SENATE CONCURRENT RESOLUTION No. 12

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator HOLLY T. SCHEPISI
District 39 (Bergen and Passaic)
Senator ROBERT W. SINGER
District 30 (Monmouth and Ocean)

Co-Sponsored by:
Senator Cardinale

SYNOPSIS

Proposes amendment to New Jersey Constitution to prohibit exclusionary zoning and clarify municipal obligations regarding affordable housing construction.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

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

A CONCURRENT RESOLUTION proposing to amend Article IV, Section VI, paragraph 2 of the New Jersey Constitution.

BE IT RESOLVED *by the Senate of the State of New Jersey (the General Assembly concurring):*

1. The following proposed amendment to the Constitution of the State of New Jersey is agreed to:

PROPOSED AMENDMENT

Amend Article IV, Section VI, paragraph 2 to read as follows:

2. The Legislature may , except as otherwise provided in this paragraph, enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature. The Legislature shall not enact laws that authorize a municipality to engage in any exclusionary zoning activity that would prevent the development of housing options for low and moderate income residents of the State. The prohibition on exclusionary zoning shall not create an affirmative obligation on any municipality to construct, or cause to be constructed, housing options to be occupied by low and moderate income residents.

2. When this proposed amendment to the Constitution is finally agreed to pursuant to Article IX, paragraph 1 of the Constitution, it shall be submitted to the people at the next general election occurring more than three months after the final agreement and shall be published at least once in at least one newspaper of each county designated by the President of the Senate, the Speaker of the General Assembly and the Secretary of State, not less than three months prior to the general election.

3. This proposed amendment to the Constitution shall be submitted to the people at that election in the following manner and form:

There shall be printed on each official ballot to be used at the general election, the following:

a. In every municipality in which voting machines are not used, a legend which shall immediately precede the question as follows:

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.

If you favor the proposition printed below make a cross (X), plus (+), or check (✔) in the square opposite the word "Yes." If you are opposed thereto make a cross (X), plus (+) or check (✔) in the square opposite the word "No."

b. In every municipality the following question:

	YES	CONSTITUTIONAL AMENDMENT TO CLARIFY LEGISLATIVE ZONING POWER CONCERNING AFFORDABLE HOUSING Do you approve amending the Constitution to prohibit exclusionary zoning by towns in New Jersey? Exclusionary zoning can prevent the development of low income housing units and has been declared illegal by federal and State courts. Pursuant to the amendment, towns would not have an obligation to actually construct, or cause to be constructed, affordable housing units.
	NO	INTERPRETIVE STATEMENT This proposed amendment would prohibit exclusionary zoning by towns in New Jersey. Exclusionary zoning can prevent the development of low income housing units and has been declared illegal by federal and State courts. Pursuant to the amendment, towns would not have an obligation to actually construct, or cause to be constructed, affordable housing units. This would eliminate lawsuits that result in the forced construction of specific housing projects.

STATEMENT

This concurrent resolution proposes a constitutional amendment to clarify municipal obligations regarding affordable housing. The amendment would place language in the State Constitution to specifically prohibit the practice of exclusionary zoning. Exclusionary zoning can prevent the development of low income housing units and has been declared illegal by federal and State courts. Pursuant to the amendment, towns would not have an obligation to actually construct, or cause to be constructed,

affordable housing units. This would eliminate litigation that results in the forced construction of specific residential projects.

It has been more than 40 years since the first court case was initiated in New Jersey concerning the opportunities for poor and minority families to obtain affordable housing. The opinion of the New Jersey Supreme Court in this case and subsequent decisions have become known as the *Mount Laurel* doctrine. Since that time, the demographics of the State have changed markedly, including increased population growth and density, wider disparity of income levels among residents, and perhaps most importantly, tremendous increases in the average cost of housing.

The early judicial decisions concerning this issue identified certain local government zoning practices as a bar to increasing the opportunities for housing for low and moderate income households. A somewhat melded judicial and statutory scheme was created to impel municipalities to eliminate these practices voluntarily. Certain regulatory measures were implemented requiring municipal financial expenditures if certain zoning mechanisms were not embraced. Competing financial concerns for resources, such as new infrastructure and schools, have played a role in the complicated interpretation of the *Mount Laurel* mandate. This amendment is intended to overturn the *Mount Laurel* mandate regarding the actual construction of affordable housing units and eliminate the so-called "builder's remedy" lawsuit, while reaffirming the State's commitment to the elimination of discriminatory zoning practices. The courts could remedy constitutional violations of the prohibition on discriminatory zoning by striking down zoning ordinances, rather than forcing the specific construction of any particular project.