The Senate Economic Growth Committee reports favorably a Senate Committee Substitute for Senate Bill No. 1.

This committee substitute revises and reforms many of the statutes relating to affordable housing in New Jersey. The Mount Laurel cases established that a developing municipality has a constitutional obligation to provide, through its land use regulations, a realistic opportunity for a fair share of its region’s present and prospective needs for housing for low and moderate income families. In response, the Legislature passed the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) to administer the requirements of the Mount Laurel decisions, establish a housing policy and provide a safe haven from the judicial builders remedy. The intent of this committee substitute is to establish a simple method of compliance with the constitutional requirements set forth by the Mount Laurel decisions. This substitute provides that certain municipalities that have taken action to provide a variety and choice of housing would be deemed to have satisfied their constitutional obligation. All other municipalities, through set-aside requirements and zoning variances, would be required to provide a realistic opportunity for a fair share of regional affordable housing needs.

This committee substitute repeals the "Statewide Non-Residential Development Fee Act," sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 et al.). The substitute removes statutory references to the Act, and prohibits municipal imposition of development fees on non-residential development. The substitute also does away with provisions permitting the Council on Affordable Housing ("council"), which was established by the "Fair Housing Act," to authorize municipal development fee trust funds.

The substitute abolishes the council, and transfers any remaining authority of the council to the State Planning Commission established by the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.). This bill amends the findings and declarations sections of the "Fair Housing Act" to eliminate references to the Council on Affordable Housing. This bill charges the State Planning Commission with
assisting municipalities to facilitate opportunities for affordable housing.

This substitute for Senate No. 1 would do away with State-imposed calculations of affordable housing need. Instead, the substitute provides that a municipality is deemed to have fulfilled a fair share of its regional housing obligation if seven and one-half percent of the municipality's housing stock is price restricted, or 33 percent of the housing stock is multi-family housing and mobile homes. Price restricted housing includes deed-restricted affordable housing units and dwelling units that have received State and federal financial assistance.

This legislation would require municipalities to set aside 10 percent of the units in any residential development project resulting in more than 20 units as low- and moderate income housing. Five percent of the units in small residential development projects resulting in more than five and fewer than 20 units would be reserved for low- and moderate income households. Although inclusionary zoning can be cumbersome, this legislation requires the municipality to provide for indirect economic incentives to a developer. These incentives include payments in lieu of construction, off-site construction, and rehabilitation for residential development projects that include affordable units. It is the committee's understanding that this legislation permits municipalities to tailor the incentives to their specific needs to encourage development and make projects economically viable.

The affordable units set aside as part of a residential development project or small residential development project would have to be half low-income and half moderate-income units. A municipality would be permitted to give households containing persons who work and reside in the municipality a preference for occupancy of the affordable units produced as part of a residential or small residential development project.

To give municipalities time to comply with the new procedures, the committee substitute provides a 120 day safe harbor from litigation.

If a municipality is not deemed to be an inclusionary municipality, this substitute provides that a proposed affordable housing development seeking a variance is deemed to be inherently beneficial, and thus to have satisfied the "positive" criteria for a d. variance pursuant to section 70 of the "Municipal Land Use Law," P.L.1975, c.291 (C:40:55D-1 et al.). The substitute provides that the application for a variance will be reviewed by the planning board. This modification is intended to ensure provision of opportunities for affordable units and provide a check on an individual municipality's discretion to use land use regulation to exclude citizens desiring to live in the municipality. The alternate procedure would not be available in a municipality that has been deemed inclusionary.
In addition, to promote stability and predictability for municipal planning purposes, this bill amends the "State Planning Act" to require the State Planning Commission to readopt the State Development and Redevelopment Plan every six years.

In order to ease the pressure for municipalities to meet affordable housing goals, this bill would permit certain regional contribution agreements ("RCAs") formed before the effective date of P.L.2008, c.46 to be reviewed and approved through the end of 2011. The State Planning Commission would review and authorize these incomplete RCAs. This substitute requires the Planning Commission to include findings supporting authorization of an RCA.

The State Planning Commission would be required, by December 31, 2011, to review agreements between municipalities that took steps to enter into RCAs before July 17, 2008. The Planning Commission would be required to approve or disapprove agreements where municipalities had adopted resolutions of intent that specify certain information.

The committee substitute also authorizes municipalities to impose and collect payments in lieu of construction of affordable units. All payments collected would be deposited in a separate trust fund to be spent for activities facilitating housing for low- and moderate-income households.

This committee substitute also forgives unmet housing need from prior rounds or periods in time before the effective date of the act.