

ASSEMBLY, No. 2176

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

**By Assemblywoman MYERS, Assemblymen GREGG,
Weingarten, O'Toole, Assemblywoman Bark, Assemblymen
DeCroce, Garrett, Bodine, Assemblywoman J. Smith,
Assemblymen Bucco, Arnone, Kramer, Assemblywoman
Murphy, Assemblymen Cottrell, T. Smith and Carroll**

1 **AN ACT** concerning affordable housing, amending P.L.1976, c.68,
2 P.L.1979, c.275, P.L.1989, c.142, P.L.1992, c.82, and P.L.1995,
3 c.231 and amending and supplementing P.L.1985, c.222.

4

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

7

8 1. Section 2 of P.L.1985, c.222 (C.52:27D-302) is amended to
9 read as follows:

10 2. The Legislature finds that:

11 a. [The New Jersey Supreme Court, through its rulings in South
12 Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975) and
13 South Burlington County NAACP v. Mount Laurel, 92 N.J. 158
14 (1983), has determined that every municipality in a growth area has a
15 constitutional obligation to provide through its land use regulations a
16 realistic opportunity for a fair share of its region's present and
17 prospective needs for housing for low and moderate income families.

18 b. In the second Mount Laurel ruling, the Supreme Court stated
19 that the determination of the methods for satisfying this constitutional
20 obligation "is better left to the Legislature," that the court has "always
21 preferred legislative to judicial action in their field," and that the
22 judicial role in upholding the Mount Laurel doctrine "could decrease
23 as a result of legislative and executive action."

24 c. The interest of all citizens, including low and moderate income
25 families in need of affordable housing, would be best served by a
26 comprehensive planning and implementation response to this
27 constitutional obligation.

28 d. There are a number of essential ingredients to a comprehensive
29 planning and implementation response, including the establishment of
30 reasonable fair share housing guidelines and standards, the initial

**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 determination of fair share by officials at the municipal level and the
2 preparation of a municipal housing element, State review of the local
3 fair share study and housing element, and continuous State funding for
4 low and moderate income housing to replace the federal housing
5 subsidy programs which have been almost completely eliminated.

6 e. The State can maximize the number of low and moderate income
7 units provided in New Jersey by allowing its municipalities to adopt
8 appropriate phasing schedules for meeting their fair share, so long as
9 the municipalities permit a timely achievement of an appropriate fair
10 share of the regional need for low and moderate income housing as
11 required by the Mt. Laurel I and II opinions.

12 f. The State can also maximize the number of low and moderate
13 income units by rehabilitating existing, but substandard, housing in the
14 State, and, in order to achieve this end, it is appropriate to permit the
15 transfer of a limited portion of the fair share obligations among
16 municipalities in a housing region, so long as the transfer occurs on the
17 basis of sound, comprehensive planning, with regard to an adequate
18 housing financing plan, and in relation to the access of low and
19 moderate income households to employment opportunities.

20 g.] It is in the best interests of the State to provide for
21 municipalities to provide comprehensive planning and the preparation
22 of a municipal housing element to ensure a realistic opportunity for
23 affordable housing.

24 b. New Jersey is richly diverse. Since the urban areas are vitally
25 important to the State, construction, conversion and rehabilitation of
26 housing in our urban centers should be encouraged. [However, the
27 provision of housing in urban areas must be balanced with the need to
28 provide housing throughout the State for the free mobility of
29 citizens.]Since agricultural and environmentally sensitive areas and
30 open space are equally important to the State, it is inappropriate for
31 the Legislature to encourage housing in these areas when they lack
32 supporting infrastructure and easy access to employment centers.

33 [h.] c. The Supreme Court of New Jersey in its Mount Laurel
34 decisions demands that municipal land use regulations affirmatively
35 afford a reasonable opportunity for a variety and choice of housing
36 including low and moderate cost housing, to meet the needs of people
37 [desiring to] that live and work there. While provision for the actual
38 construction of that housing by municipalities is not required, they are
39 encouraged but not mandated to expend their own resources to help
40 provide low and moderate income housing.

41 (cf: P.L.1985, c.222, s.2)

42

43 2. Section 3 of P.L.1985, c.222 (C.52:27D-303) is amended to
44 read as follows:

45 3. The Legislature declares that the statutory scheme set forth in
46 this act is in the public interest in that it comprehends a low and

1 moderate income housing planning and financing mechanism in
2 accordance with regional considerations and sound planning concepts
3 which satisfies the constitutional obligation enunciated by the Supreme
4 Court. The Legislature declares that the State's preference for the
5 resolution of existing and future disputes involving exclusionary
6 zoning is the mediation and review process set forth in this act and not
7 litigation, and that it is the intention of this act to provide various
8 alternatives to the use of the builder's remedy as a method of achieving
9 [fair share] housing.

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

11

12 3. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
13 read as follows:

14 4. As used in this act:

15 a. "Council" means the Council on Affordable Housing established
16 in this act, which shall have primary jurisdiction for the administration
17 of housing obligations in accordance with sound regional planning
18 considerations in this State.

19 b. "Housing region" means a geographic area of not less than two
20 nor more than four contiguous, whole counties which exhibit
21 significant social, economic and income similarities, and which
22 constitute to the greatest extent practicable the primary metropolitan
23 statistical areas as last defined by the United States Census Bureau
24 prior to the effective date of this act.

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

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

39 e. ["Resolution of participation" means a resolution adopted by a
40 municipality in which the municipality chooses to prepare a fair share
41 plan and housing element in accordance with this act.

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

1 [g.] f. "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 units
4 are provided for a reasonable income range of low and moderate
5 income households.

6 [h.] g. "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.] h. "Agency" means the New Jersey Mortgage and Housing
10 Finance Agency established by P.L. 1983, c. 530 (C. 55:14K-1 et
11 seq.).

12 [j.] i. "Prospective need" means a projection of housing needs
13 based on development and growth which is reasonably likely to occur
14 in a region or a municipality, as the case may be, as a result of actual
15 determination of public and private entities. In determining
16 prospective need, consideration shall be given to approvals of
17 development applications, real property transfers and economic
18 projections prepared by the State Planning Commission established by
19 sections 1 through 12 of P.L. 1985, c. 398 (C. 52:18A-196 et seq.).
20 (cf: P.L.1985, c.222, s.4)

21

22 4. Section 5 of P.L. 1985, c.222 (C.52:27D-305) is amended to
23 read as follows:

24 5. a. There is established in, but not of, the Department of
25 Community Affairs a Council on Affordable Housing to consist of [11]
26 13 members appointed by the Governor with the advice and consent
27 of the Senate, of whom [four]five shall be elected officials
28 representing the interests of local government, at least one of whom
29 shall be representative of an urban municipality having a population in
30 excess of 40,000 persons and a population density in excess of 3,000
31 persons per square mile, at least one of whom shall be representative
32 of a municipality having a population of 40,000 persons or less and a
33 population density of 3,000 persons per square mile or less, at least
34 one of whom shall be representative of a rural municipality, and no
35 more than one of whom may be a representative of the interests of
36 county government; three shall represent the interests of households
37 in need of low and moderate housing, one of whom shall represent the
38 interests of the nonprofit builders of low and moderate income
39 housing, and shall have an expertise in land use practices and housing
40 issues, one of whom shall be the Commissioner of Community Affairs,
41 ex officio, or his or her designee, who shall serve as chairperson and
42 one of whom shall be the executive director of the agency, serving ex
43 officio; one shall represent the interests of the for-profit builders of
44 market rate homes, and shall have an expertise in land use practices
45 and housing issues; and [three]four shall represent the public interest.
46 Not more than [six]seven of the [11] 13 shall be members of the same

1 political party. The membership shall be balanced to the greatest extent
2 practicable among the various housing regions of the State.

3 b. The members shall serve for terms of six years, except that of
4 the members first appointed, two shall serve for terms of four years,
5 three for terms of five years, and three for terms of six years. Both
6 members appointed pursuant to subsection a. of this section, as
7 amended by P.L. c. (C.) (pending before the Legislature as this
8 bill) shall be appointed for a term of six years. All members shall serve
9 until their respective successors are appointed and shall have qualified.
10 Notwithstanding the above, a member appointed to represent the
11 interests of local government shall serve only such length of the term
12 for which appointed as the member continues to hold elected local
13 office, except that the term of a member so appointed shall not become
14 vacant until 60 days after the member ceases to hold that elected
15 office. Vacancies shall be filled in the same manner as the original
16 appointments, but for the remainders of the unexpired terms only.

17 c. The members, excluding the executive director of the agency and
18 the Commissioner of Community Affairs, shall be compensated at the
19 rate of \$150.00 for each six-hour day, or prorated portion thereof for
20 more or less than six hours, spent in attendance at meetings and
21 consultations and all members shall be eligible for reimbursement for
22 necessary expenses incurred in connection with the discharge of their
23 duties.

24 d. The Governor shall nominate the members within 30 days of the
25 effective date of this act and shall designate a member to serve as
26 chairman throughout the member's term of office and until his
27 successor shall have been appointed and qualified.

28 e. Any member may be removed from office for misconduct in
29 office, willful neglect of duty, or other conduct evidencing unfitness
30 for the office, or for incompetence. A proceeding for removal may be
31 instituted by the Attorney General in the Superior Court. A member
32 or employee of the council shall automatically forfeit his office or
33 employment upon conviction of any crime. Any member or employee
34 of the council shall be subject to the duty to appear and testify and to
35 removal from his office or employment in accordance with the
36 provisions of P.L.1970, c.72 (C.2A:81-17.2a et seq.).

37 (cf: P.L.1995, c.83, s.1)

38

39 5. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
40 read as follows:

41 7. It shall be the duty of the council, seven months after the
42 confirmation of the last member initially appointed to the council, or
43 January 1, 1986, whichever is earlier, and from time to time thereafter,
44 to:

45 a. Determine housing regions of the State;
46 b. Estimate the present and prospective need for low and moderate

1 income housing at the State and regional levels;

2 c. Adopt criteria and guidelines for:

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

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

43 (2) Municipal adjustment of the present and prospective [fair
44 share] need based upon available vacant and developable land,
45 infrastructure considerations or environmental or historic preservation
46 factors and adjustments shall be made whenever:

- 1 (a) The preservation of historically or important architecture and
2 sites and their environs or environmentally sensitive lands may be
3 jeopardized,
- 4 (b) The established pattern of development in the community
5 would be drastically altered,
- 6 (c) Adequate land for recreational, conservation or agricultural and
7 farmland preservation purposes would not be provided,
- 8 (d) Adequate open space would not be provided,
- 9 (e) The pattern of development is contrary to the planning
10 designations in the State Development and Redevelopment Plan
11 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
12 (C.52:18A-196 et seq.),
- 13 (f) Vacant and developable land is not available in the municipality,
14 and
- 15 (g) Adequate public facilities and infrastructure capacities are not
16 available, or would result in costs prohibitive to the public if provided;
17 and
- 18 (3) (Deleted by amendment, P.L.1993, c.31);
- 19 d. Provide population and household projections for the State and
20 housing regions;
- 21 e. In its discretion, place a limit, based on a percentage of existing
22 housing stock in a municipality and any other criteria including
23 employment opportunities which the council deems appropriate, upon
24 the aggregate number of units which may be allocated to a
25 municipality [as its fair share of the region's present and prospective
26 need for low and moderate income housing]. No municipality shall be
27 required to address a [fair share] need beyond 1,000 units within six
28 years from the grant of substantive certification, unless it is
29 demonstrated, following objection by an interested party and an
30 evidentiary hearing, based upon the facts and circumstances of the
31 affected municipality that it is likely that the municipality through its
32 zoning powers could create a realistic opportunity for more than 1,000
33 low and moderate income units within that six-year period. For the
34 purposes of this section, the facts and circumstances which shall
35 determine whether a municipality's [fair share] need shall exceed 1,000
36 units, as provided above, shall be a finding that the municipality has
37 issued more than 5,000 certificates of occupancy for residential units
38 in the six-year period preceding the petition for substantive
39 certification in connection with which the objection was filed.
- 40 For the purpose of crediting low and moderate income housing
41 units in order to arrive at a determination of present and prospective
42 [fair share] need, as set forth in paragraph (1) of subsection c. of this
43 section, housing units comprised in a community residence for the
44 developmentally disabled, as defined in section 2 of P.L.1977, c.448
45 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or
46 to be promulgated by the council, to the extent that the units are

1 affordable to persons of low and moderate income and are available to
2 the general public.

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

16 (cf: P.L.1995, c.344, s.1)

17

18 6. Section 9 of P.L.1985, c.222 (C.52:27D-309) is amended to
19 read as follows:

20 9. a. Within four months after the effective date of this act, each
21 municipality which so elects shall[, by a duly adopted resolution of
22 participation,] notify the council of its intent to submit to the council
23 its [fair share] housing plan. Within five months after the council's
24 adoption of its criteria and guidelines, the municipality shall prepare
25 and file with the council a housing element, based on the council's
26 criteria and guidelines, and any [fair share] housing ordinance
27 introduced and given first reading and second reading in a hearing
28 pursuant to R.S. 40:49-2 which implements the housing element.

29 b. A municipality which does not notify the council of its
30 participation within four months may do so at any time thereafter. In
31 any exclusionary zoning litigation instituted against such a
32 municipality, however, there shall be no exhaustion of administrative
33 remedy requirements pursuant to section 16 of this act unless the
34 municipality also files its [fair share] plan and housing element with the
35 council prior to the institution of the litigation.

36 (cf: P.L.1985, c.222, s.9)

37

38 7. Section 10 of P.L.1985, c.222 (C.52:27D-310) is amended to
39 read as follows:

40 10. A municipality's housing element shall be designed to achieve
41 the goal of access to affordable housing to meet present [and
42 prospective] housing needs, with particular attention to low and
43 moderate income housing, and shall contain at least:

44 a. An inventory of the municipality's housing stock by age,
45 condition, purchase or rental value, occupancy characteristics, and
46 type, including the number of units affordable to low and moderate

1 income households and substandard housing capable of being
2 rehabilitated, and in conducting this inventory the municipality shall
3 have access, on a confidential basis for the sole purpose of conducting
4 the inventory, to all necessary property tax assessment records and
5 information in the assessor's office, including but not limited to the
6 property record cards;

7 b. A projection of the municipality's housing stock, including the
8 probable future construction of low and moderate income housing, for
9 the next six years, taking into account, but not necessarily limited to,
10 construction permits issued, approvals of applications for development
11 and probable residential development of lands;

12 c. An analysis of the municipality's demographic characteristics,
13 including but not necessarily limited to, household size, income level
14 and age;

15 d. An analysis of the existing and probable future employment
16 characteristics of the municipality;

17 e. A determination of the municipality's present and prospective
18 [fair share] need for low and moderate income housing and its capacity
19 to accommodate its present and prospective housing needs[, including
20 its fair share for low and moderate income housing]; and

21 f. A consideration of the lands that are most appropriate for
22 construction of low and moderate income housing and of the existing
23 structures most appropriate for conversion to, or rehabilitation for,
24 low and moderate income housing, including a consideration of lands
25 of developers who have expressed a commitment to provide low and
26 moderate income housing.

27 (cf: P.L.1985, c.222, s.10)

28

29 8. Section 1 of P.L.1995, c.231 (C.52:27D-310.1) is amended to
30 read as follows:

31 1. When computing a municipal adjustment regarding available
32 land resources as part of the determination of a municipality's [fair
33 share of] affordable housing need, the Council on Affordable Housing
34 shall exclude from designating as vacant land any land listed on a
35 master plan of a municipality as being dedicated, by easement or
36 otherwise, for purposes of conservation, park lands or open space and
37 which is owned by a county, municipality or tax-exempt, nonprofit
38 organization.

39 (cf: P.L.1995, c.231, s.1)

40

41 9. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to
42 read as follows:

43 11. a. In adopting its housing element, the municipality may
44 provide for its [fair share of] low and moderate income housing need
45 by means of any technique or combination of techniques which provide
46 a realistic opportunity for the provision of [the fair share] that need.

1 The housing element shall contain an analysis demonstrating that it will
2 provide such a realistic opportunity, and the municipality shall
3 establish that its land use and other relevant ordinances have been
4 revised to incorporate the provisions for low and moderate income
5 housing. In preparing the housing element, the municipality shall
6 consider the following techniques for providing low and moderate
7 income housing within the municipality, as well as such other
8 techniques as may be published by the council or proposed by the
9 municipality:

10 (1) Rezoning for densities necessary to assure the economic
11 viability of any inclusionary developments, either through mandatory
12 set-asides or density bonuses, as may be necessary to meet all or part
13 of the municipality's [fair share] need;

14 (2) Determination of the total residential zoning necessary to
15 assure that the municipality's [fair share] housing need is achieved;

16 (3) Determination of measures that the municipality will take to
17 assure that low and moderate income units remain affordable to low
18 and moderate income households for an appropriate period of not less
19 than six years;

20 (4) A plan for infrastructure expansion and rehabilitation if
21 necessary to assure the achievement of the municipality's [fair share
22 of] need for low and moderate income housing;

23 (5) Donation or use of municipally owned land or land condemned
24 by the municipality for purposes of providing low and moderate
25 income housing;

26 (6) Tax abatements for purposes of providing low and moderate
27 income housing;

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

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

32 b. The municipality may provide for a phasing schedule for the
33 achievement of its [fair share of] low and moderate income housing
34 need which is not inconsistent with section 23 of this act.

35 c. The municipality may propose that a portion of its [fair share]
36 housing need be met through a regional contribution agreement. The
37 housing element shall demonstrate, however, the manner in which that
38 portion will be provided within the municipality if the regional
39 contribution agreement is not entered into. The municipality shall
40 provide a statement of its reasons for the proposal.

41 d. Nothing in this act shall require a municipality to raise or expend
42 municipal revenues in order to provide low and moderate income
43 housing.

44 e. When a municipality's housing element includes the provision of
45 rental housing units in a community residence for the developmentally
46 disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2),

1 which will be affordable to persons of low and moderate income, and
2 for which adequate measures to retain such affordability pursuant to
3 paragraph (3) of subsection a. of this section are included in the
4 housing element, those housing units shall be fully credited as
5 permitted under the rules of the council towards the fulfillment of the
6 municipality's [fair share of] low and moderate income housing need.
7 (cf: P.L.1995, c.344, s.2)

8

9 10. Section 1 of P.L.1989, c.142 (C.52:27D-311.1) is amended to
10 read as follows:

11 1. Nothing in the act to which this act is supplementary, P.L.1985,
12 c.222 (C.52:27D-301 et al.), shall be construed to require that a
13 municipality fulfill all or any portion of its [fair share] housing
14 obligation through permitting the development or redevelopment of
15 property within the municipality on which is located a residential
16 structure which has not been declared unfit, or which was within the
17 previous three years negligently or willfully rendered unfit, for human
18 occupancy or use pursuant to P.L.1942, c.112 (C.40:48-2.3 et seq.),
19 and which is situated on a lot of less than two acres of land or on a lot
20 formed by merging two or more such lots, if the development or
21 redevelopment would require the demolition of that structure. Any
22 action heretofore taken by the Council on Affordable Housing based
23 upon such a construction of P.L.1985, c.222 is invalidated.

24 (cf: P.L.1989, c.142, s.1)

25

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

28 12. a. A municipality may propose the transfer of [up to 50% of
29 its fair share] its obligation to provide affordable housing opportunities
30 to another municipality within its housing region by means of a
31 contractual agreement into which two municipalities voluntarily enter.
32 A municipality may also propose a transfer by contracting with the
33 agency or another governmental entity designated by the council if the
34 council determines that the municipality has exhausted all possibilities
35 within its housing region. A municipality proposing to transfer to
36 another municipality, whether directly or by means of a contract with
37 the agency or another governmental entity designated by the council,
38 shall provide the council with the housing element and statement
39 required under subsection c. of section 11 of P.L.1985, c.222
40 (C.52:27D-311), and shall request the council to determine a match
41 with a municipality filing a statement of intent pursuant to subsection
42 e. of this section. Except as provided in subsection b. of this section,
43 the agreement may be entered into upon obtaining substantive
44 certification under section 14 of P.L.1985, c.222 (C.52:27D-314), or
45 anytime thereafter. The regional contribution agreement entered into
46 shall specify how the housing shall be provided by the second

1 municipality, hereinafter the receiving municipality, and the amount of
2 contributions to be made by the first municipality, hereinafter the
3 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] housing need by entering into a regional contribution
8 agreement. If the court believes the request to be reasonable, the
9 court shall request the council to review the proposed agreement and
10 to determine a match with a receiving municipality or municipalities
11 pursuant to this section. The court may establish time limitations for
12 the council's review, and shall retain jurisdiction over the matter during
13 the period of council review. If the court determines that the
14 agreement provides a realistic opportunity for the provision of low and
15 moderate income housing within the housing region, it shall provide
16 the sending municipality a credit against its [fair share for] housing
17 obligation to be provided through the agreement in the manner
18 provided in this section.

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

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

1 comprehensive regional planning, the council shall approve the
2 regional contribution agreement by resolution. All determinations of
3 a county planning board or agency shall be in writing and shall be
4 made within such time limits as the council may prescribe, beyond
5 which the council shall make those determinations and no fee shall be
6 paid to the county planning board or agency pursuant to this
7 subsection.

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

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

38 f. The council shall establish guidelines for the duration and
39 amount of contributions in regional contribution agreements. In doing
40 so, the council shall give substantial consideration to the average of:
41 (1) the median amount required to rehabilitate a low and moderate
42 income unit up to code enforcement standards; (2) the average internal
43 subsidization required for a developer to provide a low income
44 housing unit in an inclusionary development; (3) the average internal
45 subsidization required for a developer to provide a moderate income
46 housing unit in an inclusionary development. Contributions may be

1 prorated in municipal appropriations occurring over a period not to
2 exceed six years and may include an amount agreed upon to
3 compensate or partially compensate the receiving municipality for
4 infrastructure or other costs generated to the receiving municipality by
5 the development. Appropriations shall be made and paid directly to
6 the receiving municipality or municipalities or to the agency or other
7 governmental entity designated by the council, as the case may be.

8 g. The council shall require receiving municipalities to file annual
9 reports with the agency setting forth the progress in implementing a
10 project funded under a regional contribution agreement, and the
11 agency shall provide the council with its evaluation of each report.
12 The council shall take such actions as may be necessary to enforce a
13 regional contribution agreement with respect to the timely
14 implementation of the project by the receiving municipality.

15 (cf: P.L.1995, c.83, s.2)

16

17 12. Section 14 of P.L.1985, c.222 (C.52:27D-314) is amended to
18 read as follows:

19 14. Unless an objection to the substantive certification is filed with
20 the council by any person within 45 days of the publication of the
21 notice of the municipality's petition, the council shall review the
22 petition and shall issue a substantive certification if it shall find that:

23 a. The municipality's [fair share] plan is consistent with the rules
24 and criteria adopted by the council and not inconsistent with
25 achievement of the low and moderate income housing needs [of the
26 region] as adjusted pursuant to the council's criteria and guidelines
27 adopted pursuant to subsection c. of section 7 of this act; and

28 b. The combination of the elimination of unnecessary housing
29 cost-generating features from the municipal land use ordinances and
30 regulations, and the affirmative measures in the housing element and
31 implementation plan make the achievement of the municipality's [fair
32 share of] low and moderate income housing obligation realistically
33 possible after allowing for the implementation of any regional
34 contribution agreement approved by the council.

35 In conducting its review, the council may meet with the
36 municipality and may deny the petition or condition its certification
37 upon changes in the element or ordinances. Any denial or conditions
38 for approval shall be in writing and shall set forth the reasons for the
39 denial or conditions. If, within 60 days of the council's denial or
40 conditional approval, the municipality refiles its petition with changes
41 satisfactory to the council, the council shall issue a substantive
42 certification.

43 Once substantive certification is granted, the municipality shall have
44 45 days in which to adopt its [fair share] housing ordinance approved
45 by the council.

46 (cf: P.L.1985, c.222, s.14)

1 13. Section 16 of P.L.1985, c.222 (C.52:27D-316) is amended to
2 read as follows:

3 16. For those exclusionary zoning cases instituted more than 60
4 days before the effective date of this act, any party to the litigation
5 may file a motion with the court to seek a transfer of the case to the
6 council. In determining whether or not to transfer, the court shall
7 consider whether or not the transfer would result in a manifest
8 injustice to any party to the litigation. If the municipality fails to file
9 a housing element and [fair share] plan with the council within five
10 months from the date of transfer, or promulgation of criteria and
11 guidelines by the council pursuant to section 7 of this act, whichever
12 occurs later, jurisdiction shall revert to the court.

13 b. Any person who institutes litigation less than 60 days before the
14 effective date of this act or after the effective date of this act
15 challenging a municipality's zoning ordinance with respect to the
16 opportunity to provide for low or moderate income housing, shall file
17 a notice to request review and mediation with the council pursuant to
18 sections 14 and 15 of this act. In the event that the municipality
19 [adopts a resolution of participation] notifies the council within the
20 period established in subsection a. of section 9 of this act, the person
21 shall exhaust the review and mediation process of the council before
22 being entitled to a trial on his complaint.

23 (cf: P.L.1985, c.222, s.16)

24

25 14. Section 3 of P.L.1979, c.275 (40:37A-108) is amended to read
26 as follows:

27 3. a. The authority, for the purpose of carrying out the purposes
28 of this act, may:

29 `(1) Accept from qualified housing sponsors applications for loans;
30 (2) Enter into agreements with qualified housing sponsors for
31 permanent loans and temporary loans or advances in anticipation of
32 such permanent loans for the construction or rehabilitation of housing
33 projects;

34 (3) Make permanent loans and temporary loans or advances in
35 anticipation of such permanent loans to qualified housing sponsors
36 under the provisions of this act;

37 (4) Enter into lease, loan, mortgage, security or any other type of
38 agreements with other agencies or instrumentalities of the State or any
39 political subdivisions of the State for the purpose of providing loans
40 and other financial assistance in order to promote housing projects in
41 any municipality, including, without limitation, agreements to purchase
42 bonds, notes or other debt obligations issued by municipalities and
43 lease, loan, mortgage, security or any other type of agreements to be
44 entered into by municipalities in order to finance a [fair share] housing
45 obligation pursuant to P.L.1985, c.222 (C.52:27D-301 et al.). The
46 period of usefulness in which such municipal debt obligations or such

1 agreements must mature shall, notwithstanding any provision of law
2 to the contrary, be based on the reasonable life of such housing
3 projects directly or indirectly financed with such municipal debt
4 obligations or such agreements, but in no event shall the period of
5 usefulness be less than the minimum established under the "Fair
6 Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.); and

7 (5) Prepare, carry out, acquire, own, lease and operate housing
8 projects and provide for the construction, reconstruction,
9 improvement, alteration or repair of those housing projects, and to
10 lease or rent any dwellings, accommodations, lands, buildings,
11 structures or other facilities comprising a housing project, subject to
12 the limitations of this act.

13 b. No application for a loan for the construction or rehabilitation
14 of a housing project to be located in any municipality shall be
15 processed unless there shall be filed with the secretary of the authority
16 prior to such application a certified copy of a resolution adopted by
17 said municipality reciting that there is a need for low and moderate
18 income housing projects in said municipality.

19 (cf: P.L.1994, c.31, s.1)

20

21 15. Section 4 of P.L.1992, c.82 (40:55D-133) is amended to read
22 as follows:

23 4. a. For any government approval which expired or is scheduled
24 to expire during the economic emergency, that approval is
25 automatically extended until December 31, 1996, except as otherwise
26 provided hereunder. Nothing in this act shall prohibit the granting of
27 such additional extensions as are provided by law when the extensions
28 granted by this act shall expire.

29 b. Nothing in this act shall be deemed to extend or purport to
30 extend any permit issued by the government of the United States or
31 any agency or instrumentality thereof, or to any permit by whatever
32 authority issued of which the duration of effect or the date or terms of
33 its expiration are specified or determined by or pursuant to law or
34 regulation of the federal government or any of its agencies or
35 instrumentalities.

36 c. Nothing in this act shall be deemed to extend any permit or
37 approval issued pursuant to the "Pinelands Protection Act," P.L.1979,
38 c.111 (C.13:18A-1 et seq.) if the extension would result in a violation
39 of federal law, or any State rule or regulation requiring approval by
40 the Secretary of the Interior pursuant to Pub.L.95-625 (16 U.S.C. 471
41 (i)).

42 d. This act shall not affect any administrative consent order issued
43 by the Department of Environmental Protection in effect or issued
44 during the period of the economic emergency, nor shall it be construed
45 to extend any approval in connection with a resource recovery facility
46 as defined in section 2 of P.L.1985, c.38 (C.13:1E-137).

1 e. In the event that any permit extended pursuant to the "Permit
2 Extension Act," P.L.1992, c.82 (C.40:55D-130 et seq.) was based
3 upon the connection to a sanitary sewer system, the permit's extension
4 shall be contingent upon the availability of sufficient capacity, on the
5 part of the treatment facility, to accommodate the development whose
6 approval has been extended. If sufficient capacity is not available,
7 those permit holders whose permits have been extended shall have
8 priority with regard to the further allocation of gallonage over those
9 permit holders who have not received approval of a hookup prior to
10 the enactment of the "Permit Extension Act." Priority regarding the
11 distribution of further gallonage to any permit holder who has received
12 the extension of a permit pursuant to the "Permit Extension Act" shall
13 be allocated in order of the granting of the original approval of the
14 connection.

15 f. This act shall not extend any approval issued under the
16 "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) in
17 connection with an application for development involving a residential
18 use where, subsequent to the expiration of the permit but prior to
19 January 1, 1992, an amendment has been adopted to the master plan
20 and the zoning ordinance to rezone the property to industrial or
21 commercial use when the permit was issued for residential use.

22 g. In the case of any approval issued under the "Municipal Land
23 Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) which is extended
24 pursuant to P.L.1992, c.82 (C.40:55D-130 et seq.), a municipality may
25 disapprove such an extension of approval for the period beyond
26 January 1, 1996, if, subsequent to January 1, 1992, but prior to July
27 1, 1994, an amendment has been adopted to the master plan and the
28 zoning ordinance to change the use of the property for which the
29 approval was issued to a use different from the use for which the
30 approval was issued. A municipal disapproval pursuant to this
31 subsection shall be made prior to June 30, 1995.

32 h. Nothing in this act shall be deemed to extend any permit issued
33 pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185
34 (C.13:19-1 et seq.) that expires after December 31, 1994 but prior to
35 January 1, 1997, if the permit was issued for a development located in
36 the coastal area, as defined pursuant to section 4 of P.L.1973, c.185
37 (C.13:19-4), between the mean high water line of any tidal waters or
38 the landward limit of a beach or dune, whichever is most landward,
39 and a point 150 feet landward of the mean high water line of any tidal
40 waters or the landward limit of a beach or dune, whichever is most
41 landward.

42 i. This act shall not affect the terms or expiration date of any
43 stipulation of settlement that was made or entered into during the
44 economic emergency, provided that the stipulation of settlement
45 involves a development which received preliminary major subdivision
46 approval prior to January 1, 1979 in a municipality that has adopted

1 a zoning change affecting the lot size and density of the development
2 which is the subject of the stipulation of settlement after the date of
3 the preliminary or final subdivision approval of that development, and
4 provided further that the stipulation of settlement does not affect any
5 housing constructed or rehabilitated in fulfillment of a [fair share]
6 housing plan adopted pursuant to P.L.1985, c.222 (C.52:27D-301 et
7 al.).

8 (cf: P.L.1995, c.341, s.1)

9

10 16. Section 3 of P.L.1976, c.68 (40A:4-45.3) is amended to read
11 as follows:

12 3. In the preparation of its budget a municipality shall limit any
13 increase in said budget to 5% or the index rate, whichever is less, over
14 the previous year's final appropriations subject to the following
15 exceptions:

16 a. (Deleted by amendment, P.L.1990, c.89.)

17 b. Capital expenditures, including appropriations for current capital
18 expenditures, whether in the capital improvement fund or as a
19 component of a line item elsewhere in the budget, provided that any
20 such current capital expenditure would be otherwise bondable under
21 the requirements of N.J.S.40A:2-21 and 40A:2-22;

22 c. (1) An increase based upon emergency temporary appropriations
23 made pursuant to N.J.S.40A:4-20 to meet an urgent situation or event
24 which immediately endangers the health, safety or property of the
25 residents of the municipality, and over which the governing body had
26 no control and for which it could not plan and emergency
27 appropriations made pursuant to N.J.S.40A:4-46. Emergency
28 temporary appropriations and emergency appropriations shall be
29 approved by at least two-thirds of the governing body and by the
30 Director of the Division of Local Government Services, and shall not
31 exceed in the aggregate 3% of the previous year's final current
32 operating appropriations.

33 (2) (Deleted by amendment, P.L.1990, c.89.)

34 The approval procedure in this subsection shall not apply to
35 appropriations adopted for a purpose referred to in subsection d. or j.
36 below;

37 d. All debt service, including that of a Type I school district;

38 e. Upon the approval of the Local Finance Board in the Division
39 of Local Government Services, amounts required for funding a
40 preceding year's deficit;

41 f. Amounts reserved for uncollected taxes;

42 g. (Deleted by amendment, P.L.1990, c.89.)

43 h. Expenditure of amounts derived from new or increased
44 construction, housing, health or fire safety inspection or other service
45 fees imposed by State law, rule or regulation or by local ordinance;

46 i. Any amount approved by any referendum;

1 j. Amounts required to be paid pursuant to (1) any contract with
2 respect to use, service or provision of any project, facility or public
3 improvement for water, sewerage, parking, senior citizen housing or
4 any similar purpose, or payments on account of debt service therefor,
5 between a municipality and any other municipality, county, school or
6 other district, agency, authority, commission, instrumentality, public
7 corporation, body corporate and politic or political subdivision of this
8 State; (2) the provisions of article 9 of P.L.1968, c.404 (C.13:17-60
9 through 13:17-76) by a constituent municipality to the intermunicipal
10 account; (3) any lease of a facility owned by a county improvement
11 authority when the lease payment represents the proportionate amount
12 necessary to amortize the debt incurred by the authority in providing
13 the facility which is leased, in whole or in part; and (4) any repayments
14 under a loan agreement entered into in accordance with the provisions
15 of section 5 of P.L.1992, c.89.

16 k. (Deleted by amendment, P.L.1987, c.74.)

17 l. Appropriations of federal, county, independent authority or State
18 funds, or by grants from private parties or nonprofit organizations for
19 a specific purpose, and amounts received or to be received from such
20 sources in reimbursement for local expenditures. If a municipality
21 provides matching funds in order to receive the federal, county,
22 independent authority or State funds, or the grants from private parties
23 or nonprofit organizations for a specific purpose, the amount of the
24 match which is required by law or agreement to be provided by the
25 municipality shall be excepted;

26 m. (Deleted by amendment, P.L.1987, c.74.)

27 n. (Deleted by amendment, P.L.1987, c.74.)

28 o. (Deleted by amendment, P.L.1990, c.89.)

29 p. (Deleted by amendment, P.L.1987, c.74.)

30 q. (Deleted by amendment, P.L.1990, c.89.)

31 r. Amounts expended to fund a free public library established
32 pursuant to the provisions of R.S.40:54-1 through 40:54-29, inclusive;
33 s. (Deleted by amendment, P.L.1990, c.89.)

34 t. Amounts expended in preparing and implementing a housing
35 element and [fair share] plan pursuant to the provisions of P.L.1985,
36 c.222 (C.52:27D-301 et al.) and any amounts received by a
37 municipality under a regional contribution agreement pursuant to
38 section 12 of that act;

39 u. Amounts expended to meet the standards established pursuant
40 to the "New Jersey Public Employees' Occupational Safety and Health
41 Act," P.L.1983, c.516 (C.34:6A-25 et seq.);

42 v. (Deleted by amendment, P.L.1990, c.89.)

43 w. Amounts appropriated for expenditures resulting from the
44 impact of a hazardous waste facility as described in subsection c. of
45 section 32 of P.L.1981, c.279 (C.13:1E-80);

- 1 x. Amounts expended to aid privately owned libraries and reading
- 2 rooms, pursuant to R.S.40:54-35;
- 3 y. (Deleted by amendment, P.L.1990, c.89.)
- 4 z. (Deleted by amendment, P.L.1990, c.89.)
- 5 aa. Extraordinary expenses, approved by the Local Finance Board,
- 6 required for the implementation of an interlocal services agreement;
- 7 bb. Any expenditure mandated as a result of a natural disaster, civil
- 8 disturbance or other emergency that is specifically authorized pursuant
- 9 to a declaration of an emergency by the President of the United States
- 10 or by the Governor;
- 11 cc. Expenditures for the cost of services mandated by any order of
- 12 court, by any federal or State statute, or by administrative rule,
- 13 directive, order, or other legally binding device issued by a State
- 14 agency which has identified such cost as mandated expenditures on
- 15 certification to the Local Finance Board by the State agency;
- 16 dd. Expenditures of amounts actually realized in the local budget
- 17 year from the sale of municipal assets if appropriated for non-recurring
- 18 purposes or otherwise approved by the director;
- 19 ee. Any local unit which is determined to be experiencing fiscal
- 20 distress pursuant to the provisions of P.L.1987, c.75
- 21 (C.52:27D-118.24 et seq.), whether or not a local unit is an "eligible
- 22 municipality" as defined in section 3 of P.L.1987, c.75
- 23 (C.52:27D-118.26), and which has available surplus pursuant to the
- 24 spending limitations imposed by P.L.1976, c.68 (C.40A:4-45.1 et
- 25 seq.), may appropriate and expend an amount of that surplus approved
- 26 by the director and the Local Finance Board as an exception to the
- 27 spending limitation. Any determination approving the appropriation
- 28 and expenditure of surplus as an exception to the spending limitations
- 29 shall be based upon:
 - 30 1) the local unit's revenue needs for the current local budget year
 - 31 and its revenue raising capacity;
 - 32 2) the intended actions of the governing body of the local unit to
 - 33 meet the local unit's revenue needs;
 - 34 3) the intended actions of the governing body of the local unit to
 - 35 expand its revenue generating capacity for subsequent local budget
 - 36 years;
 - 37 4) the local unit's ability to demonstrate the source and existence
 - 38 of sufficient surplus as would be prudent to appropriate as an
 - 39 exception to the spending limitations to meet the operating expenses
 - 40 for the local unit's current budget year; and
 - 41 5) the impact of utilization of surplus upon succeeding budgets of
 - 42 the local unit;
- 43 ff. Amounts expended for the staffing and operation of the
- 44 municipal court;
- 45 gg. Amounts appropriated for the cost of administering a joint
- 46 insurance fund established pursuant to subsection b. of section 1 of

1 P.L.1983, c.372 (C.40A:10-36), but not including appropriations for
2 claims payments by local member units;

3 hh. Amounts appropriated for the cost of implementing an
4 estimated tax billing system and the issuance of tax bills thereunder
5 pursuant to section 3 of P.L.1994, c.72 (C.54:4-66.2).

6 (cf: P.L.1994, c.72, s.6)

7

8 17. (New section) Notwithstanding the provisions of P.L.1985,
9 c.222 (C.52:27D-301 et al.) or any other law, rule or regulation to the
10 contrary, no municipality shall be required to provide for affordable
11 housing to accommodate housing need generated outside of its
12 borders. Any municipality which chooses to provide for its prospective
13 need may propose the transfer of any portion of that need to another
14 municipality within its housing region pursuant to section 12 of
15 P.L.1985, c.222 (C.52:27D-312).

16

17 18. This act shall take effect upon the adoption of a constitutional
18 amendment relieving municipalities of the responsibility to provide
19 affordable housing for persons living or working outside municipal
20 boundaries.

21

22

STATEMENT

25

25 It has been 15 years since the New Jersey Supreme Court issued its
26 second Mount Laurel decision and 11 years since the Legislature
27 adopted the Fair Housing Act to address the court's concern that
28 municipalities were using zoning to exclude opportunities for
29 affordable housing. The sponsor feels that it is time to examine the
30 impact of this legislation and amend the law to address concerns that
31 were not foreseen by either the court or the original law.

In its decision, the court relied on the 1980 State Development Guide Plan for designating where housing should be built. That plan identified growth and non-growth areas. In 1992, however, the state adopted a new plan, which stated that all areas can accept growth. This has been used to say that all areas have an equal responsibility for providing affordable housing. As a result, the heaviest burden is falling on pristine environmentally sensitive and agricultural areas, furthering the urbanization of the state and threatening natural resources, concepts that the public finds anathema. It's simply easier and more profitable to build new housing in the wide open spaces, rather than in areas already developed. The State has done little to change this, in spite of statements in the State Development and Redevelopment Plan that discourage such development.

45 Municipalities find it unfair to accept an obligation to contribute to
46 a region's need unless there is agreement between municipalities in a

1 region, particularly when the state has done nothing to promote
2 regional planning. For example, a municipality that is determined to
3 preserve farmland located next to a municipality that is determined to
4 encourage industrial and commercial development must allocate scarce
5 resources to an increase in development because of the Fair Housing
6 Act's requirement for contributing to regional needs.

7 The statement by the court that "In exercising control over use of
8 land, state cannot favor rich over poor; it cannot legislatively set aside
9 dilapidated housing in urban ghettos for the poor and decent housing
10 elsewhere for everyone else" ignored the fact that people lived in the
11 city to begin with because there were more jobs, services and mass
12 transportation. The State has done little to provide mass
13 transportation elsewhere, and the increase in housing in the suburbs
14 and rural areas has only served to clog highways and increase air
15 pollution. How can the poor afford to live in the suburbs and rural
16 areas where there are fewer jobs and few options for reaching them?
17 There is too much incentive, initiated by the Mount Laurel decision,
18 for building in the country versus the city. This is adding to urban
19 problems as businesses follow development elsewhere.

20 The court also said that "our present programs of State aid to
21 education are designed to reduce significantly the differential school
22 tax burden between municipalities that accept residential development
23 and those that do not." This ignores the fact that the state does not
24 subsidize education in suburban and rural areas to the extent that it
25 does in urban areas and indicates that the court did not envision the
26 increased tax burden on municipalities resulting from residential
27 developments, which is causing middle income families to find those
28 municipalities increasingly unaffordable.

29 This bill accepts the court's invitation for legislative action based on
30 a need to balance the need for affordable housing with the need for
31 affordable communities, permitting municipalities to further other
32 worthy goals, such as urban development and redevelopment, planning
33 based on infrastructure, farmland preservation and environmental
34 protection. It rejects a municipality's obligation to provide for
35 affordable housing based on regional need absent a voluntary regional
36 agreement, and rejects the obligation to commit to a prospective need
37 for such housing while retaining a requirement to plan for such need.
38 Municipalities must continue to accept an obligation to provide for
39 opportunities for affordable housing and to reflect this in their master
40 plans, under the bill.

41

42

43

44

45 Removes requirement of "Fair Housing Act" that municipality
46 accommodate housing need generated beyond municipal borders.