

New Jersey State Senate Passes Bill S-1

A proposal to abolish the Council on Affordable Housing

On June 10, 2010, the New Jersey State Senate passed Bill S-1 that proposes to abolish the council on Affordable Housing (“COAH”) and revamp how municipal compliance with affordable housing obligations will be established. Bill S-1 has been amended slightly from its prior version so as to incorporate some of the proposals in the Housing Task Force Report prepared for the Governor. The next step is for Bill S-1’s companion bill in the State Assembly, Bill A-2057, to go through the legislative process.

There are many moving parts with Bill S-1, however, key aspects are as follows:

- COAH would be eliminated within 6 months of the effective date and its powers transferred to the Department of Community Affairs.
- All municipalities would be required to set-aside 10% of the units in any residential development of 5 or more units for affordable housing. All residential development of fewer than 5 units would have a 5% set-aside (presumably, through a payment in lieu of construction on the fractional obligation).
- A municipality that meets certain benchmarks, such as 7.5% of its housing stock price being restricted or 33% of its housing stock comprised of single-family attached, mobile homes or multiple dwelling units, will be deemed an “inclusionary municipality.”
- Municipalities would not have to address any Prior Round unmet need.
- Non-residential development fees would be eliminated (there is presently a moratorium on the fee for projects that receive preliminary or final approval prior to July 1, 2010).
- Regional Contribution Agreements (RCAs) would still be prohibited (an earlier version of Bill S-1 permitted RCAs until December 31, 2011).

There is no doubt that from an affordable housing compliance standpoint, Bill S-1 is favorable to municipalities. In April 2010, the Office of Legislative Services issued a legal opinion that Bill S-1 (as then proposed) “may be susceptible to a constitutional challenge” since the Bill uses a numberless approach towards affordable housing compliance without regard to allocated regional need. It does not appear that the amendments to Bill S-1 necessarily change that opinion.

We will continue to follow the progress of this legislation in the State Assembly as well as any future revisions to the same. Please view our website, www.ghclaw.com, to stay apprised of any updates. Should you have any questions concerning the status of the legislation or any provisions within it, please contact [Craig M. Gianetti, Esq.](mailto:Craig.M.Gianetti@ghclaw.com)