



NEW JERSEY GENERAL ASSEMBLY

HONORABLE
JOSEPH J. ROBERTS, JR.
SPEAKER

MAJORITY OFFICE
STATE HOUSE SOUTH WING SUITE LB110
PO BOX 098
TRENTON, NEW JERSEY 08625-0098
(609) 292-7065

WILLIAM J. CASTNER, JR., ESQ.
EXECUTIVE DIRECTOR

AFFORDABLE HOUSING REFORM PLAN

This memorandum outlines proposals that will lead to the creation of greater affordable housing opportunities in New Jersey. The policy alternatives were identified after a review of housing policies in other states, discussions with other legislators and input from the following stakeholders: **1)** the Housing and Community Development Network; **2)** Community Investment Strategies; **3)** the Coalition for Affordable Housing and the Environment; **4)** the Fair Share Housing Center; **5)** Homes for New Jersey; **6)** the Apartment Association; **7)** the New Jersey Chapter of the National Association of Industrial and Office Properties; **8)** the New Jersey League of Municipalities; **9)** the New Jersey Manufactured Housing Association; and **10)** the Department of Community Affairs.

- *Eliminate Regional Contribution Agreements*

RCAs – which the State sanctions – allow affluent municipalities to sell off half of their affordable housing obligation to cash-strapped urban communities. A wealthy “sending” town in an RCA arrangement pays another town to assume its low- and middle-income housing and the urban “receiving” communities take the money because they need it. The negative consequences of RCA arrangements are obvious. By allowing a municipality to cut its affordable-housing obligation in half, RCAs make it challenging and sometimes impossible for working New Jerseyans with modest incomes to live in the suburban communities where they work. RCAs also lead to concentrated poverty.

RCAs are bad public policy and should be eliminated. But they should not be abolished in a vacuum. Municipalities currently relying on RCA funds from “sending” communities will need to make up for the lost revenue. The State has an obligation to provide this substitute funding and to work with mayors and affordable housing advocates to make this a reality.

- *Require State development projects to include 20% affordable units*

Establish a 20% affordable housing set aside for all State-assisted development projects, including projects in Smart Growth Areas and Transit Villages. The State also should direct all State agencies with land-use authority (e.g., Pinelands Commission, Meadowlands Commission, Highlands Council, and Sports and Exposition Authority) to incorporate mixed-income housing development requirements into their master plans, redevelopment plans, and development regulations.

- *Create an “Affordable Housing Trust Fund”*

New Jersey should create its own single, centralized trust fund for affordable housing. Although the realty transfer fee is the most popular source for state housing trust funds, many other revenue streams are also dedicated for this purpose nationally. These include interest from real estate or title escrow accounts (Connecticut, Maryland, Minnesota, Washington, Wisconsin); lottery earnings (Kentucky, Oregon); document recording fees (Delaware, Missouri, Ohio); interest from tenant security deposits (Oregon); interest from unclaimed property (Arizona); bond and fee revenues (Kansas, Nevada, New Hampshire); capital budget funds (Washington); and the state income tax (Louisiana, Massachusetts). Nine state housing funds receive revenue from more than one source.

In order to increase funding, the State could combine dedicated realty transfer fee revenue with an additional source or sources of funding. The new trust fund would be the repository of the State’s housing related revenues.

- *Allow private developers of inclusionary development projects to compete for Federal Low-Income Tax Credits*

Current Housing and Mortgage Financing Agency (HMFA) regulations prohibit inclusionary development projects (those that include both market rate and affordable units) from competing for Federal Low Income Tax Credits. Because inclusionary development projects are the State’s primary method of constructing affordable housing, this restriction is an impediment to the production of affordable units.

To increase affordable housing production, we need to make Federal Low Income Tax Credits available to private developers of inclusionary development projects. Because this funding is very limited, however, eligibility should be restricted to private development projects that (1) exceed their maximum affordable obligations or (2) go beyond the Council on Affordable Housing’s (COAH) affordability requirements (i.e., are priced to be affordable to low- or very-low income families).

- *Increase the maximum income that an individual may earn and still qualify for affordable housing and set aside affordable units for very-low-income residents*

A-4385 (Watson Coleman) would permit “middle income” families (those making 80% to 110% of a region’s median income level) to qualify for affordable housing. For a family of four, maximum income limits would be increased from a State average of approximately \$63,000 to an average of approximately \$87,000. A-4385 was introduced on June 14, 2007 and referred to AHO. At the same time, however, we must be careful not to divert existing resources from low- and moderate-income families. While we can no longer continue to overlook the needs of “middle income” families, we must not do it at the expense of lower income families.

In addition, **A-1343** (Watson Coleman) would promote the production of affordable housing for very-low-income families (those earning less than 30% of median income, or roughly \$19,000 annually) by requiring all State housing programs to set aside 25% of affordable units for very-low-income residents. A-1343 passed out of AHO on May 10, 2007 by a vote of 4-1-1.

- *Ensure new school funding formula accounts for municipalities that accept low- and moderate-income families with school age children*

The new school funding formula should provide enhanced funding to school districts located in municipalities that provide affordable housing for low- and moderate-income families with school-age children. Too many municipalities attempt to meet their affordable obligations without providing housing for young families because of the cost of educating additional students (e.g., by constructing age restricted housing or by participating in RCA agreements). Increasing the funding available to schools with low- and moderate- income students will provide an incentive for municipalities to provide this much needed housing.

- *Require one-for-one replacement of affordable housing units lost through redevelopment*

In addition to constructing new affordable units, New Jersey needs to preserve the affordable housing stock that we already have. Eminent domain and redevelopment reform should require one-for-one replacement of all affordable units lost through redevelopment.

- *Require towns to spend municipal housing trust fund dollars on affordable housing within their borders*

In New Jersey, COAH-certified municipalities maintain their own municipal housing trust funds, which are funded by development fees, payments in-lieu of construction fees and (in some cases) revenue generated from RCAs. The revenue generated by these funds must be used for affordable-housing purposes. It is estimated that these trust funds have accumulated over \$150 million dollars in surplus revenue because municipalities refuse to accept affordable-housing development projects or because they are stockpiling revenue to fund future RCAs.

Eliminating RCAs would go a long way toward correcting this problem. As an added safeguard, the State could require towns to either (1) spend money deposited into their local trust funds within three years of receiving it; (2) provide a detailed plan of how this money will be spent; or (3) turn the money over to the State to be deposited into the Balanced Housing Fund. This would ensure that money dedicated for affordable housing is used for that purpose.

- *Require COAH to mandate that municipalities provide density bonuses to developers constructing inclusionary developments*

The *Mount Laurel* doctrine requires municipalities to create realistic opportunities for the construction of affordable housing. Third-round rules, however, actually discourage such construction by allowing municipalities to order developers to build affordable units without providing any offsetting benefit as incentive. This not only impedes construction of affordable housing, but it also increases the cost of market-rate housing because developers are forced to raise prices in order compensate for the revenue lost to deed-restricted units.

The Legislature should require COAH to mandate that municipal land use ordinances provide offsetting density bonuses to stimulate production of low- and moderate-income housing.

- *Require COAH to account for existing affordable-housing units when allocating a town's fair share*

COAH's third-round "growth share" formula assigns every municipality an identical obligation based upon the amount of growth a town experiences, regardless of a town's existing affordable housing stock. To ensure that urban and inner-ring municipalities do not continue to house disproportionate shares of the State's low-income families, the Legislature should require COAH to account for a town's existing affordable housing stock when calculating that town's obligation (this process is referred to as "reallocated present need" and was an integral component of COAH's first and second round methodologies). Please note that the recent appellate court opinion upheld the third-round's elimination of reallocated present need, although the court did concede that this was a close call.

- *Create "Comprehensive Housing Plan"*

New Jersey's housing problem is complex, systemic and long-standing. It is therefore necessary for the State to ensure that affordable housing remains a top priority for future administrations and legislatures. The Legislature should make permanent Commissioner Doria's housing task force comprised of a diverse body of government officials, as well as public and private stakeholders. The Housing Task Force would be charged with developing a "comprehensive statewide housing plan" and submitting annual reports to the Legislature over a 10-year period. These annual reports should evaluate progress toward achieving the State's affordable housing goals and recommend aggressive remedial strategies where necessary. This comprehensive housing plan would focus on coordinating existing housing services and targeting resources to priority populations.

This proposal is based on Illinois legislation enacted into law in 2006 and is strongly supported by the Housing and Community Development Network. New York City also recently developed a comprehensive affordable housing plan aimed at realizing its goal of developing 165,000 units in 10 years. Since implementing the plan three years ago, the city has produced 75,000 units.

- *Require regular publication of affordable housing statistics*

Although the Fair Housing Act contemplates DCA issuing an annual report documenting affordable housing construction, this report has not been made available since 2003. The Legislature should require DCA to make available this year's report. The Legislature also should require COAH and HMFA to report on the affordable housing they have financed.