

May 26, 2016

Re: Urgent Legislative Alert,
Affordable Housing “Gap” Period
[S-2254](#) & [A-3821](#)

Dear Mayor:

We urge your immediate attention to bipartisan legislation that will clarify municipal affordable housing obligations in a more rational and constructive manner. A recent trial Court determination related to municipal affordable housing obligations included a “gap period” analysis retroactively over an additional 16 year period, separate and apart from the normal 10 year present and prospective need. Essentially, this determination created a new category of municipal affordable housing obligations.

[S-2254](#), sponsored by Senators Greenstein and Bateman, and [A-3821](#), sponsored by Assemblymen DeAngelo and Benson, would, according to the bill statement,

“...eliminate any possible misconception with respect to the Legislature’s intent to ensure that determinations of a municipality’s fair share of affordable housing will be based upon the present and prospective need for affordable housing, as clearly set forth in the “Fair Housing Act” and that a fair share obligation will not include retrospective need that may have arisen during any “gap period” between housing cycles. “

The League supports this important legislation, which will facilitate municipal compliance and result in the production of affordable housing.

Recently the Ocean County Superior Court included a distinct “gap period” analysis retroactively over an additional 16 year period, separate and apart from the normal 10 year present and prospective need. This “gap issue” arises out of COAH’s inability to promulgate third round regulations from 1999 to the present or make any final determination as to state and regional housing need, as well as constant litigation by certain groups. The inclusion of this new obligation on municipalities will likely result in arbitrary determinations and inflate local, regional and statewide need to numbers that municipalities could not realistically meet. Additionally, such retrospective determinations raise serious analytical problems because “gap” households may no longer exist and/or could be double counted as present need.

The Ocean County Court determination, which is the subject of an interlocutory appeal, is contrary to the clear language and intent of the Fair Housing Act. This legislation affirms and clarifies that intent so there can be no misinterpretation by the Court. S-2254 and A-3821 clarify that every municipality’s affordable housing obligation is the sum of: 1) present need, which are low income households (households whose income is 50% or less of the median gross income for household in the housing region) and moderate income households (households whose income is more than 50% but less than 80% of the median gross income for households in the housing region) that exist in the municipality presently, but live in deteriorated housing; and,

2) prospective need, which is the municipality's share of low and moderate income households that will be created in the future. S-2254 and A-3821 clarify the existing law and create a rational and reasonable path forward for New Jersey municipalities to meet their affordable housing goals.

Pursuant to the March 2015 State Supreme Court ruling, hundreds of New Jersey's municipalities have voluntarily sought declaratory judgments through the courts. In doing so, these municipalities have already expended significant financial and administrative resources. This legislation is an important clarification that precludes further significant, unfair impacts and would result in a more rational statewide housing policy, including reasonable and achievable obligations for municipalities.

We strongly urge you to immediately:

- 1) Bring this legislation to the attention of your State Legislators and ask that they support the bills and co-sponsor;
- 2) Contact the members of the Legislative Committee to which these bills are referenced and ask for their support; and
- 3) Contact the offices of the Governor, Senate President Sweeney and Assembly Speaker Prieto and ask for their immediate attention and support.

Please click [here](#) for a sample Resolution in support of these bills.

The League thanks the sponsors for advancing this important and timely proposal. S-2254 is referenced to the Senate Community and Urban Affairs Committee. A-3821 is referenced to the Assembly Housing and Community Development Committee.

Contact: Mike Cerra, mcerra@njslom.org, 609-695-3481 x120.

Sincerely,

Michael J. Darcy, CAE Executive
Director