



Mar 25, 2024

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Sweeping Affordable Housing Reform Signed Into Law in New Jersey

On March 20, 2024, Governor Phil Murphy signed what could be the most significant and impactful affordable housing reform legislation in New Jersey since the original enactment of the Fair Housing Act (FHA) in 1985 in [A4/S50](#) (the “Law”). After the New Jersey Supreme Court declared the Council on Affordable Housing (COAH) “moribund” in 2015, municipalities and developers, as well as interested advocacy groups, have been engaged in constitutional compliance litigation in an attempt to determine how best to create realistic opportunities for the construction of affordable housing. These various cases resulted in a large number of settlements across the state, with some very public and prolonged litigation still pending.

The Law is quite comprehensive and takes effect immediately. It applies to each new round of affordable housing obligations beginning after enactment of the Law, so it will apply to the Fourth Round, which commences on July 1, 2025, and for each 10-year period thereafter. In the immediate term, under the Law as signed, the New Jersey Department of Community Affairs (DCA) has an affirmative obligation to create its estimates for prospective and present need obligations no later than October 20, 2024, and municipalities must affirm their obligation (or calculate their own) no later than January 31, 2025. Developers and interested parties then have a narrow window in which to challenge these obligations and intervene through the newly created Affordable Housing Dispute Resolution Program (the “Program,” discussed below), if needed.

Developers, municipalities, and interested parties should review this legislation closely and make sure to note the upcoming dates for compliance and review. Gibbons’s experienced affordable housing attorneys presently work with developers and municipalities alike to determine obligations and strategic approaches for compliance.

According to a [report](#) released by the *National Low Income Housing Coalition*, New Jersey currently has a deficit of more than 200,000

affordable housing units. In an attempt to accelerate and incentivize the prompt creation of affordable housing in the next round of compliance (*i.e.*, 2025–2035) and beyond, the six bills signed create a method for streamlining the litigation approach with something more akin to an administrative process to review and approve municipal housing elements and fair share plans, as well as determine their compliance with the *Mount Laurel* doctrine. The economic incentives component of this legislative package will be reviewed in a subsequent post.

The Law creates a new method of determining and reviewing constitutional compliance for municipalities, and will require developers and interested parties to engage early in the process if they are interested at all in helping to craft approaches for compliance. Among other things, the Law:

- formally disbands the state COAH, which was declared moribund by the New Jersey Supreme Court in 2015
- creates an entity to review constitutional compliance based on data prepared by the DCA
- requires the DCA to complete regional need calculations for both present and prospective needs, determine municipal obligations, and provide for their publication by October 20, 2024, which is seven months following the effective date of the bill
- permits a municipality to diverge from the DCA calculations in determining its obligation as long as it adheres generally to the methodology established for the Third Round in Judge Jacobson’s voluminous 2018 decision in *In re: the Municipality of Princeton*
- directs the creation of the Affordable Housing Dispute Resolution Program to “efficiently resolv[e] disputes involving the Fair Housing Act,” and directs the Administrative Director of the Courts to establish the panel of an odd number of judges, as well as a system outside of the existing declaratory judgment framework for filing challenges and disputes arising out of this new process

- requires a municipality to adopt its obligation by binding resolution on or before January 31, 2025, in order to be assured of immunity from exclusionary zoning litigation and to secure a presumption of validity for its obligation as established by DCA
- requires any interested party to challenge obligations on a municipal basis no later than February 28, 2025, and those challenges must detail how the obligation as calculated fails to match the standards established by the Law
- requires a municipality to establish a housing element and fair share plan to detail its form of compliance with this obligation in advance of the commencement of the Fourth Round, and propose necessary changes to associated ordinances on or before June 30, 2025, in order to be assured of protection from exclusionary zoning litigation
- permits an interested party to initiate a challenge to a municipal fair share plan and housing element, if submitted through the Program on or before August 31, 2025
- requires municipalities to adopt challenge-associated changes to municipal ordinances on or before March 15, 2026, or else risk the loss of immunity from exclusionary zoning litigation
- authorizes the Program to subsequently terminate immunity under certain circumstances if it becomes apparent that the municipality is not determined to come into constitutional compliance
- provides that a municipality with compliance certification would continue to benefit from the presumption of validity for actions taken in furtherance of its compliance, but not absolute immunity, if an interested party is to: (1) challenge a municipality for failure to comply with the terms of its compliance certification; or (2) bring a challenge before the Program alleging that, despite the issuance of compliance certification, a municipality's fair share obligation, fair share plan, housing element, or implementing ordinances are in violation of the Mount Laurel doctrine or the Law

- establishes limitations on the use of municipal affordable housing trust fund moneys for administrative costs, attorney fees, and court costs to obtain immunity from exclusionary zoning litigation, contest the municipality's fair share obligation, or use while a municipality does not have immunity from exclusionary zoning litigation
- requires the DCA to maintain certain affordable housing-related information on its website, including the start and expiration dates of deed restrictions; residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures; and the current balance in the municipality's affordable housing trust funds
- requires, with exceptions, that for newly created rental units, a 40-year minimum deed restriction would be required, and in the case of for-sale units, a 30-year minimum deed restriction would be required.

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