SENATE, No. 155

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
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SYNOPSIS

Establishes additional factors for municipal adjustment used in calculating fair share affordable housing obligations; provides population-based cap for these obligations.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 3/25/2021)

AN ACT concerning municipal fair share affordable housing obligations and amending P.L.1985, c.222.

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

1. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to read as follows:

4. As used in P.L.1985, c.222 (C.52:27D-301 et al.):

a. "Council" means the Council on Affordable Housing established in P.L.1985, c.222 (C.52:27D-301 et al.), which shall have primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State, and any successor body, temporary or otherwise, that obtains such primary jurisdiction.

b. "Housing region" means a geographic area of not less than two nor more than four contiguous, whole counties which exhibit significant social, economic and income similarities, and which constitute to the greatest extent practicable the primary metropolitan statistical areas as last defined by the United States Census Bureau prior to the effective date of P.L.1985, c.222 (C.52:27D-301 et al.).

c. "Low income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

d. "Moderate income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than **[**50%**]** 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

e. "Resolution of participation" means a resolution adopted by a municipality in which the municipality chooses to prepare a fair share plan and housing element in accordance with P.L.1985, c.222 (C.52:27D-301 et al.).

f. "Inclusionary development" means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households.

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.

g. "Conversion" means the conversion of existing commercial, industrial, or residential structures for low and moderate income housing purposes where a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households.

h. "Development" means any development for which permission may be required pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

i. "Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et seq.).

j. "Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. In determining prospective need, consideration shall be given to approvals of development applications, real property transfers, and economic projections prepared by the State Planning Commission established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

k. "Person with a disability" means a person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

l. "Adaptable" means constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and in accordance with the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15).

m. "Very low income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

(cf: P.L.2017, c.131, s.199)

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

7. It shall be the duty of the council, seven months after the confirmation of the last member initially appointed to the council,

or January 1, 1986, whichever is earlier, and from time to time thereafter, to:

a. Determine housing regions of the State;

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

c. Adopt criteria and guidelines for:

(1) Municipal determination of its present and prospective fair share of the housing need in a given region which shall be computed for a 10-year period.

Municipal fair share shall be determined after crediting on a one-to-one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. Notwithstanding any other law to the contrary, a municipality shall be entitled to a credit for a unit if it demonstrates that (a) the municipality issued a certificate of occupancy for the unit, which was either newly constructed or rehabilitated between April 1, 1980 and December 15, 1986; (b) a construction code official certifies, based upon a visual exterior survey, that the unit is in compliance with pertinent construction code standards with respect to structural elements, roofing, siding, doors and windows; (c) the household occupying the unit certifies in writing, under penalty of perjury, that it receives no greater income than that established pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for moderate income housing; and (d) the unit for which credit is sought is affordable to low and moderate income households under the standards established by the council at the time of filing of the petition for substantive certification. It shall be sufficient if the certification required in subparagraph (c) is signed by one member of the household. A certification submitted pursuant to this paragraph shall be reviewable only by the council or its staff and shall not be a public record**[**;**]** .

Nothing in P.L.1995, c.81 shall affect the validity of substantive certification granted by the council prior to November 21, 1994, or of a judgment of compliance entered by any court of competent jurisdiction prior to that date. Additionally, any municipality that received substantive certification or a judgment of compliance prior to November 21, 1994 and filed a motion prior to November 21, 1994 to amend substantive certification or a judgment of compliance for the purpose of obtaining credits, shall be entitled to a determination of its right to credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81. Any municipality that filed a motion prior to November 21, 1994 for the purpose of obtaining credits, which motion was supported by the results of a completed survey performed pursuant to council rules, shall be entitled to a determination of its right to credits pursuant to the standards established by the Legislature prior to P.L.1995, c.81;

(2) Municipal adjustment of the present and prospective fair share based upon population, available vacant and developable land, infrastructure considerations [or] including, but not limited to, water supply and sewerage capacities, school class size and school service considerations, public safety service considerations, public transportation and traffic considerations, and environmental or historic preservation factors [and] , which adjustments shall be made whenever:

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

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

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

(d) Adequate open space would not be provided,

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

(f) Vacant and developable land is not available in the municipality, [and]

(g) Adequate public facilities and infrastructure capacities, including, but not limited to, water supply and sewerage capacities, are not available, or would result in [costs prohibitive] significant costs to the public if provided[.],

(h) Maintaining approximately the same school class sizes would result in significant costs to the public,

(i) Adequate school facilities, resources, and equipment are not available, or would result in significant costs to the public if provided,

(j) Adequate public safety facilities, resources, and equipment are not available, or would result in significant costs to the public if provided,

(k) Adequate public transportation facilities, resources, and equipment are not available, or would result in significant costs to the public if provided, and

(l) Present traffic conditions would be substantially disrupted;

(3) (Deleted by amendment, P.L.1993, c.31)[.]

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

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

allocation of units to a municipality as its fair share shall not exceed an amount that would result in an increase of the municipal population by more than five percent in any 10-year period. For the purposes of this limit, each unit of affordable housing shall be deemed to be occupied by four residents, except that units of housing for seniors shall be deemed to be occupied by two residents. No municipality shall be required to address a fair share of housing units affordable to households with a gross household income of less than **[**80%**]** 80 percent of the median gross household income beyond the lesser of: (1) the number of units that represent housing for five percent of a municipality's population; or (2) 1,000 units within **[**ten**]** 10 years from the grant of substantive certification, unless it is demonstrated, following objection by an interested party and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than : (1) the number of low and moderate income units that would represent housing for a five percent increase of the municipal population; or (2) 1,000 low and moderate income units in a municipality where 1,000 units would represent housing for less than five percent of the municipal population, within that **[**ten-year**]** 10-year period. For the purposes of this section, the facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units, as provided above, shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the **[**ten-year**]** 10-year period preceding the petition for substantive certification in connection with which the objection was filed.

For the purpose of crediting low and moderate income housing units in order to arrive at a determination of present and prospective fair share, as set forth in paragraph (1) of subsection c. of this section, housing units comprised in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or to be promulgated by the council, to the extent that the units are affordable to persons of low and moderate income and are available to the general public.

The council, with respect to any municipality seeking substantive certification, shall require that a minimum percentage of housing units in any residential development resulting from a zoning change made to a previously non-residentially-zoned property, where the change in zoning precedes or follows the application for residential development by no more than 24 months, be reserved for occupancy by low or moderate income households, which percentage shall be determined by the council based on economic feasibility with consideration for the proposed density of development.

In carrying out the above duties, including, but not limited to, present and prospective need estimations the council shall give appropriate weight to pertinent research studies, government reports, decisions of other branches of government, implementation of the State Development and Redevelopment Plan prepared pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and public comment. To assist the council, the State Planning Commission established under that act shall provide the council annually with economic growth, development and decline projections for each housing region for the next **[**ten**]** 10 years. The council shall develop procedures for periodically adjusting regional need based upon the low and moderate income housing that is provided in the region through any federal, State, municipal or private housing program.

No housing unit subject to the provisions of section 5 of P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for inclusion in the municipal fair share plan certified by the council unless the unit complies with the requirements set forth thereunder.

(cf: P.L.2008, c.46, s.6)

3. This act shall take effect immediately.

STATEMENT

This bill would establish additional specific factors to be used in calculating the municipal adjustment for a municipality's fair share affordable housing obligation. The bill also caps the number of units a municipality may have allocated as its affordable housing obligation with regard to the size of the municipal population.

The additional factors to be used in calculating the municipal adjustment are as follows:

(a) population of the municipality;

(b) water supply and sewerage capacity in the municipality;

(c) school class sizes and school services in the municipality;

(d) public safety services in the municipality; and

(e) public transportation and traffic in the municipality.

The bill requires a municipal adjustment if maintaining approximately the same school class sizes would be a significant cost or if adequate school, public safety, and public transportation resources are not available or would be a significant cost to provide. A municipal adjustment would also have to be made if present traffic conditions would be substantially disrupted.

The additional municipal adjustment factors required by the bill would require a more holistic examination of the actual state of

affairs in a municipality, as well as of the potential impacts of additional development, in calculating its fair share affordable housing obligation. This will help ensure that reasonable numbers are arrived at that will not be disruptive to the quality of life and provision of local government services in a municipality.

The bill's population cap would protect those municipalities that may face dramatic municipal population increases if mandated to add a large amount of additional affordable housing. Current law provides that no municipality shall be required to address a fair share of affordable housing units beyond 1,000 low and moderate income units within 10 years from the grant of substantive certification; except that a municipality may be allocated more than 1,000 units, if based upon an evidentiary hearing, it is found likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within that 10-year period. In order to prevent the disparate impact such a potentially large affordable housing mandate can create for municipalities with small populations, this bill provides that an allocation of units to a municipality as its fair share shall not exceed an amount that would result in an increase of the municipal population by more than five percent.