

**TO: Members, Assembly Housing and Local Government Committee**

**FROM: NJ League of Municipalities**

**Date: June 17, 2010**

**RE: S-1, Other Issues**

Dear Members,

This memorandum is meant to compliment our major issues memo. This memo focuses on more technical comments and suggestions on S-1.

## **I. OTHER POLICY POLICY ISSUES**

- **Section 7, Amends Fair Housing Act.**

**Comments:**

- Delete definition of “development” since it defined in the MLUL.
- Amend definition of “price restricted unit” as follows:

*"Price restricted unit" means a residential dwelling unit that is price restricted, including: units that are deed or mortgage restricted for occupancy by residents of low or moderate income; price restricted pursuant to covenants established for units financed by federal Low Income Housing Tax Credits; price restricted pursuant to covenants established for units developed pursuant to the "Neighborhood Revitalization State Tax Credit Act," P.L.2001, c.415 (C.52:27D-490 et seq.); units rehabilitated as either a sending or receiving municipality under a regional contribution agreement, and subject to price controls; units built or rehabilitated as part of a Community Development Block Grant, and subject to price controls; housing units operated by a Public Housing Authority; units constructed, rehabilitated, or receiving project-based assistance under the program authorized pursuant to section 8 of the United States Housing Act of 1937; or units constructed with other governmental funding sources.*

- Amend definition of “Developable Land” as follows:  
*"Developable land" means undeveloped property having access to adequate sewer and water capacity, having a slope of less than 15 percent, that is not property owned privately, by a board of education, municipality or county, and designated by easement, deed restriction, master plan, resolution or ordinance as open space, parkland, conservation land or farmland preservation, or sites listed on the State or National Register of Historic Places, and located where development is consistent with the*

"Freshwater Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.), the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), the "Highlands Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et al.), or the Federal Clean Water Act, 33 U.S.C. ss.1251 through 1376, "Hackensack Meadowlands Reclamation and Development Act" P.L.1968, c.404 (C.13:17-1 et seq.).

- Amend definition of "inclusionary municipality" to reference both Sections 19 and 20, as follows:

"Inclusionary municipality" means a municipality deemed, pursuant to sections 19 and 20 of P.L. , c. (C. ) (pending before the Legislature as this bill), to have provided, or planned for, a variety and choice of housing as evidenced by the quantity of price-restricted units or amount of other units, the characteristics of which demonstrate an opportunity for low-income or moderate-income housing.

- Add new term for definition, as follows:

*"Prospective residential growth" shall include all housing units, other than units replacing existing housing units to the extent there is no net growth in housing units, which are issued certificates of occupancy after the effective date of this Act. The term shall not include units from development that was granted preliminary final approval prior to the effective data of this Act*

- **Section 18: New Statutory Language.**

**Comment:**

- Add language to Section 18(f) to read,

*"Notwithstanding the foregoing, a municipality shall have the right to withdraw its petition for substantive certification, at any time, and proceed pursuant to the provisions for compliance created in P.L. c. (C. ) (pending before the Legislature as this bill. "*

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

**Comments:**

- Section 19(a): 60 day requirement is unnecessary. DCA is required to promulgate regulations and there will be other transitional issues. 60 days is not enough time.
- Change shall to may, as follows:

*“19. (New section) a. Following the effective date of P.L. , c. (C. ), a municipality may apply to the department for a determination of whether the municipality is an inclusionary municipality that shall be deemed to have provided for its portion of the region's opportunity for low- and moderate-income housing.”*

- Section 19(b): change from six years to ten years to align with current Fair Housing Act and the Census.

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

**Comments:**

- Section 20(a)(3)(b), delete, “...the provision of funding sources and other incentives to encourage...”

## II. COURT/LEGAL DEFENSE ISSUES

- **Section 1. New Language, Introduction.**

**Comment:**

- **NJLM counsel suggests that some minor changes to the Introduction and the addition of the language:**
- *The Governor’s Housing Opportunity Task Force Report dated March, 2010, concluded that if a simple ten percent requirement had been established from the start of the affordable housing process, more affordable housing would have been produced than was achieved in the complex system established by the Council on Affordable Housing, the Fair Housing*

- **Section 21: New Statutory Language.**

**Comments:**

- Add new subsection (a) as follows,

***“a. It shall be the obligation of every municipality to zone for housing for low and moderate income households equal to ten percent of all prospective residential growth. The requirement shall not apply to those municipalities that choose to continue to conform to or pursue a substantive certification in accordance with Section 20(d) of...”***

- Amend 21(b)(2) to read. (Note this language will encourage the construction of rentals, by adding a 2-1 credits, similar to special needs housing.)

*(2) For any new small residential development project, as defined in subsection u. of section 4 of P.L.1985, c.222 (C.52:27D-304), and any redevelopment, rehabilitation, infill development, or adaptive reuse of a residential or small residential development project that would qualify as a small residential development project if it was new construction, a municipality shall require a developer to pay a development fee pursuant to section 27 of P.L. c. (C. )(pending before the Legislature as this bill) but nothing shall prevent a developer from reserving units for low and moderate income households. For the purposes of this reservation, one special needs housing unit, and rental units, shall count as two housing units. Nothing in this paragraph shall be construed to require the developer of a small residential development project to pay a development fee when the developer is providing for the on-site or off-site construction of affordable units.*

- Amend 21(c) as follows:

***c. If the municipality determines that an inclusionary development is not economically viable, the developer shall be required to provide the affordable housing units within the same municipality utilizing one or more of the alternative means provided in Section 22.***

- Amend 21(e) as follows, to clarify that when this development fee is paid, it goes to the municipality, provided the municipality is authorized to do so. Otherwise, it goes to the State.

*e. Residential development projects resulting in a fractional unit reserved for occupancy by low-income or moderate-income households, shall deposit a development fee collected, based upon the market rates units resulting in the computation of that fractional unit, into a municipal trust fund established by a municipality pursuant to section 27 of P.L. , c. (C. ) (pending before the Legislature as this bill) or into the "New Jersey Affordable Housing Trust Fund," established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).*

- Amend 21(g) as follows:

**g. At least 50 percent of the units reserved for low-income or moderate- income housing pursuant to this section shall be reserved for low- income housing. If an odd number of affordable units is being constructed, rehabilitated or developed pursuant to this section, the higher number of units may be determined by the municipality.**

- Amend 21(i) to delete reference to State Planning Commission.

### **III. TECHNICAL CHANGES AND/OR CORRECTIONS**

- **Section 6 , Amends Fair Housing Act.**

**Comment:**

- Add the following language to Section 6(f) to help defense of the Act:

*“In this regard the Legislature finds that a simple obligation of 10% of all prospective residential development is likely to produce greater affordable housing opportunities than prior regulatory adoptions, statutes and court decisions.”*

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

- Section 20(a)(3)(b), delete, “developments” and replace with “units.”
- Section 20(a)(3)(c), delete, “...a detailed analysis...” and replace with “an inventory”
- Section 20(a)(3)(d), delete “detailed.”
- Section 20(b)(1), add section 3 to reference, as follows:

“ (1) In making a determination pursuant to subsection a., paragraph (1),(2) or (3)...”

- Section 20(b)(2): Term “Luxury dwellings” is undefined.
- Section 20(b)(2): Delete buildings, replace with units.

- Section 20(d): Amend to read:

“A municipality that received, **or is pursuing**, substantive certification...”

- **Section 22: New statutory language.**

**Comments:**

- **22(b): Definition of rehabilitation should be in the definitions section of the bill?**
- **Section 27: New Statutory Language, Residential Development Fee**
  - Section 27(a): Is this intended for all developments, or just small developments (<5 units)?
- **Section 29, New Statutory Language, Forgives Unmet prior round need.**
  - Amend Section 29(a) to read,

*29. (New section) a. A municipality that chooses not to participate in, or withdraws from, the Council process, shall not be liable for any unsatisfied housing obligation based on regulations promulgated by the Council on Affordable Housing pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or any law or fact in a time period prior to the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill). A municipality shall continue to maintain any affordability controls on existing affordable units until, at least, the end of those controls.*