



Lunch and Learn: A-4/S-50 Roundtable

January 23, 2024, 12 Noon

A4

Assembly Housing Committee. Committee

Possible hearing on 1/29.

ASSEMBLY, No. 4
STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED JANUARY 9, 2024

Sponsored by:
Assemblywoman YVONNE LOPEZ
District 19 (Middlesex)
Assemblyman CRAIG J. COUGHLIN
District 19 (Middlesex)
Assemblyman BENJIE E. WIMBERLY
District 35 (Bergen and Passaic)
Assemblywoman VERLINA REYNOLDS-JACKSON
District 15 (Hunterdon and Mercer)

SYNOPSIS
Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.

CURRENT VERSION OF TEXT
As introduced.



Tuesday, , January 23, 2024

S50

Senate Community & Urban Affairs

Hearing on January 25.

SENATE, No. 50
STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED JANUARY 9, 2024

Sponsored by:
Senator TROY SINGLETON
District 7 (Burlington)
Senator NICHOLAS P. SCUTARI
District 22 (Somerset and Union)

Co-Sponsored by:
Senator Beach

SYNOPSIS
Reforms municipal responsibilities concerning provision of affordable housing; abolishes COAH; appropriates \$16 million.

CURRENT VERSION OF TEXT
As introduced.



(Sponsorship Updated As Of: 1/9/2024)

Descriptions above as of January 23, 2024. Bill may be subject to amendments

Major Provisions of A4/S50

- COAH abolished. Its duties and functions would be split between the Department of Community Affairs (DCA) and the Administrative Office of Courts (AOC.)
- DCA runs the numbers using the methodology within the bill and the newly established Affordable Housing Dispute Resolution Program (Program) within the AOC handles any dispute.
- The DCA is tasked with calculating regional need and municipal present and prospective obligations by the methodology outlined in in legislation concerning the methodologies and datasets within the March 8, 2018 unpublished decision from the Superior Court; In re Application of Municipality of Princeton, also known as the “Jacobson opinion.”
- Each municipality sets its own obligation number and must adopt the number through a binding resolution.
- The availability of bonus credits has been expanded compared to the bills introduced last legislative session but remain capped. The rental bonus credit would be eliminated.
- The Chief Justice of the NJ Supreme Court Makes appointments to the Program.

A4/S50, Methodology

- Methodology based chiefly on the data sets and calculations found with In re Application of Municipality of Princeton, also known as the “Jacobson opinion.”
- Legislation makes specific changes with present need calculation as well as prospective need, in addition to the Jacobson opinion.

A4/S50, The Process in a Nutshell

1. DCA produces a report determining the regional need and municipal obligations for each region of the state. This is to happen on or before **August 1, 2024**. (*Section 3 d.*)
2. Considering these calculations a municipality shall determine its present and prospective fair share obligation. This obligation shall be adopted through binding resolution no later than January 31, 2025. If a municipality does not meet this deadline, it loses immunity from builder's remedy litigation. (*Section 3 f. (1)(b)*)

A4/S50, The Process in a Nutshell, continued

3. Interested parties have until February 28, 2025, to challenge the municipality's adopted obligation number through the Program. If no challenge by this time, then on March 1, 2025, the municipality's determination is established by default. *(Section 3 f. (1)(b))*

4. Challenges to the municipal obligation determination are brought within the Program. Any challenge must state with particularity how the municipal calculation fails to comply with the methodology laid out within the legislation and must include the challenger's own calculation of fair share obligations. *(Section 3 f. (1)(c))*

A4/S50, The Process in a Nutshell

5. Upon a challenge the Program can:

- a. Make a finding that the municipality's determination of its present and prospective need obligation did not facially comply with the law and the immunity is revoked,
- b. Make an adjustment to the municipality's determination to comply with the law without revoking immunity, or
- c. Reject the challenge and affirm the municipality's determination.
 - A determination from the Program must be made no later than March 31 of the year when the current round is expiring. That is, March 31, 2025, for the upcoming Fourth Round. (*Section 3 f. (1)(c)*)

A4/S50, The Process in a Nutshell

6. A municipality must adopt a Housing Element and Fair Share Plan, along with drafts of the appropriate zoning and other ordinances and resolutions implementing its present and prospective obligation by June 30, 2025. These must be filed with the Program within 48 hours of adoption. Failure to meet these deadlines, including filing with the Program, will result in the loss of immunity from builder's remedy litigation. *(Section 3 f. (2)(a))*
7. An interested party has until August 31, 2025, to file an action within the Program challenging the municipality's Fair Share Plan and Housing Element. If no challenge before August 31, then the Program review the Plan and Element for consistency with the FHA. *(Section 3 f. (2)(b))*

A4/S50, The Process in a Nutshell

8. A municipality has until December 31, 2025, to settle any challenge or provide an explanation as to why it will not make all, or some of the requested changes, or both. (*Section 3 f. (2)(b)*)
9. A municipality has until March 15, 2026, to amend their Housing Element and Fair Share Plan and to adopt the implementing ordinances to comport with the amended numbers. Upon adoption of any changes the municipality must immediately file them with the Program using the Programs website. (*Section 3 f. (2)(c)*)
10. A municipality or other interested party may file an action through the program seeking a realistic opportunity review at the midpoint of the certification period. (*Section 4, Pages 16-17*)

A4/S50, The Program

(See Section 5, Beginning on page 17)

- The purpose of the Affordable Housing Dispute Resolution Program (Program) is to “efficiently resolve disputes involving the “Fair Share Housing Act.”
- The Program is made up of an odd number of members, of at least three and no more than seven.
- Members of the Program are to be appointed by the Chief Justice of the Supreme Court within 40 days of the legislation’s adoption. Members must be current or former “Mount Laurel Judges” or other qualified experts, if there are not enough judges.

A4/S50, The Program

- When making appointments the Chief Justice must take into consideration the experience in the employment of alternative dispute resolution methods and relevant subject.
- The legislation from last session included a provision that limited the political make up of the Program members. No such provision is in the newly introduced bill

A4/S50, County Level Housing Judges

- The Chief Justice is required to designate a Superior Court judge who sits within the vicinage, or a retired judge, who during the judge's tenure served within the vicinage, to serve as a county level housing judge to resolve disputes over compliance of fair share affordable housing obligations and municipal fair share plans and housing elements of municipalities within their county, with the Fair Housing Act.
- A judge shall be permitted to serve as a county level housing judge for more than one county in the same vicinage.

A4/S50, Bonus Credits

See Section 24, page 49.

- A municipality shall not receive more than one type of bonus credit for any unit. This is current practice.
- A municipality shall not be permitted to satisfy more than 25% of its prospective need obligations through the use of bonus credits.
(A4, page 48)
- The availability of bonus credits has been expanded compared to the bills introduced last legislative session but remain capped.
- **The rental bonus credit would be eliminated.**

A4/S50, Bonus Credits

1. Special Needs: One unit of credit and **one bonus credit** for each unit of low- or moderate-income housing for individuals with special needs or permanent supportive housing.
2. Non-Profit Partnership: One unit of credit and **one-half bonus credit** for each unit of low- or moderate-income housing unit created in partnership with a non-profit housing developer.
3. Proximity to Transit: One unit of credit and **one-half bonus credit** for each unit of low- or moderate-income housing located within a one-half mile radius (one-mile radius if located in a Garden State Growth Zone) surrounding a NJ Transit Port Authority Transit Corp., Port Authority Trans-Hudson Corp., rail, bus, or ferry station, including all light rail stations.
4. Age-Restricted: One unit of credit and **one-half bonus credit** for a unit of age-restricted housing. (Bonus credit only applicable to 15% of all age-restricted housing built that count towards affordable housing obligation.)
5. Family Housing: One unit of credit and **one-half bonus credit** for each unit of low- or moderate-income family housing with at least three bedrooms above the minimum number required by the bedroom distribution in a given development.

A4/S50, Bonus Credits

6. Redevelopment: One unit of credit and **one-half bonus credit** for each unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space.
7. Extension of Affordability Controls: One unit of credit and **one-half bonus credit** for each existing low- or moderate-income **RENTAL** housing unit for which affordability controls are extended for a new term, and the municipality contributes funding towards the costs necessary for this preservation.
8. 100% Affordable with Municipal Contribution: One unit of credit and **one-half bonus credit** for each unit of low- or moderate-income housing in a 100% affordable housing project, which the municipality either contributes property without which the project would not be feasible, or makes contributions from the municipal affordable housing trust fund that covers no less than 10% of the project costs.
9. Very Low Income: One unit of credit and **one-half bonus credit** for each unit of very low-income housing for families above the 13% of units required to be preserved for very low-income housing

A4/S50, Housing Element and Fair Share Plan

Housing Element & Fair Share Plan

- Must include a spending plan for current funds in the municipal affordable housing trust fund and projected funds towards the round.
- As part of the Housing Element and Fair Share Plan the municipality shall include an assessment of the degree to which the municipality has met its fair share obligation from the prior rounds of affordable housing obligations as established by prior approval and determine to what extent this obligation is unfulfilled or whether the municipality has credits in excess of prior round obligations.
- The legislation expands upon the techniques required to be considered in a housing element. Under current law the housing element must consider “A plan for infrastructure expansion and rehabilitation if necessary...” The legislation expands this to require a plan for “conversion or redevelopment of unused or underutilized property, including existing structures” (*Section 24*)

A4/S50, Vacant Land Adjustment and Need to Identify Parcels Likely to Redevelop

Section 23, page 44.

- The legislation would require any municipality that receives a an adjustment of its prospective need obligation for the fourth or any subsequent rounds based on a lack of vacant land to, as part of its adopting and implementing its Housing Element and Fair Share Plan, “identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25% of the prospective need obligation that has been adjusted, and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so.”
- The Program, as part of providing Compliance Certification, must confirm that land was correctly excluded.

A4/S50, Limits, Minimums, & Maximums:

Age Restricted Housing: A municipality may not satisfy more than 25% of the affordable housing units, exclusive of bonus credits, to address its prospective need obligation through the creation of age-restricted housing. This is a continuation of current requirements.

Housing Available to Families with Children: A municipality must satisfy at least 50% of the actual affordable housing units, exclusive of bonus credits, created to address its prospective need obligation through the creation of housing available to families with children. This is a continuation of current requirements.

Rental Housing: A municipality must satisfy at least 25% of the actual affordable housing units, exclusive of bonus credits, to address its prospective need obligation through rental units. At least half of that number must be available for families with children. This is a continuation of current requirements.

A4/S50, Limits, Minimums, & Maximums:

Very Low Income: (page 59) 13% of the housing units made available for low- and moderate income households must be reserved for occupancy by very low-income households. (This is not new.) What is new is that at least half of that number must be made available to families with children.

Transitional Housing: (*Section 24, page 47*) A municipality shall not credit transitional housing credits to more than 10% of the municipality's fair share obligation.

1,000 Unit Maximum: (*Section 3, page 12*) A municipality may lower its prospective need obligation to the extent necessary to prevent establishing a prospective need obligations of more than 1,000 housing units, after application of credits, or to prevent a prospective need obligation that exceeds 20% of the total number of households in a municipality. If subject to both, the reduction resulting in the lower obligation number is to be applied.

A4/S50, Affordability Controls:

Section 27, amending Section 21 of P.L.1985, c.222 (C.52:27D-321 (f)) Page 56.

- Under current law the HMFA may provide grants and loans to affordable housing programs provided the housing created through the assistance is restricted as low- and moderate income housing for a period of 20 years. This 20-year period was required for both rentals and for-sale units.
- The legislation increases the minimum period requiring affordability controls to 40 years for rental units and maintains a 20 year period for for-sale units.
- Current law also provides for the opportunity to lower the 20-year required affordability controls if it is determined that the economic feasibility of the program is jeopardized by the requirement and that the public purpose served by the program outweighs the shorter period.
- The legislation eliminates the opportunity to reduce the minimum requirement for affordability controls.

Municipal Housing Liaisons (Page 57)

- The DCA is tasked with promulgating processes and standards for the certification of administrative agents and municipal housing liaisons.

A4/S50, Development Fees

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- **New:** Within 90 days following enactment, any municipality that is or has been authorized to impose and collect development fees from developers of residential property or payments in lieu of constructing affordable housing, shall provide the DCA with a detailed accounting of such fees that have been collected and expended since the inception of the municipal authorization of such fees.
- A detailed accounting is then due by January 15 each year.
- Must include within Housing Element a spending plan for current funds in the municipal affordable housing trust fund and projected funds towards the round.
- DCA is to establish new rules related to the funds including rules that establish an expedited process for approving a spending plan for emergent opportunities to create affordable housing.
- A municipality is prohibited from expending any development trust funds unless they have immunity from builder's remedy litigation at the time of the expenditure. This limitation is changes prior practice which allowed expenditures if the municipality was in the process of obtaining certification.

A4/S50, Development Fees:

Limitation on Use of Funds:

New: Development fees cannot be used to pay for: (i) administrative costs, attorney fees or court costs to obtain a judgement of repose (ii) to contest a determination of the municipality's fair share obligation, (iii) on costs of any challenger in connection to a challenge to the municipality's obligations, housing element, or fair share plan.

There remains a 20% cap on the use of funds for administrative purposes but what constitutes administrative purposes has been specified and limited to: (i) actions and efforts reasonably related to the determination of a municipal obligation and development of its housing element and fair share plan, and (ii) expenses that are reasonably necessary for compliance with the process of the program, including but not limited to, the costs to the municipality of resolving a challenge under the program.

Note – Development fees cannot be used to pay for the administrative costs associated with a judgement of repose, but they can be used (capped at 20%) for the administrative costs within the Program. Unclear on how development fees can be used if Program determination is appealed.

A4/S50, Timeline

August 1, 2024: Deadline for the DCA to complete and publish a report on the calculation of regional need and municipal obligations for each region. A new report is due August 1 of the year prior to the start of each 10-year round.

January 31, 2025: Deadline for a municipality to adopt their numbers via “Binding Resolution” with or without using the DCA’s numbers.

February 28, 2025: Deadline to challenge a municipality’s adopted numbers.

March 1, 2025: If no challenges, the Town’s numbers are established by default, immunity remains in effect.

April 1, 2025: Deadline for the Affordable Housing Dispute Resolution Program (AHDRP) to settle the number challenge(s).

A4/S50, Timeline, continued

June 30, 2025: Deadline to adopt and endorse a Housing Element and Fair Share Plan and file with the Program to maintain immunity.

August 31, 2025: Deadline to challenge the validity of a municipality's Housing Element and Fair Share Plan.

December 31, 2025: Deadline for the municipality to settle the challenge or provide an explanation as to why it will not make all, or some of the requested changes, or both.

March 15, 2026: Deadline for a municipality to amend their Housing Element and Fair Share Plans and to adopt the implementing ordinances to comport with the amended numbers.

Next Steps, Senate

Senate Community and Urban Affairs Committee,
Thursday, January 25, 10 AM.
Committee Room 1, Statehouse Annex

Members:

The Hon. Troy Singleton, Chair (Sponsor), SenSingleton@njleg.org

The Hon. Brian P. Stack, Vice Chair, SenStack@njleg.org

The Hon. Carmen F. Amato, SenAmato@njleg.org

The Hon. Renee C. Burgess, SenBurgess@njleg.org

The Hon. Holly T. Schepisi, SenSchepisi@njleg.org

Send statements/testimony to: OLSaideSCU@njleg.org

Next Steps, Assembly

Expected to be on agenda
Assembly Housing Committee
Monday, January 29, Time TBD.

Members:

The Hon. Yvonne Lopez, Chair. AswLopez@njleg.org

To Be Announced.

Send statements/testimony to: OLSaideAHO@njleg.org

Next Steps

Concerns and Questions?



**New Jersey State League
of Municipalities**

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