LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 500
STATE OF NEW JERSEY
213th LEGISLATURE

DATED: JUNE 20, 2008

SUMMARY

Synopsis: Revises laws concerning the provision of affordable housing.

Type of Impact: Indeterminate local revenue loss. Indeterminate increase in State revenue. Establishes new Urban Housing Assistance Fund

Agencies Affected: Department of Community Affairs, Council on Affordable Housing, and municipalities

Office of Legislative Services Estimate

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<td>Indeterminate increase in State revenue – See comments below</td>
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• The Office of Legislative Services (OLS) estimates an indeterminate increase in State revenue as a result of this new Statewide fee on non-residential construction, and further estimates an indeterminate effect on local revenue. No specific estimate is feasible due to the unpredictable nature of the basis for the fee, i.e., the extent and location of new construction subject to the fee.

• The principal fiscal impact of this substitute bill is the imposition of a Statewide fee on all new non-residential construction to raise revenue for the construction and rehabilitation of affordable housing. The fee is imposed at a rate of 2.5 percent of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot or lots, and 2.5 percent of the increase in the equalized assessed value of the additions to existing structures to be used for non-residential purposes.

• With respect to municipal revenue, the OLS notes that the substitute bill’s pre-emption of local ordinances imposing fees on non-residential construction at higher rates than 2.5 percent could, for some municipalities, result in less revenue than they would otherwise collect if this bill were not enacted. The OLS notes that 274 municipalities are certified to collect development fees for deposit in affordable housing trust funds.
• The OLS notes that the substitute allows the Department of Community Affairs (DCA) to utilize annually up to 7.5 percent of the monies in the New Jersey Affordable Housing Trust Fund for the payment of administrative costs related to the administration of the Fair Housing Act, the State Housing Commission, or any costs related to the administration of this substitute.

BILL DESCRIPTION

Assembly Committee Substitute for Assembly Bill No. 500 of 2008 reforms many of the laws applicable to affordable housing. Most notably, it requires development fees to be charged Statewide on non-residential construction or improvements. For new construction the fee will be an amount equal to two and one-half percent of the equalized assessed value of the land and improvements. With regard to improvements, the fee will be an amount equal to two and one-half percent of the increase in the equalized assessed value of the additions made to the existing structure. Those municipalities that are currently certified by the Council on Affordable Housing (COAH) to collect residential development fees will be permitted to collect and retain the non-residential development fees. Developers of non-residential property in a municipality that are not authorized to charge development fees will be required to send the non-residential development fees to the State Treasurer, to be used for affordable housing purposes under the “Fair Housing Act.” This substitute also creates a program to assist municipalities eligible to receive urban aid with the creation of affordable housing units in light of the substitute’s elimination of the regional contribution agreement from the Fair Housing Act. Finally, this substitute creates a 15-member State Housing Commission that is directed to develop a strategic housing plan for New Jersey and prepare an annual housing performance report to the Governor and the Joint Committee on Housing Affordability.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates an indeterminate increase in State revenue as a result of this new Statewide fee on non-residential construction, and further estimates an indeterminate effect on local revenue. No specific estimate is feasible due to the unpredictable nature of the basis for the fee, i.e., the extent and location of new construction subject to the fee. This will vary from year to year according to such factors as national and regional economic conditions, local planning and zoning decisions, and the impact of government development subsidies.

The principal fiscal impact of this substitute is the imposition of a Statewide fee on all new non-residential construction to raise revenue for the construction and rehabilitation of affordable housing. The fee is imposed at a rate of 2.5 percent of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot or lots, and 2.5 percent of the increase in the equalized assessed value of the additions to existing structures to be used for non-residential purposes. Certain exclusions from the fee are provided for houses of worship, non-profit hospitals, nursing homes, educational facilities, certain parking lots, recreational facilities, and projects within an urban transit hub or certain transit villages. These
fees would be paid to the State by developers of non-residential properties in municipalities that are not currently certified by the COAH to collect residential development fees; otherwise they would be paid directly to the municipality where the construction occurs.

Under the bill the first $20 million in revenue from the State portion would be deposited into a newly-created Urban Housing Assistance Fund, for the purpose of assisting urban aid municipalities in the rehabilitation and production of housing. The remainder of State fee revenues would be deposited into the New Jersey Affordable Housing Trust Fund (currently known as the Neighborhood Preservation Nonlapsing Revolving Fund) to be used for affordable housing purposes under the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.). This substitute also allows the DCA to use annually up to 7.5 percent of the monies available in the fund for the payment of any necessary administrative costs related to the administration of the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.), the State Housing Commission or any administrative costs. A provision of the original bill allowing the Department of the Treasury to spend up to five percent annually for administrative costs was removed by the committee substitute.

The OLS has reviewed information obtained from the Divisions of Codes and Standards and Local Government Services in the DCA to illustrate, but not to forecast, the amount of revenue that would be collected by the State if this substitute were to become law. Using information contained in county budgets submitted to the Division of Local Government Services as part of the budget review process, the OLS has determined that the equalized assessed value of all added assessments in New Jersey for 2007, generally equivalent to new residential and non-residential construction, was $13,815,887,643.

To discern the percentage of this total which may have been non-residential in nature, the OLS consulted the December 2007 edition of The New Jersey Construction Reporter published by the Division of Codes and Standards. This report indicated that the Statewide dollar amount of non-residential construction authorized by building permits in 2007 was $7,054,524,983, which represented about 47 percent of the Statewide total of the dollar amount of all construction authorized by building permits for all construction in 2007. To estimate the equalized assessed value of all new non-residential construction in 2007, $13,815,887,643 was multiplied by 0.47. This calculation yielded a result of $6,538,215,024. Two and one-half percent of this amount (the proposed fee) equals $163,455,375. No information was reviewed by the OLS indicating the municipal location of any added assessments, so no attempt is made to illustrate how this hypothetical revenue yield would be divided between the State and municipalities.

With respect to municipal revenue, the OLS notes that the bill’s pre-emption of local ordinances imposing fees on non-residential construction at higher rates than 2.5 percent could, for some municipalities, result in less revenue than would otherwise occur if this substitute bill were not enacted. The substitute provides that any municipal ordinances imposing non-residential development fees for affordable housing purposes under current COAH regulations, that are generally 3 percent of the equalized assessed value in municipalities under COAH jurisdiction that have not adopted a growth-share ordinance, become void and without effect. The substitute also discontinues payments-in-lieu-of construction developer fees in municipalities having adopted a growth share ordinance. These fees are typically based on a ratio of 1 affordable housing unit per 16 jobs deemed created by the non-residential development, and varies depending upon the housing region in which the development occurs and the number of jobs created per 1,000 square feet of development.

Finally, the OLS notes that this substitute eliminates the regional contribution agreement as a method to address housing needs under the “Fair Housing Act,” P.L.1985, c.222 (C.52:27D-301 et al.). However, agreements that have been formally reviewed and recommended by COAH for approval by the courts prior to the enactment of this substitute will be allowed to go forward.
Since 1985, 149 regional contribution agreements have resulted in the transfer of the obligation for building 10,400 units of affordable housing from one municipality to another. According to COAH, the total value of these agreements exceed $216 million.

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Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67 (C. 52:13B-1 et seq.).