

ASSEMBLY, No. 1471

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1996

By Assemblymen PASCARELL, Steele and R. Smith

1 AN ACT concerning regional contribution agreements for affordable  
2 housing obligations of municipalities and amending P.L.1985,  
3 c.222.

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

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8 1. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to  
9 read as follows:

10 12. a. A municipality may propose the transfer of up to 50[%]  
11 percent of its fair share to another municipality within its housing  
12 region by means of a contractual agreement into which two  
13 municipalities voluntarily enter. A municipality in which a historic  
14 district as defined pursuant to section 4 of P.L.1975, c.291 (C.40:55D-  
15 4) or in which an urban enterprise zone has been established pursuant  
16 to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303  
17 (C.52:27H-60 et seq.) is located may receive the transfer of up to 75  
18 percent of the fair share of another municipality within its housing  
19 region by means of a contractual agreement into which the two  
20 municipalities voluntarily enter. A municipality may also propose a  
21 transfer by contracting with the agency or another governmental entity  
22 designated by the council if the council determines that the  
23 municipality has exhausted all possibilities within its housing region.  
24 A municipality proposing to transfer to another municipality, whether  
25 directly or by means of a contract with the agency or another  
26 governmental entity designated by the council, shall provide the  
27 council with the housing element and statement required under  
28 subsection c. of section 11 of P.L.1985, c.222 (C.52:27D-311), and  
29 shall request the council to determine a match with a municipality  
30 filing a statement of intent pursuant to subsection e. of this section.  
31 Except as provided in subsection b. of this section, the agreement may  
32 be entered into upon obtaining substantive certification under section  
33 14 of P.L.1985, c.222 (C.52:27D-314), or anytime thereafter. The  
34 regional contribution agreement entered into shall specify how the

**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 housing shall be provided by the second municipality, hereinafter the  
2 receiving municipality, and the amount of contributions to be made by  
3 the first municipality, hereinafter the sending municipality.

4 b. A municipality which is a defendant in an exclusionary zoning  
5 suit and which has not obtained substantive certification pursuant to  
6 this act may request the court to be permitted to fulfill a portion of its  
7 fair share by entering into a regional contribution agreement. If the  
8 court believes the request to be reasonable, the court shall request the  
9 council to review the proposed agreement and to determine a match  
10 with a receiving municipality or municipalities pursuant to this section.  
11 The court may establish time limitations for the council's review, and  
12 shall retain jurisdiction over the matter during the period of council  
13 review. If the court determines that the agreement provides a realistic  
14 opportunity for the provision of low and moderate income housing  
15 within the housing region, it shall provide the sending municipality a  
16 credit against its fair share for housing to be provided through the  
17 agreement in the manner provided in this section.

18 The agreement shall be entered into prior to the entry of a final  
19 judgment in the litigation. In cases in which a final judgment was  
20 entered prior to the date this act takes effect and in which an appeal is  
21 pending, a municipality may request consideration of a regional  
22 contribution agreement; provided that it is entered into within 120  
23 days after this act takes effect. In a case in which a final judgment has  
24 been entered, the court shall consider whether or not the agreement  
25 constitutes an expeditious means of providing part of the fair share.

26 c. Regional contribution agreements shall be approved by the  
27 council, after review by the county planning board or agency of the  
28 county in which the receiving municipality is located. The council  
29 shall determine whether or not the agreement provides a realistic  
30 opportunity for the provision of low and moderate income housing  
31 within convenient access to employment opportunities. The council  
32 shall refer the agreement to the county planning board or agency which  
33 shall review whether or not the transfer agreement is in accordance  
34 with sound, comprehensive regional planning. In its review, the  
35 county planning board or agency shall consider the master plan and  
36 zoning ordinance of the sending and receiving municipalities, its own  
37 county master plan, and the State development and redevelopment  
38 plan. In the event that there is no county planning board or agency in  
39 the county in which the receiving municipality is located, the council  
40 shall also determine whether or not the agreement is in accordance  
41 with sound, comprehensive regional planning. After it has been  
42 determined that the agreement provides a realistic opportunity for low  
43 and moderate income housing within convenient access to employment  
44 opportunities, and that the agreement is consistent with sound,  
45 comprehensive regional planning, the council shall approve the  
46 regional contribution agreement by resolution. All determinations of

1 a county planning board or agency shall be in writing and shall be  
2 made within such time limits as the council may prescribe, beyond  
3 which the council shall make those determinations and no fee shall be  
4 paid to the county planning board or agency pursuant to this  
5 subsection.

6 d. In approving a regional contribution agreement, the council shall  
7 set forth in its resolution a schedule of the contributions to be  
8 appropriated annually by the sending municipality. A copy of the  
9 adopted resolution shall be filed promptly with the Director of the  
10 Division of Local Government Services in the Department of  
11 Community Affairs, and the director shall thereafter not approve an  
12 annual budget of a sending municipality if it does not include  
13 appropriations necessary to meet the terms of the resolution. Amounts  
14 appropriated by a sending municipality for a regional contribution  
15 agreement pursuant to this section are exempt from the limitations or  
16 increases in final appropriations imposed under P.L.1976, c.68  
17 (C.40A:4-45.1 et seq.).

18 e. The council shall maintain current lists of municipalities which  
19 have stated an intent to enter into regional contribution agreements as  
20 receiving municipalities, and shall establish procedures for filing  
21 statements of intent with the council. No receiving municipality shall  
22 be required to accept a greater number of low and moderate income  
23 units through an agreement than it has expressed a willingness to  
24 accept in its statement, but the number stated shall not be less than a  
25 reasonable minimum number of units, not to exceed 100, as established  
26 by the council. The council shall require a project plan from a  
27 receiving municipality prior to the entering into of the agreement, and  
28 shall submit the project plan to the agency for its review as to the  
29 feasibility of the plan prior to the council's approval of the agreement.  
30 The agency may recommend and the council may approve as part of  
31 the project plan a provision that the time limitations for contractual  
32 guarantees or resale controls for low and moderate income units  
33 included in the project shall be less than 30 years, if it is determined  
34 that modification is necessary to assure the economic viability of the  
35 project.

36 f. The council shall establish guidelines for the duration and  
37 amount of contributions in regional contribution agreements. In doing  
38 so, the council shall give substantial consideration to the average of:  
39 (1) the median amount required to rehabilitate a low and moderate  
40 income unit up to code enforcement standards; (2) the average internal  
41 subsidization required for a developer to provide a low income  
42 housing unit in an inclusionary development; (3) the average internal  
43 subsidization required for a developer to provide a moderate income  
44 housing unit in an inclusionary development. Contributions may be  
45 prorated in municipal appropriations occurring over a period not to  
46 exceed six years and may include an amount agreed upon to

1 compensate or partially compensate the receiving municipality for  
2 infrastructure or other costs generated to the receiving municipality by  
3 the development. Appropriations shall be made and paid directly to  
4 the receiving municipality or municipalities or to the agency or other  
5 governmental entity designated by the council, as the case may be.

6 g. The council shall require receiving municipalities to file annual  
7 reports with the agency setting forth the progress in implementing a  
8 project funded under a regional contribution agreement, and the  
9 agency shall provide the council with its evaluation of each report.  
10 The council shall take such actions as may be necessary to enforce a  
11 regional contribution agreement with respect to the timely  
12 implementation of the project by the receiving municipality.  
13 (cf: P.L.1995, c.83, s 2).

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15 2. This act shall take effect immediately.

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#### STATEMENT

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20 This bill would permit certain municipalities to satisfy their fair  
21 share affordable housing obligation pursuant to the Fair Housing Act,  
22 P.L.1985, c.222, by entering into regional contribution agreements  
23 allowing a transfer of up to 75 percent of the fair share obligation to  
24 other municipalities in the same region. Current law permits a transfer  
25 of up to 50 percent of the fair share obligation. The bill would allow  
26 municipalities in which historic districts or urban enterprise zones have  
27 been established to enter into agreements to receive up to 75 percent  
28 of another municipality's housing obligation.

29 By increasing the percentage of the obligation allowed to be  
30 transferred to these cities, the bill will encourage economic growth and  
31 job opportunities where there is still a need for affordable housing, and  
32 an equal, if not greater, need for the funding that these cities would  
33 receive by taking a bigger share of other municipalities' obligations.

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38 Increases from 50 percent to 75 percent the amount of fair share  
39 housing obligation that may be transferred for certain regional  
40 contribution agreements.