

**SENATE CONCURRENT
RESOLUTION No. 35**

**STATE OF NEW JERSEY
220th LEGISLATURE**

INTRODUCED JANUARY 18, 2022

Sponsored by:
Senator JON M. BRAMNICK
District 21 (Morris, Somerset and Union)

SYNOPSIS

Proposes constitutional amendment to provide that only Legislature may determine affordable housing obligations.

CURRENT VERSION OF TEXT

As introduced.



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

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

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

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10 PROPOSED AMENDMENT

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12 a. Amend Article IV, Section VI, paragraph 2 to read as
13 follows:

14 2. (a) The Legislature may enact general laws under which
15 municipalities, other than counties, may adopt zoning ordinances
16 limiting and restricting to specified districts and regulating therein,
17 buildings and structures, according to their construction, and the
18 nature and extent of their use, and the nature and extent of the uses
19 of land, and the exercise of such authority shall be deemed to be
20 within the police power of the State. Such laws shall be subject to
21 repeal or alteration by the Legislature.

22 (b) The affordable housing needs of the State, the means by
23 which those needs may be fulfilled, and the consequences for
24 noncompliance shall be determined only by the Legislature through
25 the enactment of general laws.

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

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

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

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

43 If you favor the proposition printed below make a cross (X), plus
44 (+), or check (✓) in the square opposite the word "Yes." If you are

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.

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1 opposed thereto make a cross (X), plus (+) or check (✓) in the
2 square opposite the word "No."

3 b. In every municipality the following question:
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	YES	<p>CONSTITUTIONAL AMENDMENT TO PROVIDE FOR LEGISLATIVE DETERMINATION OF AFFORDABLE HOUSING NEEDS</p> <p>Do you approve amending the Constitution to change the way that affordable housing needs are determined?</p> <p>The amendment provides that only the Legislature can decide the amount of affordable housing units that are needed in the State. The amendment also provides that only the Legislature can decide how this need can be fulfilled and the possible penalties for failing to meet this need. The courts would not be allowed to require a town to build affordable housing.</p>
	NO	<p>INTERPRETIVE STATEMENT</p> <p>The New Jersey Supreme Court has ruled that the State Constitution requires affordable housing to be made available in the State. The courts currently decide the need for affordable housing throughout the State.</p> <p>This amendment changes the way that affordable housing obligations are determined. The amendment provides that only the Legislature can decide the number of affordable housing units that are needed in the State. In addition, only the Legislature could decide the ways in which this need can be fulfilled and the possible penalties for failing to fulfill this need.</p>

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STATEMENT

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9 This amendment to the State Constitution provides that the
10 constitutional obligation to make available affordable housing, and
11 the means by which this obligation may be fulfilled, can only be
12 determined by the Legislature.

13 The New Jersey Supreme Court has ruled that there is a
14 constitutional obligation to provide a realistic opportunity for the
15 construction of affordable housing in accordance with the present

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1 and prospective need for low and moderate income housing.
2 Following the dissolution of the Council on Affordable Housing,
3 the Superior Court has become responsible for determining the
4 number of affordable housing units that are needed throughout the
5 State. However, the New Jersey Supreme Court indicated in
6 multiple rulings, including Southern Burlington County NAACP v.
7 Mount Laurel, 92 N.J. 158 (1983) and Hills Development Co. v.
8 Bernards, 103 N.J. 1 (1986), that the determination of the methods
9 for satisfying this constitutional obligation “is better left to the
10 Legislature.”

11 Accordingly, this amendment proposes to amend the State
12 Constitution to provide that the constitutional obligation to make
13 available affordable housing, the means by which this obligation
14 can be fulfilled, and the possible consequences for noncompliance,
15 may only be determined by the Legislature through the enactment
16 of general legislation.