

## DRAFT

**Revised March 24, 2010**

*Please note this is a working document and may be revised further.*

**Summary, SCS for S-1, Amended by the State Senate, March 22, 2010.  
Abolishes COAH, Reforms Fair Housing Act**

**Summary prepared by the NJ League of Municipalities.**

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**SCS for S-1 is online at: [http://www.njleg.state.nj.us/2010/Bills/S0500/1\\_R1.HTM](http://www.njleg.state.nj.us/2010/Bills/S0500/1_R1.HTM)**

**----> The bill stands at 2<sup>nd</sup> reading in the Senate and can be voted on at the next Senate voting session. The Senate is now in recess for budget hearing, so the next voting session will not occur until the recess ends in May.**

### **SUMMARY**

#### **COAH abolished; New Role for State Planning Commission**

- Section 2 abolishes the Council on Affordable Housing (COAH). All powers, function and duties not repealed by the new law are transferred to the State Planning Commission (SPC.) All appropriations and other moneys are continued under the jurisdiction of the SPC.
- Section 3 amends the State Planning Act, directing the SPC to revise and readopt the State Plan every six years, instead of every three years.

#### **Calculation of Need**

- Eliminates the statewide calculation of need.
- Forgives prior round unmet need. See Section 31(a), page 31.

#### **Builder's Remedy Litigation**

No exclusionary zoning litigation may be brought against a municipality for 120 days following the effective date of the bill.

This does not apply to a municipality subject to court order to provide affordable housing.

Litigation filed before the effective date of the bill may remain with the Court, "which shall take judicial notice of the statutory intent stated hereunder."

Section 32, page 31.

#### **Defines "Inclusionary Municipality"**

Defined as, "...a municipality deemed...to have provided 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."

See Section 5(r), page 8.

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**Inclusionary Criteria**

See Section 20, pages 23-24.

1. 7.5% of total housing stock is “price restricted.”
  - a. Price restricted, subject to controls, defined to include:
    - i. Deed restricted units (e.g. units built through COAH);
    - ii. Units financed through “Low Income Tax Credits,”
    - iii. Units financed through “Neighborhood Revitalization State Tax Credit Act”;
    - iv. Units rehabilitated through RCA agreements;
    - v. Units financed through Community Development Block Grants;
    - vi. Housing units operated by a Public Housing Authority;
    - vii. Units constructed, rehabilitated or receiving project based assistance under Section 8 of the US Housing Act of 1937;

See Section 5(o), page 8.

Note: Units under local control ordinances was removed from the SCS.

**OR**

2. 33% of housing stock is:
  - a. single family attached housing, defined as, “...two or more dwelling units sharing a wall that extends from ground to roof;
  - b. mobile homes located in a mobile home park;
  - c. Multiple dwellings (luxury dwelling as determined by the State Planning Commission excluded.)

**OR**

The provision providing a safe harbor was removed from this section, but is authorized by sections 19(b)(2), pg 23 and 25(c). Municipalities which pass the ordinances authorized by these sections would not be classified as “inclusionary” but NOT subject to the variance procedure

A list of municipalities that meet the definition of “inclusionary” based on the best available data is online at:

<http://www.njsendems.com/Docs/Inclusionary%20Municipalities%20Under%20S-1,%203-8-10.pdf>

*This list is not official, subject to change and cites only those that meet criteria 1 and 2 above. Any municipality that does meet the criteria above can do so, as noted in criteria 3.*

**Towns with 3<sup>rd</sup> Round COAH Substantive Certification**

A municipality which received COAH 3<sup>rd</sup> round substantive certification shall also be considered inclusionary until the end of the approved certification period, “...provided that the municipality continues to fully and faithfully implement the provisions of its fair share plan.” See Section 20(d), page 24.

Effectively, a municipality that is certified under the COAH 3<sup>rd</sup> round methodology (57 to date) would have the option to continue to implement that plan, or petition the State Planning Commission (within 30 days of the effective date of the bill) for a determination that it is “inclusionary.”

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### Process for municipalities

Within 30 days of the effective date of the bill, a municipality shall apply to the State Planning Commission for a determination of whether it meets the definition of inclusionary as referenced above. See Section 19(a), page 23.

“Municipalities may impose and collect payments in lieu of construction of affordable housing in residential developments...” Payments are to be made into the housing trust fund. See Section 29, page 29.

### Economic Viability

“A municipality, in evaluating the economic viability of an application for an inclusionary development, may be guided by the applicable provisions of N.J.A.C. 5:96 and N.J.A.C 5:97, the regulations of the Council on Affordable Housing for the housing round beginning June 2, 2008.”

See Section 21(c), page 25.

### Variance Procedure

Municipalities not classified as “inclusionary” or do not pass the ordinance referenced in Sections 19(b) are subject to a variance procedure, with an inclusionary development deemed an “inherently beneficial use.” The developer would then need to make “a showing that the variance or other relief can be granted without substantial detriment to the public good.” Lands that are not in sewer service areas and for which sewer-water “cannot be reasonably extended from a nearby approved sewer-service area.” See

Per request of the League, this section was amended to change from to the zoning board to the planning board.

Municipalities meeting the “inclusionary criteria” are not subject the variance procedure, “...and a denial of a variance under such circumstances shall be presumptively valid.”

Section 25, page 26-27.

### Residential Development

For any new residential development of 5 or more , , a municipality shall require that 20% of the housing units be set aside for occupancy by low and moderate income households, provided that project remains “economically viable.”

See Section 21(a)(1), pages 24.

For any new residential development less than 5 units, a municipality shall require that a payment in lieu of 2.5% of the documents constructions costs shall be deposited inot the municipal housing trust fund. There is no payment if the developer is providing for the construction of the housing units onsite.

See Section 21(a)(2), page 25.

“Where land use or local government approvals are required, a municipality shall make a reasonable effort to facilitate the economic viability of an inclusionary development...”

See Section 21(b), page 24-25.

Of the units setaside for affordable housing, 50% is designated for low and moderate households, and 50% for moderate.

See Section 21(f), page 25.

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Residential development that results in a fractional unit for low and moderate income families can be satisfied through a payment in lieu of construction into the municipal housing trust fund.

The developer of an inclusionary project may satisfy the affordable housing obligation through the following means:

1. On-site, inclusionary development.
2. Newly constructed offsite.
3. Provided offsite through rehabilitation of existing substandard units.
4. Payment of lieu of construction in the municipal trust fund.

See Section 22, page 25-26

### Preferences

A municipality is permitted to give an occupancy preference in affordable housing units to households that have at least one member who works in the municipality and to households that have at least one member who resides in the municipality.

See Section 23, page 26.

“A municipality shall acquire State surplus property in the municipality for affordable housing purposes wherever surplus property is available for disposal in exchange for nominal consideration...”

### State Surplus Property

Further the State Planning Commission is required to conduct of study of available surplus State property in every municipality not meeting the inclusionary standard. This study shall include an estimate of the number of affordable housing units that could be developed on the property.

See Section 24, page 26.

“...a municipality shall not alter the zoning classification of any inclusionary development site that is included in a municipality’s master plan as an inclusionary development site, or which has received any local, county, or State land use or environmental permit or approval, and is, by judgment of repose, court order, or settlement in exclusionary zoning litigation, designated or reserved for purposes of satisfying a municipality’s fair share of the region’s housing opportunities.”

See Section 31, page 31.

### Commercial Development

The 2.5% fee on non-residential development is repealed. See Section 27(g), page 29.

Municipalities are prohibited from imposing a fee on non-residential development or construction for the provision of affordable housing. See Section 28(a), page 29.

Effectively, commercial development would no longer trigger an affordable housing requirement.

### Regional Contribution Agreements

- Section 12 allows for a process in which regional contribution agreements (RCAs) that were extinguished by PL 2008, c. 46 (aka A-500) to advance.
- If both the sending and receiving municipality agree, the agreement may be considered for approval by the SPC.
- The SPC would have until December 31, 2011 to approve any agreements.

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- The original bill statement stated that up to 5,000 units and up to \$116 million could be transferred.
- No new agreements could be developed moving forward.
- New language (Section 12(h)(4) provides for a four-year approval window for projects financed through an RCA.

See Section 12, pages 14-18.

### **Affirmative Marketing Requirements**

Affirmative marketing requirements shall be waived to permit those who have lost their personal residences or may experience foreclosure to occupy, rent or purchase any new inclusionary housing units. See Section 30, page 31.

### **Special Needs Housing**

“Newly constructed” special needs housing can be credited on a 2 for 1 basis. See Section 20(b), page 23-24.