

TO: Members, Assembly Housing and Local Government Committee

FROM: NJ League of Municipalities

Date: June 17, 2010

RE: S-1, Major Issues

This memo summarizes our identified major issues with S-1. A follow-up memo will follow later today, summarizing other issues, including technical concerns.

We hope this is of interest and assistance to you.

MAJOR POLICY ISSUES

- **Section 20: New statutory language. Defines inclusionary criteria**

Comments:

- Section 20(a)(2), delete, "...provided no less than one-half of the housing stock described in this paragraph is rental housing..."
- Section 20(a)(2), add, "...or other housing units that are affordable to low and moderate income households."

- **Section 19: New Statutory language.**

Comments:

- Section 19(c): There is no way to zone for workforce housing, unless the intent is to give municipalities the power to zone based upon household economics and restrictions in sale price. The only way to assure such housing is reserved for workforce households is to place deed restrictions on the price of the units. ? If the legislative intent is to promote workforce housing, incentives and other inducements should be provided. In particular, such incentives should be provided since the densities which likely will be required will place greater burden on infrastructure. Delete phrase, "...shall be reserved for use as workforce housing as defined in subsection s. of section 4 of P.L.1985, c.222 (C.52:27D-304)" and replaced with, "...shall be deemed to meet those criteria if it

adopts an ordinance providing that at least one fifth of its developable property shall be reserved for residential use.”

- **Section 27: New Statutory Language, Residential Development Fee**

Comments:

- Section 27(c)(4) changes maximum administrative costs from 20% to 7.5%. The change is intended align with the State percentage. The State, however, has a bigger pool of dollars than municipalities to rely upon. This should be changed back to 20%. Any shortfall in administrative costs would otherwise fall on to taxpayers.
- Section 27(d) states that a development fee can only be charged based upon the affordable unit(s) not being provided, as if trying to convert it into a payment in lieu. Such limited application of the development fee will not generate sufficient funds to provide any affordable housing. Recommend deleting the last sentence of 27(d), “A development fee may only be collected for the portion of the equalized assessed value attributable to the low- and moderate-income housing units required by section 21....”
- Section 27(e): Clock should be reset for existing trust fund dollars. With a new housing policy in place, we believe municipalities should have every opportunity to spend their trust fund dollars within their community.

- **Section 24: New Language, Variance Procedures**

Comments:

- Section 24(a), delete “...an inherently beneficial use...” and replace with “...promote the general welfare...”
- Section 24(a) delete “...make only a showing that the variance or other relief can be granted without substantial detriment to the public good” and replace with, “...satisfy the negative criteria contained in Section 57 of P.L. 1975, c. 291 (C.40:55D-70.)”

- **Section 30, New Statutory Language, Litigation.**

Comments:

- This offers protection from litigation, but not variances. Because of the time frame for DCA to promulgate regulations and other transitional issues, this protection should also apply to variances. Amend to read, as follows:

30. (New section) a. No exclusionary zoning action naming a municipality as a defendant, nor any relief under Section 24 of P.L. c. (C.) (pending before the Legislature as this bill), shall be filed for 365 days following the effective date of this act. Upon the filing of an application pursuant to Section 19 of P.L. c. (C.) (pending before the Legislature as this

bill), a municipality shall not be subject to any enforcement action, by litigation or variance, pending the decision by the Department. Upon the Department rendering a determination that a municipality is inclusionary pursuant to Section 20 of P.L. c. (C.)(pending before the Legislature as this bill), the municipality shall have immunity from any builder's remedy lawsuits.