

ASSEMBLY, No. 723

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman R. SMITH

1 AN ACT concerning affordable housing for the developmentally
2 disabled, amending and supplementing the "Fair Housing Act,"
3 P.L.1985, c.222 (C.52:27D-301 et al.) and amending P.L.1978,
4 c.159.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. (New section) As used in this act:

10 "Approved operator" means any person, firm, corporation or
11 association, public or private, which is approved to operate a
12 community residence for the developmentally disabled under the
13 standards and regulations adopted for that purpose by the Department
14 of Human Services pursuant to P.L.1977, c.448. (C.30:11B-1 et seq.).

15 "Community residence for the developmentally disabled" has the
16 meaning established in section 2 of P.L.1977, c.448 (C.30:11B-2).

17
18 2. (New section) a. Two percent of all municipal fair shares of
19 affordable housing units as determined pursuant to section 7 of
20 P.L.1985, c.222 (C.52:27D-307) shall be reserved, in the manner
21 provided in this amendatory and supplementary act, for units to be
22 comprised in community residences for the developmentally disabled.

23 b. In order to qualify as affordable housing within the meaning of
24 section a. of this section, any structure and associated real property
25 intended to be used as a community residence for the developmentally
26 disabled pursuant to reservation as provided in subsection a. of this
27 section and the terms of a municipal housing element as provided in
28 section 3 of this act shall be available for lease or purchase by or on
29 behalf of an approved operator of such residence. The cost of lease
30 or purchase shall, in the judgment of the Council on Affordable
31 Housing, permit accommodation of the number of disabled residents
32 for which that residence is intended at a cost within the range of

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 affordability for the same number of persons of low or moderate
2 income in the housing region wherein the residence is located or
3 proposed to be located, regardless of whether the cost of
4 accommodation in the community residence is to be borne in whole or
5 part by any grant, gift, subsidy or subvention instead of or in addition
6 to any payment made out of income of those disabled residents.

7
8 3. (New section) a. In formulating its housing element as required
9 pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301
10 et al.) and paragraph (3) of subsection b. of section 19 of the
11 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-28), a
12 municipality shall, after determining its present and prospective fair
13 share for low and moderate income housing pursuant to subsection e.
14 of section 10 of P.L.1985, c.222 (C.52:27D-310), establish its
15 reservation of housing units for community residences for the
16 developmentally disabled within that fair share at 2 percent thereof,
17 with fractional amounts rounded to the nearest whole number; except
18 that if the number so derived is less than four, the reservation shall be
19 zero.

20 b. If the number derived by the calculation prescribed in subsection
21 a. of this section is four or more, the municipality shall, in preparing
22 that portion of its housing element in which it sets forth, pursuant to
23 section 11 of P.L.1985, c.222 (C.52:27D-311), the techniques
24 whereby it proposes to provide realistic opportunity for provision of
25 its fair share of low and moderate income housing, include specific
26 provision for realizing the amount of units in community-residence
27 housing for the developmentally disabled to the extent of the
28 reservation so calculated.

29 c. In formulating that portion of its housing element which is
30 required pursuant to subsection b. of this section, a municipality shall
31 consult with the Division of Developmental Disabilities in the
32 Department of Human Services, to assure that the location,
33 construction, surroundings and other characteristics of the facilities
34 envisaged by that portion of the housing element are consonant with
35 the requirements of a community residential facility under P.L.1983,
36 c.524 (C.30:6D-13 et seq.) and the "Developmentally Disabled Rights
37 Act," P.L.1977, c.82 (C.30:6D-1 et seq.). On and after the effective
38 date of this act no municipal housing element which is required to
39 comply with subsection b. of this act shall be considered for
40 substantive certification by the Council on Affordable Housing unless
41 its provisions pursuant to that subsection have been approved by the
42 Commissioner of Human Services.

43
44 4. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to
45 read as follows:

46 11. a. In adopting its housing element, the municipality may

1 provide for its fair share of low and moderate income housing,
2 including the portion thereof reserved for community residences for
3 the developmentally disabled pursuant to P.L. , c. (C.) (now
4 pending in the Legislature as this bill), by means of any technique or
5 combination of techniques which provide a realistic opportunity for the
6 provision of the fair share. The housing element shall contain an
7 analysis demonstrating that it will provide such a realistic opportunity,
8 and the municipality shall establish that its land use and other relevant
9 ordinances have been revised to incorporate the provisions for low and
10 moderate income housing. In preparing the housing element, the
11 municipality shall consider the following techniques for providing low
12 and moderate income housing within the municipality, as well as such
13 other techniques as may be published by the council or proposed by
14 the municipality:

15 (1) Rezoning for densities necessary to assure the economic
16 viability of any inclusionary developments, either through mandatory
17 set-asides or density bonuses, as may be necessary to meet all or part
18 of the municipality's fair share;

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

21 (3) Determination of measures that the municipality will take to
22 assure that low and moderate income units remain affordable to low
23 and moderate income households for an appropriate period of not less
24 than six years;

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

28 (5) Donation or use of municipally owned land or land condemned
29 by the municipality for purposes of providing low and moderate
30 income housing;

31 (6) Tax abatements for purposes of providing low and moderate
32 income housing;

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

35 (8) Utilization of municipally generated funds toward the
36 construction of low and moderate income housing.

37 b. The municipality may provide for a phasing schedule for the
38 achievement of its fair share of low and moderate income housing
39 which is not inconsistent with section 23 of this act.

40 c. The municipality may propose that a portion of its fair share be
41 met through a regional contribution agreement. The housing element
42 shall demonstrate, however, the manner in which that portion will be
43 provided within the municipality if the regional contribution agreement
44 is not entered into. The municipality shall provide a statement of its
45 reasons for the proposal.

46 d. Nothing in this act shall require a municipality to raise or expend

1 municipal revenues in order to provide low and moderate income
2 housing.

3 (cf: P.L.1985, c.222, s.11)

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5 5. Section 1 of P.L.1978, c.159 (C.40:55D-66.1) is amended to
6 read as follows:

7 1. a. Community residences for the developmentally disabled and
8 community shelters for victims of domestic violence shall be a
9 permitted use in all residential districts of a municipality, and the
10 requirements therefor shall be the same as for single family dwelling
11 units located within such districts; provided, however, that, in the case
12 of a community residence for the developmentally disabled or
13 community shelter for victims of domestic violence housing more than
14 six persons, excluding resident staff, a zoning ordinance may require
15 for the use or conversion to use of a dwelling unit to such a
16 community residence or shelter, a conditional use permit in accordance
17 with section 54 of the act to which this act is a supplement
18 (C.40:55D-67).

19 b. Any requirements imposed for the issuance of a conditional use
20 permit shall be reasonably related to the health, safety and welfare of
21 the residents of the district; provided, however, that, except as
22 otherwise provided in subsection c. of this section, a municipality may
23 deny such a permit to any proposed community residence for the
24 developmentally disabled or community shelter for victims of domestic
25 violence which would be located within 1500 feet of an existing such
26 residence or shelter; provided further, however, that, except as
27 otherwise provided in subsection c. of this section, a municipality may
28 deny the issuance of any additional such permits if the number of
29 persons, other than resident staff, resident at existing such community
30 residences or community shelters within the municipality exceeds 50
31 persons, or 0.5% of the population of the municipality, whichever is
32 greater.

33 c. Nothing in subsection b. of this section shall be construed to
34 authorize denial of a permit for a community residence for the
35 developmentally disabled which is proposed to be established in
36 conformity with the requirements of P.L....., c..... (C.....) (now pending
37 in the Legislature as this bill) and forms a portion of a municipal
38 housing element that has received substantive certification by the
39 Council on Affordable Housing.

40 (cf: P.L.1979, c.338, s.2)

41

42 6. (New section) The Council on Affordable Housing is authorized
43 to make and promulgate, in accordance with the "Administrative
44 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) all rules and
45 regulations necessary or expedient to the effectuation of this act;
46 except that the Commissioner of Human Services is authorized in like

1 manner to make and promulgate all regulations required to implement
2 the consultation and approval process mandated by subsection c. of
3 section 3 of this act, and all regulations made by the Council on
4 Affordable Housing under authority of this section shall be consistent
5 with the regulations so made by the Commissioner of Human Services.
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7 7. This act shall take effect January 1, 1990, except that section 6
8 shall take effect immediately.
9

10 11 STATEMENT

12
13 This bill would require that 2 percent of a municipality's "fair share"
14 of low and moderate income housing as determined under the "Fair
15 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) be devoted to
16 community residences for the developmentally disabled. It excepts
17 those municipalities where 2 percent of the "fair share" is less than
18 four units.

19 The bill would require a municipality's housing element to include
20 specific provision for meeting its computed quota of such community
21 residential facilities as a part of its general plan for achieving its
22 overall fair share of housing affordable to persons and families of low
23 and moderate income. Since the process of calculating municipalities'
24 obligations under the Fair Housing Act, and of formulating and
25 certifying their plans for meeting those obligations, follows a six-year
26 cycle, this requirement would not immediately affect those
27 municipalities which have already achieved certification in the current
28 cycle. But it would apply immediately to a municipality that seeks
29 certification of its housing element by the Council on Affordable
30 Housing on and after January 1, 1990, the effective date of the bill.

31 To qualify as "affordable" housing under this bill, a proposed
32 community residence would have to be available for purchase or lease
33 by an operator approved by the Department of Human Services to
34 operate such a community residence. The cost of the property would
35 have to be low enough to permit the operator to accommodate the
36 residents at a cost within the range of affordability for a like number
37 of other low and moderate income persons in the housing region
38 where the residence is located. Computation of the costs of
39 accommodation would be independent of whether payment came from
40 the residents' own income or from outside gifts, grants or subsidies.

41 The bill further provides that certain limitations which
42 municipalities may ordinarily impose upon the number and location of
43 such residences under P.L.1978, c.159 (C.40:55D-66.1 et seq.) shall
44 not apply to community residences for the disabled that are established
45 pursuant to provisions of the municipality's housing element adopted
46 pursuant to the terms of this bill.

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3 Requires inclusion of community residences for the disabled in "fair
4 share" affordable housing plans.