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P.O. Box 145
106 Grand Central Avenue
Lavallette, NJ 08735
(732) 830-0777

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Princeton, NJ 08540
(609) 436-1201

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M. Pasquale Law
146 Rea Avenue
Hawthorne, NJ 07506
(973) 423-0909

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October 2, 2024

RE: FHA Amendment Proposed by NJILGA

Dear Counsel:

As President of the New Jersey Institute of Local Government Attorneys (NJILGA), I am writing on behalf of the NJILGA officers and trustees to inform you of proposed amendments to the Fair Housing Act (FHA) that will benefit municipalities by providing a better method to calculate municipal affordable housing obligations.

We understand that municipal attorneys deal with a myriad of important local government issues on a regular basis, few of which have a greater impact than then implementing affordable housing obligations.

We are also sure you know that our Legislature recently enacted changes to the Fair Housing Act, the law which has guided our clients' affordable housing obligations since 1985. We want to alert you to a provision in the new law that is likely to dramatically extend your clients' affordable housing obligations beyond realistic bounds.

The provision in question, *N.J.S.A. 52:27D-304.2.b.(2)* of the FHA as recently amended, has the effect of establishing an affordable housing obligation of about 85,000 for the entire state during the 2025 through 2035 time-span. The problem arises when one recognizes that only about 140,000 new residential construction certificates of occupancy were issued for all types of housing units in New Jersey for the ten-year period upon which the 85,000 figure is based. As you can see, the new law's affordable housing obligation is almost 61% of all housing types produced in the prior ten years. Based on a statewide obligation of 85,000 affordable units, and using the traditional method of creating affordable housing through inclusionary zoning at a set-aside rate of 20%, the new FHA provision would require the construction of about 425,000 housing units to achieve that affordable housing goal. 425,000 housing units is more than triple the number of new housing units constructed in New Jersey in the ten-year period used to determine the prospective need. Simple math illustrates the concern.

Our constitutional doctrine under the Mount Laurel line of cases, and even the Fair Housing Act, requires municipal affordable housing obligations to be "realistic." We have obvious concerns that the new law is deeply flawed in that it imposes patently unrealistic obligations.

The NJILGA Trustees created a committee to address this issue. After analysis, the committee prepared draft legislation, which has been approved by the NJILGA

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officers and trustees. The proposed legislation would correct this imbalance. We will provide that the proposed legislation next week.

Your support for reasonable changes to return the Fair Housing Act to its roots in establishing realistic goals is important. More information will be provided in the coming days. In the meantime, if you have any questions, please contact the undersigned.

We look forward to working with you.

Very truly yours,

Michele R. Donato
Michele R. Donato
President, NJILGA

MRD:dp

cc: NJILGA Officers (by email transmission only)
NJILGA Trustees (by email transmission only)