

ASSEMBLY, No. 1835

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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District 34 (Essex and Passaic)

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District 15 (Hunterdon and Mercer)

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Co-Sponsored by:

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SYNOPSIS

Requires developers of residential housing to provide low, moderate, and middle income housing or pay fee.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning affordable housing and supplementing
2 P.L.1985, c.222 (C.52:27D-301 et al.).

3

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

6

7 1. a. The developer of a project with 30 or more residential
8 units that: is approved by a planning board or zoning board of
9 adjustment; is permissible under either a use variance, a density
10 variance increasing the permissible density at the site, a rezoning
11 permitting multiple residential units where not previously
12 permitted, a new or amended redevelopment plan, or a new or
13 amended rehabilitation plan; has a net density of six or more units
14 per acre; and for which an application for a construction permit is
15 submitted on or after the effective date of P.L. , c. (C.)
16 (pending before the Legislature as this bill), shall reserve at least:

17 (1) five percent of the residential units for very low income
18 housing;

19 (2) 10 percent of the residential units for low income housing;

20 (3) five percent of the residential units for moderate income
21 housing; and

22 (4) five percent of the residential units for middle income
23 housing.

24 b. A project subject to subsection a. of this section shall be
25 developed as follows:

26 (1) If more than 25 percent of market rate housing units are
27 completed, no less than 10 percent of very low, low, moderate, and
28 middle income housing units shall be completed;

29 (2) If 50 percent or more of the market rate housing units are
30 completed, no less than 50 percent of very low, low, moderate, and
31 middle income housing units shall be completed;

32 (3) If 75 percent or more of the market rate housing units are
33 completed, no less than 75 percent of very low, low, moderate, and
34 middle income housing units shall be completed;

35 (4) If 90 percent or more of the market rate housing units are
36 completed, no less than 100 percent of very low, low, moderate, and
37 middle income housing units shall be completed;

38 The municipality shall withhold a certificate of occupancy for
39 market rate units, at any stage of development, if the requirements
40 of this subsection are not satisfied.

41 c. The developer of a project subject to subsection a. of this
42 section may develop the residential units reserved for very low,
43 low, moderate, and middle income housing onsite or offsite within
44 the municipality in which the project is located.

45 d. Any municipal approval or agreement entered into between a
46 municipality and a developer concerning the development of a
47 project subject to subsection a. of this section shall incorporate
48 contractual guarantees and procedures ensuring that any residential

- 1 unit reserved for very low, low, moderate, and middle income
2 housing shall continue to be so reserved for a period of at least 98
3 years.
- 4 e. For a project subject to subsection a. of this section that is
5 not age-restricted, at least 30 percent of all the very low, low,
6 moderate, and middle income housing units required by this section
7 shall be two bedroom units and at least 20 percent of all the very
8 low, low, moderate, and middle income housing units required by
9 this section shall be three bedroom units.
- 10 f. (1) A municipality that is authorized to impose and collect
11 development fees pursuant to section 8 of P.L.2008, c.46
12 (C.52:27D-329.2), or to impose and collect payments-in-lieu of
13 constructing affordable units pursuant to section 9 of P.L.2008, c.46
14 (C.52:27D-329.3), may, in its discretion and in lieu of requiring the
15 construction of very low, low, moderate, and middle income
16 housing units pursuant to subsection a. of this section, require a
17 developer to pay a development fee in an amount equal to 30
18 percent of the total project cost, as determined by the municipal
19 engineer or other qualified municipal official designated by
20 ordinance; provided, however, that the amount of the fee that may
21 be required under this paragraph shall be 25 percent of the total
22 project cost if the project achieves a silver rating according to the
23 Leadership in Energy and Environmental Design Green Building
24 Rating System as adopted by the United States Green Building
25 Council.
- 26 (2) A fee required pursuant to paragraph (1) of this subsection
27 shall be paid prior to the issuance of a construction permit for the
28 project.
- 29 (3) A municipality shall, by ordinance, either:
- 30 (a) deposit all fees collected pursuant to this subsection into an
31 affordable housing trust fund and spend those funds on the
32 development of very low, low, or moderate income housing within
33 the municipality, pursuant to section 8 of P.L.2008, c.46 (C.52:27D-
34 329.2); or
- 35 (b) deposit 50 percent of the fees collected pursuant to this
36 subsection into an affordable housing trust fund and spend those
37 funds on the development of very low, low, or moderate income
38 housing within the municipality, pursuant to section 8 of P.L.2008,
39 c.46 (C.52:27D-329.2), and deposit the remaining 50 percent of the
40 fees collected pursuant to this subsection into a community center
41 trust fund and spend those funds on the development of community
42 centers.
- 43 g. Nothing in this section shall be construed to affect the
44 obligation of a municipality to plan and zone to provide through its
45 land use regulations a realistic opportunity for a fair share of its
46 region's present and prospective needs for very low, low, and
47 moderate income housing. Nothing in this section shall be
48 construed to alter the obligations of a developer or municipality to

1 comply with the terms of a court- or agency-approved agreement or
2 fair share plan, or to prevent a municipality from creating or
3 enforcing requirements beyond the minimum requirements
4 established in this section. This section shall not apply to a project
5 that is identified by block and lot or other specific reference in a
6 court- or agency-approved agreement or fair share plan.

7 h. The agency shall, on or before the first day of the fourth
8 month next following the effective date of P.L. , c. (C.)
9 (pending before the Legislature as this bill) promulgate rules and
10 regulations, pursuant to the "Administrative Procedure Act,"
11 P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the provisions of
12 this section.

13 i. As used in this section:

14 "Community center" means any indoor or outdoor buildings,
15 spaces, structures, or improvements intended for active or passive
16 recreation, including but not limited to parks, ball fields, meeting
17 halls, and classrooms, accommodating either organized or informal
18 activity and oriented towards serving residents of the municipality.

19 "Middle income housing" means housing affordable, according
20 to federal Department of Housing and Urban Development or other
21 recognized standards for home ownership and rental costs, and
22 occupied or reserved for occupancy by households with a gross
23 household income equal to more than 80 percent but less than 120
24 percent of the median gross household income for households of the
25 same size within the housing region in which the housing is located.
26

27 2. This act shall take effect on the first day of the fourth month
28 next following enactment, except the agency may take any
29 anticipatory administrative action in advance as shall be necessary
30 for the implementation of this act.
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33 STATEMENT 34

35 This bill would require certain projects with 30 or more residential
36 units to reserve 25 percent of the units for very low, low, moderate,
37 and middle income housing. The bill establishes a schedule under
38 which a developer would be required to complete a certain percentage
39 of the very low, low, moderate, and middle income housing units upon
40 the completion of a certain percentage of the market rate housing units.
41 The municipality would be permitted to withhold the certificate of
42 occupancy for market rate units, at any stage of development, if the
43 requirements of this schedule are not satisfied. The developer would
44 be permitted to develop the residential units reserved for very low,
45 low, moderate, and middle income housing offsite of the project,
46 provided that the units are developed within the municipality in which
47 the project is located. Any residential unit reserved for very low, low,
48 moderate, and middle income housing would have to continue to be so

1 reserved for a period of at least 98 years, according to the current
2 affordability standards. For a project that is not age-restricted, at least
3 30 percent of all the very low, low, moderate, and middle income
4 housing units would have to be two bedroom units and at least another
5 20 percent of these units would have to be three bedroom units.

6 Under the bill a municipality may, instead of requiring the
7 construction of very low, low, moderate, and middle income housing
8 units, require a developer to pay a development fee in an amount equal
9 to 30 percent of the total project cost; provided, however, that the
10 amount of that fee would be 25 percent of the total project cost if the
11 project achieves a silver rating according to the Leadership in Energy
12 and Environmental Design Green Building Rating System as adopted
13 by the United States Green Building Council. If such a fee is required,
14 it would have to be paid prior to the issuance of a construction permit
15 for the project. These fees would have to be placed into an affordable
16 housing trust fund and spent on the development of very low, low, or
17 moderate income housing within the municipality. Alternatively, half
18 of these fees may be placed into an affordable housing trust fund and
19 spent on the development of very low, low, or moderate income
20 housing within the municipality, and the remaining half placed into a
21 community center trust fund and spent on the development of
22 community centers.

23 Nothing in this bill would affect the obligation of a municipality to
24 plan and zone to provide through its land use regulations a realistic
25 opportunity for a fair share of its region's present and prospective
26 needs for very low, low, and moderate income housing. Additionally,
27 nothing in this bill would alter the obligations of a developer or
28 municipality to comply with the terms of a court- or agency-approved
29 agreement or fair share plan, or to prevent a municipality from creating
30 or enforcing requirements beyond the minimum requirements
31 established in this section. Also, the bill would not apply to a project
32 that is identified by block and lot or other specific reference in a court-
33 or agency-approved agreement or fair share plan.

34 Lastly, the bill requires the New Jersey Housing and Mortgage
35 Finance Agency to adopt rules and regulations effectuating the
36 provisions of the bill on or before the first day of the fourth month next
37 following the effective date of the bill.