumstances of the municipality.

This bill requires only those municipalities in which it can be demonstrated that 1,000 low and moderate income housing units can be accommodated through zoning to address a fair share of that number. The bill specifies the facts and circumstances which shall determine the municipality's ability to absorb that number of units. Specifically, the facts and circumstances which shall determine a municipality's fair share shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential development in the six-year period preceding the petition for substantive certification in connection with which the objection was filed.

This bill would also repeal section 23 of the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-323) which allows municipalities to phase in their fair share obligations. In so doing, it is intended to eliminate the potential for temporary taking whereby a municipality could zone a parcel for inclusionary development, but bar the owner from developing the parcel consistent with the inclusionary rezoning for some set period of time.

As originally introduced, this bill capped at 50 percent the proportion of a municipality's fair share which it would have to address within any given six-year period unless it was demonstrated that the municipality could create a realistic opportunity for that number of housing units. In addition, the committee amended the bill to clarify the facts and circumstances which shall determine the need for the municipality to address a fair share beyond 1,000 units.



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001
Contact:

TRENTON, N.J. 08625
Release:

Jon Shure
Jo Glading
609/777-2600

Friday
Jan. 29, 1993

GOVERNOR SIGNS BILL PROVIDING FAIR SHARE ADJUSTMENT

Governor Jim Florio today signed legislation to ease municipal fair share obligations for affordable housing under the "Fair Housing Act."

The bill is aimed at easing financial and planning burdens imposed on municipalities through their affordable housing obligations. Original fair share calculations following the Mt. Laurel ruling were based on demands and expected growth which were ultimately not realized.

The bill signed today allows for the adjustment of a municipality's obligation. It requires only those municipalities which can demonstrate that 1,000 low and moderate income housing units can be accommodated through zoning to address a fair share of that number.

The bill, S 858/A 1489, was sponsored by Senator Joe Kyrillos and John Dorsey, and Assemblymen Joe Azzolina and David Wolfe.

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