



**State of New Jersey**  
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**MEMORANDUM**

TO: State Planning Commission Members  
FROM: Joy Farber, Chief Counsel  
DATE: June 18, 2008  
RE: Legislative Update

There has been a significant amount of legislative activity regarding issues touching on land use planning recently. It is difficult to predict the likelihood of any proposed bill being moved from committee for vote by the Legislature. This is particularly true during budget season.

The following is a listing of the most significant and relevant proposed bills, a brief description of the subject matter, sponsors and present status.

Affordable Housing

Bill No. A 500 – Revises laws concerning the provision of affordable housing  
Sponsors: Roberts, Watson-Coleman, Green, Giblin, Coutino, Jasey  
Committee: Assembly Housing and Local Government, introduced  
Status: June 16, 2008, Passed in Assembly 45-33-2 vote, June 16, 2008, Received in Senate without committee reference, 2nd reading in Senate

The bill would revise portions of various laws, primarily the Fair Housing Act.

- Use of RCA's would be prohibited as of date of adoption.
- A new State agency program on rehabilitation and new construction of affordable housing would be created.
- A New Jersey Urban Housing Assistance Fund would be established to fund affordable housing rehabilitation and new construction and use of monies from the "NJ Affordable Housing Trust Fund" to be used in this program is expressly prohibited.
- Department of Community Affairs (DCA) would be required to prepare a Strategic Five Year Plan to address housing shortages.
- A new State volunteer board and an interdepartmental working group would be created to oversee the program and prepare annual progress reports on provision of affordable housing.
- The position of Senior Deputy Commissioner for Housing would be created.
- A "New Jersey Affordable Housing Trust Fund" would be created.
- A non-residential development tax of 2.5% of equalized assessed value would be imposed on new non-residential development on unimproved lots. A mixed-use development would be taxed on the non-residential portion. A non-residential development tax of 2.5% of the increase in equalized assessed value of the land and improvements would be imposed on additions to existing structures to be used for



non-residential purposes. The maximum of the tax for any one project would be \$25 million. Exemptions would include: houses of worship, tax-exempt property used for educational purposes, hospitals if no net increase in employees results, parking lots and structures, and public amenities.

- Revenues generated from the tax up to \$20 million, as well as certain realty transfer fees, would be dedicated to the Urban Housing Assistance Fund with the remainder to be dedicated to the Affordable Housing trust fund except for amounts necessary for administrative purposes not to exceed five percent annually.
- Only municipalities that have confirmed status of compliance with the Fair Housing Act and have a COAH authorized spending plan may use funds collected from developers' fees. Municipalities would not be permitted to impose development fees on non-residential development and would not be permitted to impose a fee on any developer providing affordable housing as part of any development in the municipality. Fees collected by municipalities would be required to spent within four years or be transferred to the new NJ Affordable Housing Trust Fund. The Redevelopment and Housing Act would be revised to require redevelopers to inventory affordable housing stock that would be lost pursuant to the redevelopment plan and would require the redeveloper to plan for (and provide) replacement housing on a 1:1 basis giving priority to displaced residents.
- The Administrative Procedures Act would be revised to require agencies prepare and Housing Affordability Impact Statement as part of rulemaking.
- The Recording, Registration, Filing and Indexing of Deeds and other Instruments Act would be revised to require certain realty transfer fees be collected and accounted for separately to the Treasurer for use in the Urban Housing Assistance Fund.

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Bill: S 1783  
Sponsor: Lesniak  
Committee: Senate Economic Growth Committee  
Topic: Housing Reform Legislation  
Status: Reported out of committee with committee substitute, 2nd reading in Senate,  
June 9, 2008

- Bill would impose a 2.5% non-residential fee to fund affordable housing.
- Exemptions would include: non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship; property used for educational purposes; parking lots and parking structures; and any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer.
- The bill prohibits a municipality from charging a payment in lieu of tax in connection with non-residential construction, and also prohibits the required construction of housing units as a result of any non-residential construction or redevelopment.

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Bill: A 622  
Sponsor: Karrow  
Committee: Assembly Housing and Local Government Committee  
Topic: Affordable Housing  
Status: Introduced January 8, 2008

Municipalities that petition for or receive substantive certification pursuant to the "Fair Housing Act" would be authorized to make certain affordable housing units available on a preferential basis to certain eligible persons.

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Bill: A 623  
Sponsor: Karrow  
Committee: Assembly Housing and Local Government Committee  
Topic: Affordable Housing  
Status: Introduced and referred to committee January 8, 2008

COAH requirement that municipality obtain initial plan endorsement from the State Planning Commission to retain substantive certification would be eliminated.

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Bill: A 626  
Sponsor: Karrow  
Committee: Assembly Housing and Local Government Committee  
Topic: Affordable Housing  
Status: Introduced January 8, 2008

- Assignment of a fair share affordable housing obligation would be limited in land designated as Planning Area 4 or 5 or that is in rural or environmentally sensitive areas regardless of classification under the State Development and Redevelopment Plan to:
  - an obligation based solely on existing units in need of rehabilitation;
  - units required as part of an inclusionary residential development set-aside; and
  - units required by virtue of a properly-adopted growth-share formula of the council, based on proposed job creation as a result of new commercial or industrial development within that area.
- The MOU between the council and the State Planning Commission of 2004 concerning the allocation of affordable housing obligation to municipalities in rural or environmentally sensitive areas would be voided.

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Bill: S 1827  
Sponsor: Oroho  
Committee: Senate Community and Urban Affairs Committee  
Topic: Exempts contaminated and industrially-zoned sites from affordable housing rules.  
Status: Introduced May 15, 2008

COAH would be prohibited from calculating a fair share affordable housing obligation for a municipality on the basis of any development of contaminated sites or industrial sites within its borders. In addition, it would prohibit a municipality from charging fees to a developer pursuant to the "Fair Housing Act," upon the developer's remediation of a contaminated site or application for development of an industrially-zoned site.

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Bill: S 1828  
Sponsor: Oroho  
Committee: Senate Environment Committee  
Topic: Concerns affordable housing in the Highlands Region  
Status: Introduced May 15, 2008

- Any reduction of the fair share obligation made by COAH for a municipality located in whole or in part in the preservation area would be prohibited from being transferred to any municipality or part of a municipality in the planning area or to any municipality in any other region in the State.
- Criteria and guidelines adopted by COAH would be revised to provide for municipal adjustment of the present and prospective fair share whenever the pattern of development is contrary to the regional

master plan adopted by the Highlands Council pursuant to the Highlands Water Protection and Planning Act.

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Bill: S 1829  
Sponsor: Oroho  
Committee: Senate and Urban Affairs Committee  
Topic: Concerns affordable housing in the Highlands Region  
Status: Introduced May 15, 2008

Imposition of affordable housing obligations and related fees would be prohibited for local transfer or relocation of a business.

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Bill: A 2517  
Sponsor: Watson-Coleman, Green, Milam, Albano and various co-sponsors  
Committee: Assembly Housing and Local Government Committee  
Topic: Affordable Housing  
Status: Reported out of committee with amendments to appropriations committee June 6, 2008

- Legislative findings include the following:
  - many thousands of NJ homeowners are at risk of losing their homes as a result of mortgage foreclosures in the immediate future and the US Senate Joint Economic Committee in October 2007 estimates more than 35,000 NJ borrowers will lose their homes to foreclosure by the end of 2009.
  - The United States Senate Joint Economic Committee also estimates that foreclosures over the next two years will result in a \$6.3 billion reduction in property values in New Jersey, as foreclosed and abandoned properties lower the value of surrounding homes. As a result of lower property values, New Jersey municipalities will lose \$99 million per year in property tax revenue, reducing resources available for public education and other public service.
  - There is a compelling public policy need for the State to address these issues. The recent increase in foreclosures has created an emergency which needs to be addressed by the State, including the need to provide the means by which homeowners can obtain counseling, emergency financial assistance, and time to adjust their finances in order to increase their ability to retain their homes and protect local governments and neighborhoods from the negative social, economic, and fiscal consequences of foreclosure and abandonment.
- A Foreclosure Prevention Revolving Trust fund would be established in HMFA for providing: (1) grants to qualified foreclosure prevention entities for the purpose of maintaining or expanding prevention counseling services and activities to assist homeowners to prevent foreclosure; (2) grants to individuals or to qualified entities to provide emergency foreclosure prevention assistance loans; and (3) loans and grants to qualified entities to acquire mortgage loans or properties from creditors in order to restructure the mortgage loans or restore the properties to productive use.
- Any amounts collected during a fiscal year, above \$5,000,000 and up to \$20,000,000, shall be available for emergency foreclosure prevention assistance loans to homeowners, or to make grants to qualified entities, for the purpose of making emergency foreclosure prevention assistance loans to homeowners and any monies collected but not allocated by the end of the fiscal year would be made available for allocation for these grants in the subsequent fiscal year.
- A creditor that issues a notice of intention to foreclose on a covered mortgage loan, pursuant to the "Fair Foreclosure Act," would be required to simultaneously transmit a certified check in the amount of \$2,000 to the agency for deposit into the trust fund. The creditor would not be able to add the amount paid to the agency to the amount owed to the creditor by the borrower.

- A creditor noticing a mortgage holder of a payment that is due or an increase in mortgage rate would be required to grant the borrower a six month period of forbearance to pursue a loan, workout loan modification, refinancing or other alternative.
- Reporting requirement for creditors to the Department of Banking and Insurance and to local municipal officials would be required.

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#### Permit Extension Act

Bill: A 2867  
Sponsors: Greenwald, Malone, Cryan, Biondi, Littel-McHose, numerous co-sponsors  
Committee: Assembly Environment and Solid Waste Committee  
Topic: Extension of Permits  
Status: Introduced May 22, 2008 and second reading June 12, 2008

- Legislative findings are that there exists a state of economic emergency in New Jersey severely impacting the real estate and construction sectors, a myriad of new regulatory requirements have increased costs of obtaining development approvals, and changes in the law during the approval process can render it impossible to renew approvals once obtained.
- The running of the period of approvals that have already been obtained would be stayed for the period of the crisis. Permits would be tolled from January 1, 2008 to December 31, 2010, resulting in an extension of up to two years on the life of building permits for commercial and residential development projects, to offset the possible lack of funding or revenues due to the current economic downturn.
- Exemptions include:
  - Pinelands permits outside of growth areas would be exempt.
  - Permits issued in an environmentally sensitive area, defined as the Highlands Preservation Area and any environmental protection zones identified in the Highlands Master Plan.
  - Approvals granted under the MLUL involving a residential development where the master plan and zoning ordinance have been amended to rezone the property to industrial or commercial use subsequent to the expiration of the permit but prior to Jan. 1, 2005 would be exempt if the permit was issued for residential use.
  - Any center designation pursuant to either the Coastal Area Facility Review Act or the State Planning Act.
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#### New Jersey Transit Villages Act

Bill: S 1223  
Sponsors: Smith  
Committee: Senate Transportation Committee  
Topic: Transit Villages  
Status: Introduced February 21, 2008

- Would encourage development in compact transit-oriented forms
- Municipalities would be allowed to create a "Transit Village Plan Element" as part of its Master Plan for review by OSG in consultation with the NJ Transit Corporation for consistency with the State Plan
- A municipality would be allowed to establish a transit zone to implement the plan element
- DOT in consultation with OSG would adopt rules regarding administration of a transit village grant funding program
- Credits against certain taxes would be available for developers of transit villages

- DEP would be able to develop an expedited permit review process for applicants of such developments
- DOT would be allowed to allocate up to \$10 million for each of three years for this purpose.

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TDR Act

Bill: A 3864  
Sponsors: Greenstein, Manzo, Handlin, Co-sponsor Vas  
Committee: Assembly Environment and Solid Waste Committee  
Topic: Statewide TDR Act  
Status: Inactive

- Levy of a developer's fee ordinance would be allowed to offset of costs of additional infrastructure born by municipalities for receiving districts.
- In addition to OSG, other state agencies would provide technical assistance to municipalities in reviewing master plans developed in order to establish a TDR ordinance.
- Municipalities would be required to submit a map in GIS format of any proposed receiving areas to OSG and relevant state agencies in order to evaluate the sits for infrastructure availability and capacity, environmental and agricultural resource value and transportation capacity.
- In order for municipalities to adopt a development transfer ordinance, it would be required to receive a certificate of eligibility rather than initial plan endorsement, as a condition for approval of the development transfer plan element and supporting documentation by the SPC.
- Highlands TDR Bank would be allowed to provide a guarantee regarding any loan secured using development potential as collateral.
- Provides increases in funding available for grants to entities seeking to develop TDR programs.

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