

SENATE, No. 1503

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Senator ANTHONY M. BUCCO

District 25 (Morris and Somerset)

SYNOPSIS

Authorizes COAH to credit municipalities with 1.5 units of fair share affordable housing obligation for each housing unit occupied by a veteran; permits municipalities to satisfy fair share affordable housing obligation through 35 percent set aside for veterans.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 7/14/2020)

1 AN ACT concerning municipalities' fair share housing obligation
2 and amending 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 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 council,
11 or January 1, 1986, whichever is earlier, and from time to time
12 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 which shall be
19 computed for a 10-year period.

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

43 Nothing in P.L.1995, c.81 shall affect the validity of substantive
44 certification granted by the council prior to November 21, 1994, or
45

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 of a judgment of compliance entered by any court of competent
2 jurisdiction prior to that date. Additionally, any municipality that
3 received substantive certification or a judgment of compliance prior
4 to November 21, 1994 and filed a motion prior to November 21,
5 1994 to amend substantive certification or a judgment of
6 compliance for the purpose of obtaining credits, shall be entitled to
7 a determination of its right to credits pursuant to the standards
8 established by the Legislature prior to P.L.1995, c.81. Any
9 municipality that filed a motion prior to November 21, 1994 for the
10 purpose of obtaining credits, which motion was supported by the
11 results of a completed survey performed pursuant to council rules,
12 shall be entitled to a determination of its right to credits pursuant to
13 the standards established by the Legislature prior to P.L.1995, c.81;

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

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

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

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

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

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

30 (f) Vacant and developable land is not available in the
31 municipality, and

32 (g) Adequate public facilities and infrastructure capacities are
33 not available, or would result in costs prohibitive to the public if
34 provided.

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

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

38 e. In its discretion, place a limit, based on a percentage of
39 existing housing stock in a municipality and any other criteria
40 including employment opportunities which the council deems
41 appropriate, upon the aggregate number of units which may be
42 allocated to a municipality as its fair share of the region's present
43 and prospective need for low and moderate income housing. No
44 municipality shall be required to address a fair share of housing
45 units affordable to households with a gross household income of
46 less than 80% of the median gross household income beyond 1,000
47 units within ten years from the grant of substantive certification,
48 unless it is demonstrated, following objection by an interested party
49 and an evidentiary hearing, based upon the facts and circumstances

1 of the affected municipality that it is likely that the municipality
2 through its zoning powers could create a realistic opportunity for
3 more than 1,000 low and moderate income units within that ten-
4 year period. For the purposes of this section, the facts and
5 circumstances which shall determine whether a municipality's fair
6 share shall exceed 1,000 units, as provided above, shall be a finding
7 that the municipality has issued more than 5,000 certificates of
8 occupancy for residential units in the ten-year period preceding the
9 petition for substantive certification in connection with which the
10 objection was filed.

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

20 Notwithstanding any law, rule, or regulation to the contrary, for
21 purposes of crediting units of housing against a municipality's fair
22 share, the council shall permit a municipality to satisfy one and one-
23 half unit of its fair share obligations by each unit of housing
24 occupied or reserved for occupancy by a low or moderate income
25 veteran with active service in time of war as defined by section 1 of
26 P.L.1963, c.171 (C.54:4-8.10).

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

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

1 No housing unit subject to the provisions of section 5 of
2 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the
3 barrier free subcode adopted by the Commissioner of Community
4 Affairs pursuant to the "State Uniform Construction Code Act,"
5 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for
6 inclusion in the municipal fair share plan certified by the council
7 unless the unit complies with the requirements set forth thereunder.
8 (cf: P.L.2008, c.46, s.6)

9
10 2. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to
11 read as follows:

12 11. a. In adopting its housing element, the municipality may
13 provide for its fair share of low and moderate income housing by
14 means of any technique or combination of techniques which provide
15 a realistic opportunity for the provision of the fair share. The
16 housing element shall contain an analysis demonstrating that it will
17 provide such a realistic opportunity, and the municipality shall
18 establish that its land use and other relevant ordinances have been
19 revised to incorporate the provisions for low and moderate income
20 housing. In preparing the housing element, the municipality shall
21 consider the following techniques for providing low and moderate
22 income housing within the municipality, as well as such other
23 techniques as may be published by the council or proposed by the
24 municipality:

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

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

33 (3) Determination of measures that the municipality will take to
34 assure that low and moderate income units remain affordable to low
35 and moderate income households for an appropriate period of not
36 less than six years;

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

40 (5) Donation or use of municipally owned land or land
41 condemned by the municipality for purposes of providing low and
42 moderate income housing;

43 (6) Tax abatements for purposes of providing low and moderate
44 income housing;

45 (7) Utilization of funds obtained from any State or federal
46 subsidy toward the construction of low and moderate income
47 housing;

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

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

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

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

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

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

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

31 g. A municipality which has received substantive certification
32 from the council, and which has actually effected the construction
33 of the affordable housing units it is obligated to provide, may
34 amend its affordable housing element or zoning ordinances without
35 the approval of the council.

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

41 i. The council, upon the application of a municipality and a
42 developer, may approve reduced affordable housing set-asides or
43 increased densities to ensure the economic feasibility of an
44 inclusionary development.

45 j. A municipality may enter into an agreement with a
46 developer or residential development owner to provide a preference
47 for affordable housing to low to moderate income veterans who
48 served in time of war or other emergency, as defined in section 1 of
49 P.L.1963, c.171 (C.54:4-8.10), of up to 50 percent of the affordable

1 units in that particular project. This preference shall be established
2 in the applicant selection process for available affordable units so
3 that applicants who are veterans who served in time of war or other
4 emergency, as referenced in this subsection, and who apply within
5 90 days of the initial marketing period shall receive preference for
6 the rental of the agreed-upon percentage of affordable units. After
7 the first 90 days of the initial 120-day marketing period, if any of
8 those units subject to the preference remain available, then
9 applicants from the general public shall be considered for
10 occupancy. Following the initial 120-day marketing period,
11 previously qualified applicants and future qualified applicants who
12 are veterans who served in time of war or other emergency, as
13 referenced in this subsection, shall be placed on a special waiting
14 list as well as the general waiting list. The veterans on the special
15 waiting list shall be given preference for affordable units, as the
16 units become available, whenever the percentage of preference-
17 occupied units falls below the agreed upon percentage. Any
18 agreement to provide affordable housing preferences for veterans
19 pursuant to this subsection shall not affect a municipality's ability to
20 receive credit for the unit from the council, or its successor.

21 k. A municipality may prepare and file a housing element that
22 provides that 35 percent of all new affordable housing shall be set
23 aside for low or moderate income veterans with active service in
24 time of war as defined by section 1 of P.L.1963, c.171 (C.54:4-
25 8.10).

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

27

28 3. This act shall take effect immediately.

29

30 STATEMENT

31

32 This bill would allow municipalities to obtain credits toward the
33 fulfillment of their fair share affordable housing obligations for
34 housing reserved for certain veterans. This bill would require the
35 Council on Affordable Housing to credit 1.5 units toward a
36 municipality's fair share obligation for each unit of housing
37 occupied by a veteran of low or moderate income.

38 This legislation also permits a municipality to submit a housing
39 element to the Council on Affordable Housing that sets aside 35
40 percent of all new affordable housing for low and moderate income
41 veterans who had active service in time of war, as defined by
42 current law.