



New Jersey Extends Moratorium on 2.5% Fee for Nonresidential Development S-2974, P.L. 2011 c.122 Signed into Law

Client Advisories

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On August 24, 2011, Acting Governor Kim Guadagno signed legislation that was passed without dissent by both the Senate and the Assembly, on June 29, 2011, approving a two (2) year moratorium on the 2.5% Fee charged by municipalities on all nonresidential development based on a project's equalized assessment. This Legislation, which Lt. Gov. Guadagno signed while Gov. Chris Christie was out of the State on official business, extends the moratorium on the Fee that was enacted as part of an amendment to the Fair Housing Act (P.L. 2008, c.46 - the Statewide Nonresidential Development Fee Act). Following that, pursuant to the Economic Stimulus Act (P.L. 2009, c.90), the imposition of the Fee was suspended until July 1, 2010. Since July 1, 2010, eligible projects were subject to the 2.5% Fee. Essentially, the Legislation recently signed by the Acting Governor extends the two (2) year moratorium until July 1, 2013, and provides as follows:

- Applies to Preliminary or Final Site Plan approvals received prior to July 1, 2013, provided that construction permits are obtained prior to January 1, 2015.
- The moratorium relates back to the end of the previous suspension, which ended July 1, 2010.
- The Law allows for the reimbursement of a 2.5% Fee previously paid unless the money has already been spent on an affordable housing project.
- If the 2.5% Fee has already been paid to a municipality, a developer must make a claim for a refund within 120 days of the effective date of the new Law (i.e., August 24, 2011). However, if the monies have already been spent on an eligible project, no refund is available.
- The new Law keeps in place C.40:55D-8.6 which is applicable to municipal development fees that developers were previously required to pay prior to July 17, 2008, the effective date of P.L. 2008, c.46.

In the Fiscal Note attached to S-2974, the Office of Legislative Services (OLS) acknowledged that the 2.5% Fee was "intended to raise revenues for the construction and rehabilitation of affordable housing." However, OLS

provided no specific revenue estimate, stating that municipalities that received Substantive Certification from the Council on Affordable Housing (COAH) “would experience a revenue loss” during the moratorium period based on their inability to charge and collect the Fee.

The new Law also provides that the portion, if any, of a municipal affordable housing obligation under Fair Housing Act attributable to a nonresidential development is “reduced or eliminated” if the collection of the Nonresidential Fee is suspended.

Based on Governor Christie’s Reorganization Plan (001 - 2001, dated June 29, 2011), COAH was abolished as an Agency, effective within 60 days of the date of the Reorganization Plan, and all of its functions, duties, powers and personnel were transferred to the Commissioner of the New Jersey Department of Community Affairs. However, the Fair Share Housing Center, on August 29, 2011, filed a Motion to Stay the Governor’s Reorganization Plan with the New Jersey Superior Court, Appellate Division. We will keep our clients advised as this matter progresses, and will closely monitor the Administration’s and the Legislature’s attempts to resolve affordable housing issues in the State.

If you have questions or concerns related to the fee moratorium or other land use matter, please contact one of the following members of Archer’s Land Use, Environmental Permitting and Compliance Practice Group:

- In Haddonfield, Group Chair Robert W. Bucknam Jr. at (856) 354-3025 or rbucknam@archerlaw.com
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