

ASSEMBLY, No. 1648

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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Harold J. Wirths and **Thomson**

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: 4/13/2018)

1 AN ACT concerning municipal fair share affordable housing
2 obligations 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 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
8 read as follows:

9 4. As used in **[this act]** P.L.1985, c.222 (C.52:27D-301 et al.):

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

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

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

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

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

41 f. "Inclusionary development" means a residential housing
42 development in which a substantial percentage of the housing units
43 are provided for a reasonable income range of low and moderate
44 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.

- 1 g. "Conversion" means the conversion of existing commercial,
2 industrial, or residential structures for low and moderate income
3 housing purposes where a substantial percentage of the housing
4 units are provided for a reasonable income range of low and
5 moderate income households.
- 6 h. "Development" means any development for which
7 permission may be required pursuant to the "Municipal Land Use
8 Law," P.L.1975, c.291 (C.40:55D-1 et seq.).
- 9 i. "Agency" means the New Jersey Housing and Mortgage
10 Finance Agency established by P.L.1983, c.530 (C.55:14K-1 et
11 seq.).
- 12 j. "Prospective need" means a projection of housing needs
13 based on development and growth which is reasonably likely to
14 occur in a region or a municipality, as the case may be, as a result
15 of actual determination of public and private entities. In
16 determining prospective need, consideration shall be given to
17 approvals of development applications, real property transfers and
18 economic projections prepared by the State Planning Commission
19 established by sections 1 through 12 of P.L.1985, c.398 (C.52:18A-
20 196 et seq.).
- 21 k. "Disabled person" means a person with a physical disability,
22 infirmity, malformation or disfigurement which is caused by bodily
23 injury, birth defect, aging or illness including epilepsy and other
24 seizure disorders, and which shall include, but not be limited to, any
25 degree of paralysis, amputation, lack of physical coordination,
26 blindness or visual impediment, deafness or hearing impediment,
27 muteness or speech impediment or physical reliance on a service or
28 guide dog, wheelchair, or other remedial appliance or device.
- 29 l. "Adaptable" means constructed in compliance with the
30 technical design standards of the barrier free subcode adopted by
31 the Commissioner of Community Affairs pursuant to the "State
32 Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119
33 et seq.) and in accordance with the provisions of section 5 of
34 P.L.2005, c.350 (C.52:27D-123.15).
- 35 m. "Very low income housing" means housing affordable
36 according to federal Department of Housing and Urban
37 Development or other recognized standards for home ownership
38 and rental costs and occupied or reserved for occupancy by
39 households with a gross household income equal to 30% or less of
40 the median gross household income for households of the same size
41 within the housing region in which the housing is located.
42 (cf: P.L.2008, c.46, s.5)
- 43
- 44 2. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
45 read as follows:
- 46 7. It shall be the duty of the council, seven months after the
47 confirmation of the last member initially appointed to the council,

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

- 3 a. Determine housing regions of the State;
- 4 b. Estimate the present and prospective need for low and
5 moderate income housing at the State and regional levels;
- 6 c. Adopt criteria and guidelines for:
 - 7 (1) Municipal determination of its present and prospective fair
8 share of the housing need in a given region which shall be
9 computed for a 10-year period.

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

34 Nothing in P.L.1995, c.81 shall affect the validity of substantive
35 certification granted by the council prior to November 21, 1994, or
36 of a judgment of compliance entered by any court of competent
37 jurisdiction prior to that date. Additionally, any municipality that
38 received substantive certification or a judgment of compliance prior
39 to November 21, 1994 and filed a motion prior to November 21,
40 1994 to amend substantive certification or a judgment of
41 compliance for the purpose of obtaining credits, shall be entitled to
42 a determination of its right to credits pursuant to the standards
43 established by the Legislature prior to P.L.1995, c.81. Any
44 municipality that filed a motion prior to November 21, 1994 for the
45 purpose of obtaining credits, which motion was supported by the
46 results of a completed survey performed pursuant to council rules,
47 shall be entitled to a determination of its right to credits pursuant to
48 the standards established by the Legislature prior to P.L.1995, c.81;

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

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

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

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

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

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

21 (f) Vacant and developable land is not available in the
22 municipality, **【and】**

23 (g) Adequate public facilities and infrastructure capacities,
24 including, but not limited to, water supply and sewerage capacities,
25 are not available, or would result in **【costs prohibitive】** significant
26 costs to the public if provided【.】.

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

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

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

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

38 (l) Present traffic conditions would be substantially disrupted;

39 (3) (Deleted by amendment, P.L.1993, c.31)**【.】**

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

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

1 allocation of units to a municipality as its fair share shall not exceed
2 an amount that would result in an increase of the municipal
3 population by more than five percent in any 10-year period. For the
4 purposes of this limit, each unit of affordable housing shall be
5 deemed to be occupied by four residents, except that units of
6 housing for seniors shall be deemed to be occupied by two
7 residents. No municipality shall be required to address a fair share
8 of housing units affordable to households with a gross household
9 income of less than **【80%】** 80 percent of the median gross
10 household income beyond the lesser of: (1) the number of units that
11 represent housing for five percent of a municipality's population; or
12 (2) 1,000 units within **【ten】** 10 years from the grant of substantive
13 certification, unless it is demonstrated, following objection by an
14 interested party and an evidentiary hearing, based upon the facts
15 and circumstances of the affected municipality that it is likely that
16 the municipality through its zoning powers could create a realistic
17 opportunity for more than : (1) the number of low and moderate
18 income units that would represent housing for a five percent
19 increase of the municipal population; or (2) 1,000 low and moderate
20 income units in a municipality where 1,000 units would represent
21 housing for less than five percent of the municipal population,
22 within that **【ten-year】** 10-year period. For the purposes of this
23 section, the facts and circumstances which shall determine whether
24 a municipality's fair share shall exceed 1,000 units, as provided
25 above, shall be a finding that the municipality has issued more than
26 5,000 certificates of occupancy for residential units in the **【ten-**
27 **year】** 10-year period preceding the petition for substantive
28 certification in connection with which the objection was filed.

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

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

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

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

23

24 3. This act shall take effect immediately.

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STATEMENT

28

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

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

- 36 (a) population of the municipality;
- 37 (b) water supply and sewerage capacity in the municipality;
- 38 (c) school class sizes and school services in the municipality;
- 39 (d) public safety services in the municipality; and
- 40 (e) public transportation and traffic in the municipality.

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

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

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

6 The bill's population cap would protect those municipalities that
7 may face dramatic municipal population increases if mandated to
8 add a large amount of additional affordable housing. Current law
9 provides that no municipality shall be required to address a fair
10 share of affordable housing units beyond 1,000 low and moderate
11 income units within 10 years from the grant of substantive
12 certification; except that a municipality may be allocated more than
13 1,000 units, if based upon an evidentiary hearing, it is found likely
14 that the municipality through its zoning powers could create a
15 realistic opportunity for more than 1,000 low and moderate income
16 units within that 10-year period. In order to prevent the disparate
17 impact such a potentially large affordable housing mandate can
18 create for municipalities with small populations, this bill provides
19 that an allocation of units to a municipality as its fair share shall not
20 exceed an amount that would result in an increase of the municipal
21 population by more than five percent.