

March 20, 1997

**ASSEMBLY BILL NO. 2309
(Second Reprint)**

To the General Assembly

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 2309 (Second Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill makes several amendments to the Fair Housing Act, N.J.S.A. 52:27D-310.1 et. seq. Currently, the Council on Affordable Housing ("COAH") excludes from its fair share affordable housing calculation any land listed on a municipality's master plan as being dedicated, by easement or otherwise, for purposes of conservation, park lands or open space, and which is owned by a county, municipality or tax-exempt, non-profit organization. This bill changes current law by also excluding from the calculation land that is leased, licensed, or in any manner operated by a municipality, more than one municipality, or a local board of education.

This bill also changes current law by excluding from the affordable housing calculation land that is authorized, by resolution, to be utilized for a public purpose other than housing. The bill requires that the resolution be adopted prior to the institution of a lawsuit seeking a builder's remedy or prior to the filing of a petition for substantive certification of a housing element and fair share plan. The bill further provides that undersized lots are not relevant under the affordable housing calculation. Section 2 of the bill makes these provisions retroactive.

B. Recommended Action

I commend the sponsors of this bill for introducing this bill and presenting New Jersey municipalities with opportunities to balance a municipality's interest in land preservation with the State's need for affordable housing. The bill's retroactivity provision, however, is too broad. The bill allows municipalities to enact resolutions protecting certain vacant land from affordable housing litigation. As worded, the retroactivity provision may be interpreted as allowing municipalities to enact resolutions in the future, insulating some municipalities from their affordable housing obligations. This interpretation would create an unacceptable imbalance between municipalities and builders by allowing municipalities to use resolutions as shields protecting them from builder's remedy litigation.

Municipalities should be able to protect their vacant spaces. The breadth of the retroactivity provision, however, might adversely affect the affordable housing calculation in the future. To help those municipalities which have already adopted the types of resolutions identified in the bill, and to maintain the integrity of the affordable housing calculation, I recommend that the bill's language be amended to address only those resolutions passed by January 1, 1997.

Therefore, I herewith return Assembly Bill No. 2309 (Second Reprint) and recommend that it be amended as follows:

Page 1, Title, Lines 1-2: Delete "and supplementing"

Page 1, Title, Line 2: Delete "(C. 52:27D-310.1 et. seq.)"

Page 1, Section 1, Line 13: After "that" insert "as of January 1, 1997,"

Page 2, Section 2, Lines 1-10: Delete in entirety

Page 2, Section 3, Line 12: Delete "3." and insert "2."

Respectfully,

/s/ Christine Todd Whitman
Governor

[seal]

Attest:

/s/ Michael P. Torpey
Chief Counsel to the Governor