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UPDATED: Fourth Round Affordable Housing Legislation Makes Its Way Through New Jersey Legislature

UPDATE (3/26/2024): On March 20th, Gov. Phil Murphy signed into law Bill A4 / S50 that passed the legislature as well as other pieces of affordable housing legislation. Some of the changes from the bill that the Assembly passed to the one signed into law are:

- ***The cap on the total number of age-restricted affordable housing units was increased from 25 percent to 30 percent of the affordable obligation.***
- ***The cap on age-restricted affordable housing bonus credits was reduced from 15 percent to 10 percent.***
- ***The 100 percent affordable development bonus credits was increased to a one-half bonus credit to a full one for one bonus credit. In addition, the specific thresholds for a municipal contribution towards the project were removed.***
- ***The control period on affordable units are a minimum of 40 years for rental units and 30 years for for-sale units.***

Another key aspect to the law is in addressing prior-round obligations in HEFSPs, towns will have to demonstrate how sites that did not develop in the prior round remain "realistic" to produce affordable housing (including any needed changes to zoning) and, if the site no longer remains realistic, the site shall be replaced with an alternative site generating an equivalent number of affordable units. In addition, on March 20, the governor signed a series of other bills into law addressing affordable housing, including:

- ***Bill S2312: Permits municipalities to grant a payment in lieu of taxes for affordable housing projects that receive a grant or loan from municipal affordable housing trust funds.***
- ***Bill S1422: Permits a taxpayer to claim depreciation on its New Jersey income tax-eligible expenditures incurred in the construction of a new affordable housing development over a 10-year period as opposed to over 27.5 years.***
- ***Bill S1484: Exempts receipts from sales made to contractors or repairmen of materials, supplies or services related to the construction of 100 percent-affordable housing projects to help reduce the cost of the construction of such projects.***

It has been almost 15 years since the New Jersey Legislature attempted to tackle New Jersey's affordable housing laws and the *Mount Laurel* doctrine (remember S-1?). But in the past few months, the Legislature is at it again. Legislation designed to address New Jersey's Fourth Round affordable housing cycle has been making its way through the Legislature and was passed in the Assembly on February 12th and is in committee with the Senate. Bill A4 (S50) (the "Bill") seeks to codify the upcoming Fourth Round, which starts July 1, 2025. With the Third Round affordable housing cycle (which technically began in 2000) coming to an end in 2025, the question on developers' minds over the past year has been "What is going to happen with the Fourth Round?" Many believe that without legislative intervention, it would remain with the courts as it has since 2015. The Bill seeks to codify the procedure going forward for the Fourth Round so municipalities and developers can plan in advance. In broad strokes, the Bill officially abolishes the Council on Affordable Housing, which has effectively been paralyzed since the Governor Christie administration, and creates the Affordable Housing Dispute Resolution Program (the "Program"), consisting of up to seven members appointed by the Chief Justice of the New Jersey Supreme Court. Under the Bill, in 2024 the Department of Community Affairs would calculate regional affordable housing need based

on the methodology Judge Jacobson outlined in her March 8, 2018 landmark decision. In order for a municipality to receive immunity from "builder remedy" lawsuits for the Fourth Round, it would have to adopt a resolution determining its fair share obligation (using the methodology) by January 31, 2025 and submit the same to the Program. Interested parties can challenge the municipality's calculated obligation by February 28, 2025. Once the obligation is set, a municipality would have until June 30, 2025 to adopt a Housing Element & Fair Share Plan (HEFSP) to address the obligation, with interested parties having the opportunity to challenge such HEFSP by August 31, 2025. If a challenge is filed, the municipality would have until December 31, 2025 to resolve any challenge or provide an explanation as to why it will not make changes to the HEFSP. Any unresolved dispute would then go to the county *Mount Laurel* judges. Other keys aspects of the current version of the Bill are as follows:

- The Bill prescribes a variety of bonus credits; however, bonus credits are capped at 25 percent of its prospective need obligation. An important aspect of the Bill is ***there are no rental bonus credits***. Some of the bonus credits include:
    - Special Needs Housing (one bonus credit);
    - Nonprofit Developer Housing (one-half bonus credit);
    - Transit-Oriented Affordable Housing (one-half bonus credit);
    - Age-Restricted Housing (one-half bonus credit, but only applicable up to 15 percent of all age-restricted housing built);
    - Three-Bedroom Family Housing (one-half bonus credit for family three-bedroom units in excess of UHAC's minimum number of three-bedroom units);
    - Redevelopment (one-half bonus credit for affordable housing constructed on land previously developed for office, retail or commercial space);
    - Extension of Rental Affordability Controls (one-half bonus credit);
    - 100 percent Affordable Development (one-half bonus credit for units in a 100 percent affordable housing development where the town contributes land or funding for a minimum of 10 percent of the project cost); and
    - Very Low-Income Units (one-half bonus credit for each very low income unit above the minimum required number).
- Provisions related to the vacant land adjustment process where a municipality seeking such an adjustment would have to identify property likely to be redeveloped during the Fourth Round that would address at least 25 percent of its obligation.
- No more than 25 percent of the affordable housing units constructed can be age-restricted housing; at least 50 percent of the affordable housing units constructed have to be family units; and at least 25 percent of the affordable housing units constructed have to be rental.
- Clarification on the 1,000 unit cap.
- Provisions dealing with affordability controls.

This alert only addresses certain key aspects of the current Bill, which is a sweeping codification of the process and procedure for municipal compliance with affordable housing obligations. Our office will continue to track this Bill through the Legislature as it could be revised further. But regardless of whether it becomes law, both developers and municipalities should be planning their strategy for the Fourth Round.

Authors



Craig M. Gianetti
Partner

Parsippany, NJ | (973) 966-8053

cgianetti@daypitney.com



Stephen R. Catanzaro
Partner

Parsippany, NJ | (973) 966-8205

scatanzaro@daypitney.com



Nicole M. Magdziak
Partner

Parsippany, NJ | (973) 966-8027

nmagdziak@daypitney.com