

SENATE CONCURRENT RESOLUTION No. 109

STATE OF NEW JERSEY

INTRODUCED JANUARY 23, 1997

By Senator CIESLA

1 A CONCURRENT RESOLUTION concerning legislative review of Department
2 of Community Affairs regulations pursuant to Article V, Section IV,
3 paragraph 6 of the Constitution of the State of New Jersey.

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5 **BE IT RESOLVED** by the Senate of the State of New Jersey (the General
6 Assembly concurring):

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8 1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of
9 the State of New Jersey, the Legislature may review any rule or regulation
10 adopted by an administrative agency to determine if the rule or regulation is
11 consistent with the intent of the Legislature as expressed in the language of the
12 statute which the rule or regulation is intended to implement.

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14 2. a. In 1985, the Legislature adopted the "Fair Housing Act," P.L.1985,
15 c.222, which recognized the constitutional obligation of each municipality to
16 provide its present and prospective share of housing affordable to persons of
17 low and middle income.

18 b. Acknowledging the extent of urbanization and density of population in
19 the State, however, the Legislature provided in section 7 of P.L.1985, C.222
20 (C.52:27D-307) for an adjustment in the calculation of municipal fair share
21 housing need "based upon available vacant and developable land...whenever...
22 vacant and developable land is not available in the municipality..."

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24 3. On June 6, 1994, the Department of Community Affairs promulgated
25 Affordable Housing Rules, which, pursuant to N.J.A.C.5:93-4.2(g), may be
26 interpreted to call for the development of private clubs, publicly owned land,
27 and subdivision of existing parcels of land in order to fulfill a municipality's fair
28 share housing obligation. The Legislature finds that it never intended to require
29 municipalities to expend municipal revenues or resources for affordable
30 housing.

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32 4. The Legislature finds that the provision of the Affordable Housing Rules
33 codified at N.J.A.C.5:93-4.2(g) which would require provision for the
34 redevelopment of real property which is already developed within a
35 municipality is in direct contravention of the intent of the Legislature in

1 allowing for an adjustment to fair share need based on the lack of developable
2 land.

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4 5. The Legislature finds that N.J.A.C.5:93-4.2(g) exceeds the scope and
5 intent of the "Fair Housing Act" in that it would impose an obligation upon
6 municipalities to provide for the development of already developed land to
7 provide for affordable housing. It was never the intent of the Legislature to
8 impose an obligation upon municipalities beyond the obligation to provide for
9 affordable housing to the extent possible from the use of available vacant land.

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11 6. The Secretary of the Senate and the Clerk of the General Assembly
12 shall transmit a duly authenticated copy of this concurrent resolution to the
13 Governor and the Commissioner of Community Affairs.

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15 7. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the
16 State of New Jersey, the Commissioner of Community Affairs shall have 30
17 days following transmittal of this resolution to amend or withdraw the
18 regulations codified in N.J.A.C.5:93-4.2 or the Legislature may, by passage
19 of another concurrent resolution, exercise its authority under the Constitution
20 to invalidate the regulations codified in N.J.A.C.5:93-4.2, in whole or in part.

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STATEMENT

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25 This concurrent resolution embodies the finding of the Legislature that the
26 regulations of the Department of Community Affairs concerning the calculation
27 of developable land for the purposes of calculating a municipality's affordable
28 housing obligation is not consistent with legislative intent pursuant to Article V,
29 Section IV, paragraph 6 of the State Constitution.

30 The concurrent resolution finds that N.J.A.C.5:93-4.2 could be interpreted
31 to have the practical effect of requiring municipalities to encourage the
32 redevelopment of public parks and private clubs in order to make way for
33 affordable housing development, which was never intended by the Legislature
34 in enacting the "Fair Housing Act."

35 The concurrent resolution further finds that N.J.A.C.5:93-4.2(g) has the
36 further practical effect of depriving municipalities of the opportunity of
37 obtaining an adjustment of their fair share obligation based on the lack of
38 developable vacant land in direct contravention of the "Fair Housing Act."

39 The Commissioner of Community Affairs will have 30 days to withdraw or
40 amend the inconsistent regulations or the Legislature may, by the passage of
41 another concurrent resolution, invalidate the regulations in whole or in part.

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3 Determines that COAH regulations regarding calculation of developable land

4 are inconsistent with legislative intent.