

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

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SENATE, No. 1

STATE OF NEW JERSEY

DATED: JUNE 3, 2010

The Senate Economic Growth Committee reports favorably a Senate Committee Substitute for 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. Mount Laurel I 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 Mount Laurel I, 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 Mount Laurel I. 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 providing for 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 Department of Community Affairs. 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 Department of Community Affairs 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 its 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. In addition, under the substitute, a municipality may be deemed inclusionary upon filing a housing plan demonstrating how the municipality plans to implement the set aside, described below, in the municipality. This legislation also does not continue or authorize regional contribution agreements.

This legislation would require all 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 allows a municipality to provide for indirect economic incentives to a developer. These incentives include payments in lieu of construction, off-site construction, the provision of accessory apartments and Elder Cottage Housing Opportunity Units, 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. A zoning board of adjustment would be required to approve any alternatives approved by the developer.

A municipality would be permitted to give households containing persons who work and reside in the municipality a preference for occupancy of half of the affordable units produced as part of a residential or small residential development project. The bill provides incentives for the creation of special needs and adaptive housing. The substitute provides that special needs housing will be double-counted for purposes of determining whether a municipality is inclusionary and whether the municipality has met the set-aside requirement. In addition, the substitute requires that 13 percent of the monies annually expended from the Affordable Housing Trust Fund be utilized for housing projects serving very low income households.

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, in a municipality deemed inclusionary, the zoning board of appeals, in reviewing a d. variance application, would not have to treat affordable housing as an inherently beneficial use.

The committee substitute also authorizes municipalities to impose and collect residential development fees. 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. To give municipalities time to comply with the new procedures, the committee substitute provides a 365 day safe harbor from litigation. The bill also prohibits municipalities from changing the zoning of parcels that have, by court order or other judicial process, been designated for affordable housing.