

Summary of the Senate Committee Substitute for S-1

Adopted by the Senate Economic Growth Committee, June 3, 2010

Section 1. New Language, Introduction.

Section 2. New Statutory Language

- Abolishes COAH (in 6 months, see Section 33.)
- The Section transfers immediately all powers of COAH to DCA (in 6 months, see Section 33.)

Section 3. Amends Municipal Land Use Law, Duties of Planning Boards

- The Section amends the Municipal Land Use Law to grant to the municipal planning board the power to grant a use variance pursuant to NJSA 40:55D-70d as an ancillary power to the review of a site plan or subdivision against request for d variances for those municipalities in process (see also language in 4d)

Section 4. Amends Municipal Land Use Law, Duties of Zoning Board

- Adds a new power for the zoning board of adjustment, paragraph f., to permit the zoning board to hear and decide whether or not there should be an alternate means to provide for affordable housing. The power is triggered by a developer's claim that providing inclusionary development is not economically viable.

Section 5, Amends Statute creating DCA

- Changes the concept of transferring the duties of the State Planning Commission to DCA, and instead expands the duties of the DCA under NJSA 52:27D-9 to include the powers of COAH which survive the bill adoption pursuant to Section 18.

Section 6 , Amends Fair Housing Act.

- Technical changes

Section 7, Amends Fair Housing Act.

- Defines the following terms, as follows:

n. "Price restricted unit" means a residential dwelling unit that is price restricted, including: units that are deed 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

o. "Developable land" means undeveloped property having reasonable access to sewer service, having a slope of less than 15 percent, that is not property owned by a municipality or county and designated by resolution or ordinance as open space, and located where development is not prohibited pursuant to 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.).

p. "Special needs housing" means housing, or the residential portion of a development that is permanent supportive housing, as defined in section 2 of P.L.2004, c.70 (C.34:1B-21.24), or a community residence that is primarily for occupancy by individuals with special needs who shall occupy such housing as their usual and permanent residence.

q. "Special needs unit" means a single unit of special needs housing for one or more occupants that contains, at a minimum, a bedroom and a bathroom.

r. "Inclusionary municipality" means a municipality deemed, pursuant to section 20 of P.L. , c. (C.) (pending before the Legislature as this bill), 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.

s. "Workforce housing" means housing affordable to, according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied by, or reserved for occupancy by, households with a gross

household income equal to or less than 120 of the median gross household income for households of the same size within the housing region in which the housing is located.

t. "Residential development project" means new construction resulting in the production of five or more residential dwelling units, whether attached or detached.

u. "Small residential development project" means new construction resulting in the production of fewer than five residential dwelling units, whether attached or detached , and shall not mean any construction or reconstruction of a single-family dwelling that is occupied by, or intended to be occupied by, the owner.

Sections 8-10:

Technical changes

Section 11, Amends Fair Housing Act,

Technical changes

Section 12, Amends Fair Housing Act (A-500),

Technical changes.

Section 13: Amends Fair Housing Act,

Technical changes.

Section 14: Amends Fair Housing Act.

- Requires that at least 13% of State NJ Affordable Housing Trust Fund be reserved for very low income housing projects.
- Prioritizes funding for special needs housing.

Section 15: Amends NJ Stimulus Act of 2009,

Technical changes.

Section 16: Amends Fair Housing Act, A-500.

- Changes the setaside from from 20% to 10% in State financed projects, such as transit villages.

- Municipalities with a judgment of repose or COAH substantive certification are exempted from this section.

Section 17: Amends Fair Housing Act, A-500.

- Adds ‘workforce’ housing as a priority for the DCA.

Section 18: New Statutory Language.

- Provides for the DCA responsibilities under the Act.

Section 19: New Statutory language.

- Municipalities provided sixty days to apply to DCA for a determination of whether it meets the inclusionary criteria.
- Allows that towns that do not meet may reapply at any time.
- Municipalities that do not meet criteria shall be deemed to meet the criteria if it adopts an ordinance proving that 20% of its developable land be reserved for workforce housing.

Section 20: New statutory language. Defines inclusionary criteria, as:

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;

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.)

Provided that at least 50% of this housing stock is rental.

OR,

3. The municipality adopts zoning ordinances or incorporates into its Master Plan standards as follows:

(a) an analysis of the municipality's current housing stock;

(b) a plan pertaining to how the municipality will satisfy the obligation pursuant to Section 21 of P.L. , c. (C.) (pending before the Legislature as this bill), which may include, the provision of funding sources and other incentives to encourage the development of on-site and off-site low and moderate income housing developments; construction by non-profit developers of 100 percent low and moderate income housing developments; the construction of accessory apartments; programs to purchase and mark down existing units; construction of supportive and special needs housing; extension of existing affordability controls; and other innovative means to provide for a variety and choice of housing opportunities for low and moderate income citizens.

(c) a detailed analysis of the municipality's existing low and moderate income housing stock; and

(d) a detailed plan providing for any municipal action, including rehabilitation, necessary to address the needs of a municipality's low- and moderate-income households residing in dilapidated or unsuitable housing;

- Provides a 2 for 1 credit for special needs housing. DCA authorized to exclude buildings determined to be "luxury dwellings."
- Upon filing ordinances or Master plan elements with DCA, the filing is deemed to satisfy the criteria. DCA will undertake a "limited" review of the filing to determine if it meets the criteria.
- Municipalities with COAH 3rd round substantive certification are "inclusionary".
- DCA has 90 days to conduct its review. The DCA's determination is appeal able to the Appellate Division.

Section 21: New Statutory Language.

- Requires municipalities to require a 10% setaside in any new residential development project, defined as projects of 5 or more units.
- For projects of less than 5 units, the setaside is 5%.

- Requires municipalities to make a reasonable effort to facilitate the economic viability of a project, and may be guided by the densities and incentives provided by COAH in its 3rd round regulations.
- Municipalities with COAH substantive certification are exempt from this section. These municipalities can withdraw their COAH its petition or certification to comply with the new Act.

Section 22: New statutory language.

- Authorizes alternate means of compliance, including:
 - (1) Permitting the required inclusionary units to be newly constructed off-site;
 - (2) Permitting the required inclusionary units to be provided off- site by rehabilitation of existing substandard units;
 - (3) Permitting a developer to pay a development fee in lieu of constructing a portion of the inclusionary units into a municipal trust fund for the construction of affordable housing pursuant to section 27 of P.L. , c. (C.) (pending before the Legislature as this bill);
 - (4) Assisting a municipally-sponsored 100 percent affordable development;
 - (5) Permitting construction of Elder Cottage Housing Opportunity units;
 - (6) Permitting the construction off-site of accessory apartment units affordable to low- and moderate-income households;
 - (7) Permitting the purchase or subsidization of units that are subsequently sold or rented to low- and moderate-income households at affordable sale prices or rents ("buy down, write down"); and
 - (8) Permitting the construction of an assisted living residence in which all or a designated number of units are restricted to low- or moderate-income households.

Section 23: New Language

- A municipality is permitted to give an occupancy preference of up to 50% of unit 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.

Section 24: New Language, Variance Procedures

- For municipalities that do not meet the inclusionary criteria, variances may be brought to the planning board with affordable housing units considered an “inherently beneficial use.”
- Municipalities that adopt an ordinance that reserves 20% of its developable land for workforce housing will be exempt from the variance procedure.

Section 25: new Language, Statewide Commercial Development Fee

- The 2.5% fee on non-residential development enacted by A-500 is repealed.

Section 26: New Language, Local Commercial Development Fees

- Prohibits any municipalities from enacting a fee on commercial development.

Section 27: New Statutory Language, Residential Development Fee

- Municipalities will be authorized to enact 2.5% fee of the equalized assessed value for residential development projects.
- Municipalities must commit these funds within 4 years.

Section 28, New Statutory Language. Foreclosures

- Waives affirmative marketing requirement in case of foreclosures.

Section 29, New Statutory Language, Forgives Unmet prior round need.

Section 30, New Statutory Language, Litigation.

- No exclusionary zoning litigation against a municipality can be filed for one year.

Section 31, New Language, Severability.

Section 32, Repeals Existing Statues

Section 33, Delay Effective date for Sections 2 and 32 for 6-months.