

ASSEMBLY, No. 359

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Reauthorizes use of regional contribution agreements.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 8/27/2020)

1 **AN ACT** concerning regional contribution agreements and amending
2 P.L.1985, c.222.

3

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

6

7 1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to
8 read as follows:

9 2. The Legislature finds that:

10 a. The New Jersey Supreme Court, through its rulings in South
11 Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975)
12 and South Burlington County NAACP v. Mount Laurel, 92 N.J. 158
13 (1983), has determined that every municipality in a growth area has
14 a constitutional obligation to provide through its land use
15 regulations a realistic opportunity for a fair share of its region's
16 present and prospective needs for housing for low and moderate
17 income families.

18 b. In the second Mount Laurel ruling, the Supreme Court stated
19 that the determination of the methods for satisfying this
20 constitutional obligation "is better left to the Legislature," that the
21 court has "always preferred legislative to judicial action in their
22 field," and that the judicial role in upholding the Mount Laurel
23 doctrine "could decrease as a result of legislative and executive
24 action."

25 c. The interest of all citizens, including low and moderate
26 income families in need of affordable housing, and the needs of the
27 workforce, would be best served by a comprehensive planning and
28 implementation response to this constitutional obligation.

29 d. There are a number of essential ingredients to a
30 comprehensive planning and implementation response, including
31 the establishment of reasonable fair share housing guidelines and
32 standards, the initial determination of fair share by officials at the
33 municipal level and the preparation of a municipal housing element,
34 State review of the local fair share study and housing element, and
35 continuous State funding for low and moderate income housing to
36 replace the federal housing subsidy programs which have been
37 almost completely eliminated.

38 e. The State can maximize the number of low and moderate
39 income units provided in New Jersey by allowing its municipalities
40 to adopt appropriate phasing schedules for meeting their fair share,
41 so long as the municipalities permit a timely achievement of an
42 appropriate fair share of the regional need for low and moderate
43 income housing as required by the Mt. Laurel I and II opinions and
44 other relevant court decisions.

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.

1 f. The State can also maximize the number of low and
2 moderate income units by creating new affordable housing and by
3 rehabilitating existing, but substandard, housing in the State.
4 Because the Legislature has determined, pursuant to P.L.2008,
5 c.46 (C.52:27D-329.1 et al.), that it is no longer appropriate or in
6 harmony with the Mount Laurel doctrine to permit the transfer of
7 the fair share obligations among municipalities within a housing
8 region, it is necessary and appropriate to create a new program to
9 create new affordable housing and to foster the rehabilitation of
10 existing, but substandard, housing.

11 g. Since the urban areas are vitally important to the State,
12 construction, conversion and rehabilitation of housing in our urban
13 centers should be encouraged. However, the provision of housing
14 in urban areas must be balanced with the need to provide housing
15 throughout the State for the free mobility of citizens.

16 h. The Supreme Court of New Jersey in its Mount Laurel
17 decisions demands that municipal land use regulations affirmatively
18 afford a reasonable opportunity for a variety and choice of housing
19 including low and moderate cost housing, to meet the needs of
20 people desiring to live there. While provision for the actual
21 construction of that housing by municipalities is not required, they
22 are encouraged but not mandated to expend their own resources to
23 help provide low and moderate income housing.

24 i. Certain amendments to the enabling act of the Council on
25 Affordable Housing are necessary to provide guidance to the
26 council to ensure consistency with the legislative intent, while at the
27 same time clarifying the limitations of the council in its rulemaking.
28 Although the court has remarked in several decisions that the
29 Legislature has granted the council considerable deference in its
30 rulemaking, the Legislature retains its power and obligation to
31 clarify and amend the enabling act from which the council derives
32 its rulemaking power, from time to time, in order to better guide the
33 council.

34 j. **【The Legislature finds that the use of regional contribution**
35 **agreements, which permits municipalities to transfer a certain**
36 **portion of their fair share housing obligation outside of the**
37 **municipal borders, should no longer be utilized as a mechanism for**
38 **the creation of affordable housing by the council.】** (Deleted by
39 amendment, P.L. , c.) (pending before the Legislature as this
40 bill)
41 (cf: P.L.2008, c.46, s.4)

42
43 2. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended
44 to read as follows:

45 11. a. In adopting its housing element, the municipality may
46 provide for its fair share of low and moderate income housing by
47 means of any technique or combination of techniques which provide
48 a realistic opportunity for the provision of the fair share. The

1 housing element shall contain an analysis demonstrating that it will
2 provide such a realistic opportunity, and the municipality shall
3 establish that its land use and other relevant ordinances have been
4 revised to incorporate the provisions for low and moderate income
5 housing. In preparing the housing element, the municipality shall
6 consider the following techniques for providing low and moderate
7 income housing within the municipality, as well as such other
8 techniques as may be published by the council or proposed by the
9 municipality:

10 (1) Rezoning for densities necessary to assure the economic
11 viability of any inclusionary developments, either through
12 mandatory set-asides or density bonuses, as may be necessary to
13 meet all or part of the municipality's fair share in accordance with
14 the regulations of the council and the provisions of subsection h. of
15 this section;

16 (2) Determination of the total residential zoning necessary to
17 assure that the municipality's fair share is achieved;

18 (3) Determination of measures that the municipality will take to
19 assure that low and moderate income units remain affordable to low
20 and moderate income households for an appropriate period of not
21 less than six years;

22 (4) A plan for infrastructure expansion and rehabilitation if
23 necessary to assure the achievement of the municipality's fair share
24 of low and moderate income housing;

25 (5) Donation or use of municipally owned land or land
26 condemned by the municipality for purposes of providing low and
27 moderate income housing;

28 (6) Tax abatements for purposes of providing low and moderate
29 income housing;

30 (7) Utilization of funds obtained from any State or federal
31 subsidy toward the construction of low and moderate income
32 housing;

33 (8) Utilization of municipally generated funds toward the
34 construction of low and moderate income housing; and

35 (9) The purchase of privately owned real property used for
36 residential purposes at the value of all liens secured by the property,
37 excluding any tax liens, notwithstanding that the total amount of
38 debt secured by liens exceeds the appraised value of the property,
39 pursuant to regulations promulgated by the Commissioner of
40 Community Affairs pursuant to subsection b. of section 41 of
41 P.L.2000, c.126 (C.52:27D-311.2).

42 b. The municipality may provide for a phasing schedule for the
43 achievement of its fair share of low and moderate income housing.

44 c. (Deleted by amendment, P.L.2008, c.46)

45 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall
46 require a municipality to raise or expend municipal revenues in
47 order to provide low and moderate income housing.

1 e. When a municipality's housing element includes the
2 provision of rental housing units in a community residence for the
3 developmentally disabled, as defined in section 2 of P.L.1977,
4 c.448 (C.30:11B-2), which will be affordable to persons of low and
5 moderate income, and for which adequate measures to retain such
6 affordability pursuant to paragraph (3) of subsection a. of this
7 section are included in the housing element, those housing units
8 shall be fully credited as permitted under the rules of the council
9 towards the fulfillment of the municipality's fair share of low and
10 moderate income housing.

11 f. It having been determined by the Legislature that the
12 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is
13 a public purpose, a municipality or municipalities may utilize public
14 monies to make donations, grants or loans of public funds for the
15 rehabilitation of deficient housing units and the provision of new or
16 substantially rehabilitated housing for low and moderate income
17 persons, providing that any private advantage is incidental.

18 g. A municipality which has received substantive certification
19 from the council, and which has actually effected the construction
20 of the affordable housing units it is obligated to provide, may
21 amend its affordable housing element or zoning ordinances without
22 the approval of the council.

23 h. Whenever affordable housing units are proposed to be
24 provided through an inclusionary development, a municipality shall
25 provide, through its zoning powers, incentives to the developer,
26 which shall include increased densities and reduced costs, in
27 accordance with the regulations of the council and this subsection.

28 i. The council, upon the application of a municipality and a
29 developer, may approve reduced affordable housing set-asides or
30 increased densities to ensure the economic feasibility of an
31 inclusionary development.

32 j. A municipality may enter into an agreement with a
33 developer or residential development owner to provide a preference
34 for affordable housing to low to moderate income veterans who
35 served in time of war or other emergency, as defined in section 1 of
36 P.L.1963, c.171 (C.54:4-8.10), of up to 50 percent of the affordable
37 units in that particular project. This preference shall be established
38 in the applicant selection process for available affordable units so
39 that applicants who are veterans who served in time of war or other
40 emergency, as referenced in this subsection, and who apply within
41 90 days of the initial marketing period shall receive preference for
42 the rental of the agreed-upon percentage of affordable units. After
43 the first 90 days of the initial 120-day marketing period, if any of
44 those units subject to the preference remain available, then
45 applicants from the general public shall be considered for
46 occupancy. Following the initial 120-day marketing period,
47 previously qualified applicants and future qualified applicants who
48 are veterans who served in time of war or other emergency, as

1 referenced in this subsection, shall be placed on a special waiting
2 list as well as the general waiting list. The veterans on the special
3 waiting list shall be given preference for affordable units, as the
4 units become available, whenever the percentage of preference-
5 occupied units falls below the agreed upon percentage. Any
6 agreement to provide affordable housing preferences for veterans
7 pursuant to this subsection shall not affect a municipality's ability to
8 receive credit for the unit from the council, or its successor.

9 k. The municipality may propose that a portion of its fair share
10 be met through a regional contribution agreement. The housing
11 element shall demonstrate, however, the manner in which that
12 portion will be provided within the municipality if the regional
13 contribution agreement is not entered into. The municipality shall
14 provide a statement of its reasons for the proposal.

15 (cf: P.L.2013, c.6, s.1)

16
17 3. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to
18 read as follows:

19 12. a. **【**Except as prohibited under P.L.2008, c.46 (C.52:27D-
20 329.1 et al.), **a】** A municipality may propose the transfer of up to
21 50% of its fair share to another municipality within its housing
22 region by means of a contractual agreement into which the two
23 municipalities voluntarily enter. A municipality may also propose a
24 transfer by contracting with the agency or another governmental
25 entity designated by the council if the council determines that the
26 municipality has exhausted all possibilities within its housing
27 region. A municipality proposing to transfer to another
28 municipality, whether directly or by means of a contract with the
29 agency or another governmental entity designated by the council,
30 shall provide the council with the housing element and statement
31 required under **【**subsection c.**】** subsection k. of section 11 of
32 P.L.1985, c.222 (C.52:27D-311), and shall request the council to
33 determine a match with a municipality filing a statement of intent
34 pursuant to subsection e. of this section. Except as provided in
35 subsection b. of this section, the agreement may be entered into
36 upon obtaining substantive certification under section 14 of
37 P.L.1985, c.222 (C.52:27D-314), or anytime thereafter. The
38 regional contribution agreement entered into shall specify how the
39 housing shall be provided by the second municipality, hereinafter
40 the receiving municipality, and the amount of contributions to be
41 made by the first municipality, hereinafter the sending municipality.

42 b. A municipality which is a defendant in an exclusionary
43 zoning suit and which has not obtained substantive certification
44 pursuant to P.L.1985, c.222 may request the court to be permitted to
45 fulfill a portion of its fair share by entering into a regional
46 contribution agreement. If the court believes the request to be
47 reasonable, the court shall request the council to review the
48 proposed agreement and to determine a match with a receiving

1 municipality or municipalities pursuant to this section. The court
2 may establish time limitations for the council's review, and shall
3 retain jurisdiction over the matter during the period of council
4 review. If the court determines that the agreement provides a
5 realistic opportunity for the provision of low and moderate income
6 housing within the housing region, it shall provide the sending
7 municipality a credit against its fair share for housing to be
8 provided through the agreement in the manner provided in this
9 section. The agreement shall be entered into prior to the entry of a
10 final judgment in the litigation. In cases in which a final judgment
11 was entered prior to the date P.L.1985, c.222 takes effect and in
12 which an appeal is pending, a municipality may request
13 consideration of a regional contribution agreement; provided that it
14 is entered into within 120 days after P.L.1985, c.222 takes effect.
15 In a case in which a final judgment has been entered, the court shall
16 consider whether or not the agreement constitutes an expeditious
17 means of providing part of the fair share. **【Notwithstanding this**
18 **subsection, no consideration shall be given to any regional**
19 **contribution agreement of which the council did not complete its**
20 **review and formally approve a recommendation to the court prior to**
21 **the effective date of P.L.2008, c.46 (C.52:27D-329.1 et al.).】**

22 c. **【Except as prohibited under P.L.2008, c.46 (C.52:27D-329.1**
23 **et al.), regional】** A regional contribution **【agreements】** agreement
24 shall be approved by the council, after review by the county
25 planning board or agency of the county in which the receiving
26 municipality is located. The council shall determine whether or not
27 the agreement provides a realistic opportunity for the provision of
28 low and moderate income housing within convenient access to
29 employment opportunities. The council shall refer the agreement to
30 the county planning board or agency which shall review whether or
31 not the transfer agreement is in accordance with sound,
32 comprehensive regional planning. In its review, the county
33 planning board or agency shall consider the master plan and zoning
34 ordinance of the sending and receiving municipalities, its own
35 county master plan, and the State development and redevelopment
36 plan. In the event that there is no county planning board or agency
37 in the county in which the receiving municipality is located, the
38 council shall also determine whether or not the agreement is in
39 accordance with sound, comprehensive regional planning. After it
40 has been determined that the agreement provides a realistic
41 opportunity for low and moderate income housing within
42 convenient access to employment opportunities, and that the
43 agreement is consistent with sound, comprehensive regional
44 planning, the council shall approve the regional contribution
45 agreement by resolution. All determinations of a county planning
46 board or agency shall be in writing and shall be made within such
47 time limits as the council may prescribe, beyond which the council

1 shall make those determinations and no fee shall be paid to the
2 county planning board or agency pursuant to this subsection.

3 d. In approving a regional contribution agreement, the council
4 shall set forth in its resolution a schedule of the contributions to be
5 appropriated annually by the sending municipality. A copy of the
6 adopted resolution shall be filed promptly with the Director of the
7 Division of Local Government Services in the Department of
8 Community Affairs, and the director shall thereafter not approve an
9 annual budget of a sending municipality if it does not include
10 appropriations necessary to meet the terms of the resolution.
11 Amounts appropriated by a sending municipality for a regional
12 contribution agreement pursuant to this section are exempt from the
13 limitations or increases in final appropriations imposed under
14 P.L.1976, c.68 (C.40A:4-45.1 et seq.).

15 e. The council shall maintain current lists of municipalities
16 which have stated an intent to enter into regional contribution
17 agreements as receiving municipalities, and shall establish
18 procedures for filing statements of intent with the council. No
19 receiving municipality shall be required to accept a greater number
20 of low and moderate income units through an agreement than it has
21 expressed a willingness to accept in its statement, but the number
22 stated shall not be less than a reasonable minimum number of units,
23 not to exceed 100, as established by the council. The council shall
24 require a project plan from a receiving municipality prior to the
25 entering into of the agreement, and shall submit the project plan to
26 the agency for its review as to the feasibility of the plan prior to the
27 council's approval of the agreement. The agency may recommend
28 and the council may approve as part of the project plan a provision
29 that the time limitations for contractual guarantees or resale controls
30 for low and moderate income units included in the project shall be
31 less than 30 years, if it is determined that modification is necessary
32 to assure the economic viability of the project.

33 f. The council shall establish guidelines for the duration and
34 amount of contributions in regional contribution agreements. In
35 doing so, the council shall give substantial consideration to the
36 average of: (1) the median amount required to rehabilitate a low and
37 moderate income unit up to code enforcement standards; (2) the
38 average internal subsidization required for a developer to provide a
39 low income housing unit in an inclusionary development; (3) the
40 average internal subsidization required for a developer to provide a
41 moderate income housing unit in an inclusionary development.
42 Contributions may be prorated in municipal appropriations
43 occurring over a period not to exceed ten years and may include an
44 amount agreed upon to compensate or partially compensate the
45 receiving municipality for infrastructure or other costs generated to
46 the receiving municipality by the development. Appropriations
47 shall be made and paid directly to the receiving municipality or

1 municipalities or to the agency or other governmental entity
2 designated by the council, as the case may be.

3 g. The council shall require receiving municipalities to file
4 annual reports with the agency setting forth the progress in
5 implementing a project funded under a regional contribution
6 agreement, and the agency shall provide the council with its
7 evaluation of each report. The council shall take such actions as
8 may be necessary to enforce a regional contribution agreement with
9 respect to the timely implementation of the project by the receiving
10 municipality.

11 **【No consideration shall be given to any regional contribution**
12 **agreement for which the council did not complete its review and**
13 **grant approval prior to the effective date of P.L.2008,**
14 **c.46 (C.52:27D-329.1 et al.). On or after the effective date of**
15 **P.L.2008, c.46 (C.52:27D-329.1 et al.), no regional contribution**
16 **agreement shall be entered into by a municipality, or approved by**
17 **the council or the court.】**

18 (cf: P.L.2008, c.46, s.16)

19

20 4. This act shall take effect immediately.

21

22

23

STATEMENT

24

25 This bill amends the Fair Housing Act to re-authorize the use of
26 regional contribution agreements by municipalities to meet
27 affordable housing needs. Since July 17, 2008, the effective date of
28 P.L.2008, c.46, municipalities have been prohibited from using
29 regional contribution agreements to address fair share housing
30 obligations. This bill would re-authorize a municipality to propose
31 transferring up to 50% of its fair share housing obligation to another
32 municipality within its housing region through a regional
33 contribution agreement. This matches the portion of a fair share
34 housing obligation that had been transferrable prior to 2008.