



**Testimony on A3447  
Assembly Housing and Local Government Committee**

**Nov. 8, 2010**

137 West Hanover Street  
Trenton, NJ 08618  
(609) 393-0008 *Tel.*  
(609) 393-1189 *Fax*  
[www.njfuture.org](http://www.njfuture.org)

**Contact:** [Peter Kasabach](#), Executive Director, 609-393-0008 ext. 104

New Jersey Future appreciates the Assembly's leadership on the affordable housing issue and is pleased to see a bill that attempts to correct the flaws in S-1 and lay the groundwork for a long-lasting, equitable affordable housing system for New Jersey.

Like its predecessor S-1, Assembly bill A-3447 lays out two strong foundational elements for a new affordable housing system: 1) Simple, objective affordable housing thresholds that towns must meet, and 2) A requirement that residential development include a percentage of affordable housing. S-1 demonstrated how this strong foundation can be rendered ineffective when the integrity of the system is undermined with loopholes and exceptions. Unfortunately, A-3447 suffers from this same problem.

First, the simple and objective threshold requirement created in A-3447 is very good because it can be measured by municipalities and there is no need for any third party bureaucracy. Municipalities meet the test if either 12% of their existing housing is affordable to low- and moderate-income households, or more than 25% of the families in their town qualify for free and reduced price lunches.

Unfortunately, this straight-forward approach was undermined by the creation of a third threshold criteria that is difficult to measure, forces up-zoning without requiring any additional affordable housing, and when combined with other provisions of this bill is unlikely to produce any affordable housing at all. The third option for municipalities is to zone at least 20% of their "developable property" for housing affordable to households earning less than 150% of the area median income (the top end of affordable housing is 80% of area median income). A town will have to go through the complicated process of determining what "developable land" is in order to identify the 20% that will be dedicated to affordable housing. Towns must then meet minimum zoning density requirements on these sites. The zoning requires that the units be affordable to households earning less than 150% of area median income, which does not meet any federal, state or court definition of affordable housing and by any definition is high-end housing. Presumably, 10% of these units will need to be affordable to low and moderate-income households, but this is not entirely clear.

Implementing the zoning provision is fraught with additional pitfalls. Taken to its logical extension, towns that are under growth pressure will ultimately need to zone virtually all of their developable land for high-end (150% of median) housing, since as developments get built, the town will need to rezone land in order to remain compliant with the 20% rule. This provision also provides an incentive for towns to pick the lowest quality and least likely to be developed

sites to be included in the 20% category. This provision furthers the perception, and in this case the reality, that affordable housing policies force bad land use planning decisions.

We strongly support a system that maintains the simple thresholds, but allows towns two ways to meet those thresholds: 1) show incremental progress toward providing actual affordable housing units, or 2) implement a comprehensive affordable housing plan with measurable benchmarks. Allowing these options, keeps the overall affordable housing system simple and fair, while allowing towns to engage in good planning and show progress before being subjected to a builder's remedy.

Second, the simple requirement that all developments 10 units or above include a percentage of low- and moderate-income units on site is very good. This is a simple to understand provision and will make affordable housing more feasible as land values adjust to this statewide land use requirement.

Unfortunately, the bill creates a number of loopholes that eliminate the "mandatory" from the inclusionary requirement. Developers can build off-site and rehabilitate units that are not equivalent, but most glaring is the ability for developers to buy their way out of the obligation with a nominal fee of 2 or 3 percent. This provision not only undermines the entire concept of mandatory inclusionary, but it will likely result in no affordable housing being built, since the fee collected is small and goes into an affordable housing trust fund. The trust fund in turn can be used for a multitude of affordable housing uses, many of which do not create new units.

In addition to these two major problems with the bill, there are a number of minor issues relating to percentages chosen and definitions used. We have thought long and hard about all of these issues and would welcome the opportunity to share practical solutions to each of the concerns we identify. I hope that this preliminary critique is useful, and we look forward to working with you to make this a bill that will create affordable housing opportunities in New Jersey.

Thank you.