COMMITTEE REPORT

April 3, 2018

**H. 4162**

Introduced by Reps. Mack, Whipper, Gilliard, Brown, Pendarvis, Henderson‑Myers, Brawley, King and Henegan

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Read the first time April 20, 2017.

**THE COMMITTEE ON MEDICAL,**

**MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

To whom was referred a Bill (H. 4162) to amend the Code of Laws of South Carolina, 1976, by adding Article 5 to Chapter 7, Title 6 so as to enact the “South Carolina Inclusionary Zoning Act, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

LEON HOWARD for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Local Expenditure**

This bill is permissive and provides the authority for counties and municipalities to use inclusionary zoning strategies to increase the development of affordable housing for low and moderate income families. Inclusionary zoning is defined as zoning regulation, requirement, or condition of development imposed by an ordinance or regulation, or pursuant to a special or conditional permit, special exception, or subdivision plan that promotes the development of affordable dwelling units.

Under this bill, a municipality or county may adopt a land use regulation, functional plan provision, housing permit requirements that establish the sale or rental price for a new multifamily or single-family structure as affordable housing, or requires a new multifamily or single-family structure to be designated for sale or rent as affordable housing. Additionally, a regulation, provision, or requirement adopted or imposed pursuant to Section 6-7-520, may not require more than 30 percent of housing units within a multifamily structure or single-family development to be sold or rented as affordable housing. The specific percentage of units to be sold or rented as affordable housing will be determined by local municipal or county zoning ordinances. Further, requirements may apply to only multifamily or single-family developments containing five or more housing units and will provide developers the option to pay a fee in lieu, in an amount determined by the municipality or county, rather than to include affordable units within their overall development. Additionally, under the proposed affordable housing requirements, a county or municipality will provide an expedited review process, such as, approving permits or reviewing building plans for approval for developments that meet the percentage of affordable units ahead of others. To encourage affordable housing development, counties and municipalities will offer developers one or more incentives including: density adjustments; modification of height, floor area, or other site specific requirements; or whole or partial waivers of system development charges, impact or permit fees set by the municipality or county; tax adjustments; or other incentives as determined by the municipality or county.

Section 6-7-520 does not restrict the authority of a municipality or county to offer additional incentives for building affordable housing units that are affordable to households with incomes at or below 60 percent of the area median income for the county or metropolitan statistical area. This bill does not apply to existing multifamily structures or single-family developments for sale or rent or to pending developments that have received permits prior to the municipality or county enacting an inclusionary zoning ordinance. Additionally, a municipality or county is authorized to require recorded deed restrictions or restrictive agreements to ensure the affordable units within a development remain affordable for a period of time to be determined by the municipality or county. A municipality or county that adopts the proposed affordable housing requirements will adopt and apply only clear and objective standards, conditions, and procedures regulating the development of affordable housing units within its jurisdiction. The standards, conditions, and procedures may not have the effect, either individually or cumulatively, of discouraging development of affordable housing units through unreasonable cost or delay. In addition, a municipality or county may adopt and apply an alternative approval process for applications and permits for residential development based on clear and objective approval criteria regulating aesthetics, either in whole or in part.

Because this bill authorizes counties and municipalities to adopt inclusionary zoning strategies but does not mandate them, the level of local government participation is unknown. Those local governments that do not implement inclusionary zoning may do so through a land use regulation, functional plan provision, or permit requirement. The Revenue and Fiscal Affairs Office anticipates those local governments that do implement inclusionary zoning will be able to do so as part of their ordinary course of business, with minimal adjustment, and without significant additional expenditure.

**Local Revenue**

The bill authorizes counties and municipalities to employ a variety of strategies to increase the development of affordable housing, including tax adjustments and full or partial waivers of impact charges or permit fees. In addition, counties and municipalities adopting a land use regulation, functional plan, or permitting condition to increase development of affordable housing must provide developers the option to pay a fee in lieu of including affordable housing in their development. These provisions and strategies would have a revenue impact on local government. However, the revenue impact is undetermined, because adopting inclusionary zoning is permissive and incentives to increase affordable housing may vary.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 5 TO CHAPTER 7, TITLE 6 SO AS TO ENACT THE “SOUTH CAROLINA INCLUSIONARY ZONING ACT” TO PROVIDE THAT COUNTIES AND MUNICIPALITIES ARE AUTHORIZED TO USE INCLUSIONARY ZONING STRATEGIES TO INCREASE THE AVAILABILITY OF AFFORDABLE HOUSING.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 7, Title 6 of the 1976 Code is amended by adding:

“Article 5

South Carolina Inclusionary Zoning Act

Section 6‑7‑510. (A) The General Assembly finds:

(1) in many counties and municipalities, there is a critical shortage of decent, safe, and affordable residential housing available to low‑ and moderate‑income families;

(2) the affordable housing shortage constitutes a danger to the health, safety, and welfare of residents of the State, and is a barrier to sound growth and sustainable economic development for South Carolina counties and municipalities; and

(3) affordable housing can include multifamily rental, single‑family rental, and single‑family homeownership.

(B) The purpose of this act is to provide authority for counties and municipalities to use inclusionary zoning strategies to increase the development of affordable housing for low‑ and moderate‑income families.

Section 6‑7‑520. (A)(1) Pursuant to Section 31‑22‑20, ‘affordable housing’ means residential housing for rent or sale which is appropriately priced for rent or sale to a person or family whose income does not exceed eighty percent of the median income for the local area, with adjustments for household size, according to the latest figures available from the United States Department of Housing and Urban Development (HUD). South Carolina’s high cost counties will not exceed one hundred twenty percent of the Area Median Income (AMI) for sale or rental of affordable housing. The Federal Housing Administration (FHA) designates high‑cost counties through its annual publication of loan limits ‑ ‘Counties with FHA Loan Limits Between the National Floor and Ceiling’.

(2) ‘Inclusionary Zoning’ means a zoning regulation, requirement, or condition of development imposed by ordinance or regulation, or pursuant to a special or conditional permit, special exception, or subdivision plan that promotes the development of affordable dwelling units.

(B)(1) A municipality or county may adopt a land use regulation or functional plan provision or impose as a condition for approving a permit, a requirement that has the effect of establishing the sales or rental price for a new multifamily or single‑family structure, or that requires a new multifamily or single‑family structure to be designated for sale or rent as affordable housing.

(2) A regulation, provision, or requirement adopted or imposed pursuant to this section:

(a) may not require more than thirty percent of housing units within a multifamily structure or single‑family development to be sold or rented as affordable housing. The specific percentage will be determined by local municipal or county zoning ordinances;

(b) only may apply to multifamily or single‑family developments containing five or more housing units;

(c) shall provide developers the option to pay a ‘fee in lieu’, in an amount determined by the municipality or county, rather than to include affordable units within their overall development; and

(d) shall provide an expedited process for developments that meet the percentage of affordable units. For example, an expedited process may include putting these developments at the front of the line for review of plans and other requirements, or other ways to reduce the time for the review and permitting process.

(3) A regulation, provision, or requirement adopted or imposed under item (2) of this subsection shall offer developers one or more of the following incentives:

(a) density adjustments;

(b) modification of height, floor area, or other site‑specific requirements; or

(c) whole or partial waivers of system development charges, impact, or permit fees set by the municipality

or county;

(d) tax adjustments; or

(e) other incentives as determined by the municipality or county.

(4) Item (2) of this subsection does not:

(a) restrict the authority of a municipality or county to offer additional incentives for building affordable housing units that are affordable to households with incomes at or below sixty percent of the AMI for the county or metropolitan statistical area; or

(b) apply to existing multifamily structures or single‑family developments for sale or rent or to pending developments that have received permits prior to the municipality or county enacting an inclusionary zoning ordinance.

(5) A municipality or county is authorized to require recorded deed restrictions or restrictive covenants to ensure the affordable units within a development remain affordable for a period of time to be determined by the municipality or county.

(6)(a) A municipality or county that adopts or imposes a regulation, provision, or requirement pursuant to item (2) of this subsection shall adopt and apply only clear and objective standards, conditions, and procedures regulating the development of affordable housing units within its jurisdiction. The standards, conditions, and procedures may not have the effect, either individually or cumulatively, of discouraging development of affordable housing units through unreasonable cost or delay; and

(b) In addition to an approval process for affordable housing based on clear and objective standards, conditions, and procedures as provided in this item, a municipality or county may adopt and apply an alternative approval process for applications and permits for residential development based on clear and objective approval criteria regulating aesthetics, either in whole or in part.”

SECTION 2. This act takes effect upon approval by the Governor.

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