



House of Representatives

General Assembly

File No. 459

February Session, 2000

Substitute House Bill No. 5107

House of Representatives, April 6, 2000

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

An Act Implementing The Recommendations Of The Blue Ribbon Commission To Study Affordable Housing Regarding The Affordable Housing Appeals Procedure.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 8-30g of the general statutes, as amended by section 1 of
2 public act 99-261, is repealed and the following is substituted in lieu
3 thereof:

4 (a) As used in this section:

5 [(1) "Affordable housing development" means a proposed housing
6 development (A) which is assisted housing, or (B) in which not less
7 than twenty-five per cent of the dwelling units will be conveyed by
8 deeds containing covenants or restrictions which shall require that, for
9 at least thirty years after the initial occupation of the proposed
10 development, such dwelling units shall be sold or rented at, or below,
11 prices which will preserve the units as affordable housing, as defined

12 in section 8-39a. Of the dwelling units conveyed by deeds containing
13 covenants or restrictions, a number of dwelling units equal to not less
14 than ten per cent of all dwelling units in the development shall be sold
15 or rented to persons and families whose income is less than or equal to
16 sixty per cent of the area median income or sixty per cent of the state
17 median income, whichever is less, and the remainder of the dwelling
18 units conveyed by deeds containing covenants or restrictions shall be
19 sold or rented to persons and families whose income is less than or
20 equal to eighty per cent of the area median income or eighty per cent
21 of the state median income, whichever is less]

22 (1) "Affordable housing development" means a proposed housing
23 development which is (A) assisted housing, or (B) a set-aside
24 development;

25 (2) ["affordable housing application"] "Affordable housing
26 application" means any application made to a commission in
27 connection with an affordable housing development by a person who
28 proposes to develop such affordable housing;

29 (3) ["assisted housing"] "Assisted housing" means housing which is
30 receiving, or will receive, financial assistance under any governmental
31 program for the construction or substantial rehabilitation of low and
32 moderate income housing, and any housing occupied by persons
33 receiving rental assistance under chapter 319uu or Section 1437f of
34 Title 42 of the United States Code;

35 (4) ["commission"] "Commission" means a zoning commission,
36 planning commission, planning and zoning commission, zoning board
37 of appeals or municipal agency exercising zoning or planning
38 authority; [and]

39 (5) ["municipality"] "Municipality" means any town, city or
40 borough, whether consolidated or unconsolidated;

41 (6) "Set-aside development" means a development in which not less
42 than thirty per cent of the dwelling units will be conveyed by deeds
43 containing covenants or restrictions which shall require that, for at
44 least fifty years after the initial occupation of the proposed
45 development, such dwelling units shall be sold or rented at, or below,
46 prices which will preserve the units as housing for which persons and
47 families pay thirty per cent or less of their annual income, where such
48 income is less than or equal to eighty per cent of the median income. In
49 a set-aside development, of the dwelling units conveyed by deeds
50 containing covenants or restrictions, a number of dwelling units equal
51 to not less than fifteen per cent of all dwelling units in the
52 development shall be sold or rented to persons and families whose
53 income is less than or equal to sixty per cent of the median income and
54 the remainder of the dwelling units conveyed by deeds containing
55 covenants or restrictions shall be sold or rented to persons and families
56 whose income is less than or equal to eighty per cent of the median
57 income;

58 (7) "Median income" means, after adjustments for family size, the
59 lesser of the state median income or the area median income for the
60 area in which the municipality containing the affordable housing
61 development is located, as determined by the United States
62 Department of Housing and Urban Development; and

63 (8) "Commissioner" means the Commissioner of Economic and
64 Community Development.

65 (b) (1) Any person filing an affordable housing application with a
66 commission shall submit, as part of the application, an affordability
67 plan which shall include at least the following: (A) Designation of the
68 person, entity or agency that will be responsible for the duration of any
69 affordability restrictions, for the administration of the affordability
70 plan and its compliance with the income limits and sale price or rental
71 restrictions of this chapter; (B) an affirmative fair housing marketing

72 plan governing the sale or rental of all dwelling units; (C) a sample
73 calculation of the maximum sales prices or rents of the intended
74 affordable dwelling units; (D) a description of the projected sequence
75 in which, within a set-aside development, the affordable dwelling
76 units will be built and offered for occupancy and the general location
77 of such units within the proposed development; and (E) draft zoning
78 regulations, conditions of approvals, deeds, restrictive covenants or
79 lease provisions that will govern the affordable dwelling units.

80 (2) The commissioner shall adopt regulations pursuant to chapter 54
81 regarding the affordability plan. Such regulations may include
82 additional criteria for preparing an affordability plan and shall
83 include: (A) A formula for determining rent levels and sale prices,
84 including establishing maximum allowable down payments to be used
85 in the calculation of maximum allowable sales prices; (B) a clarification
86 of the costs that are to be included when calculating maximum
87 allowed rents and sale prices; (C) a clarification as to how family size
88 and bedroom counts are to be equated in establishing maximum rental
89 and sale prices for the affordable units; and (D) a listing of the
90 considerations to be included in the computation of income under this
91 section.

92 (c) Any commission, by regulation, may require that an affordable
93 housing application seeking a change of zone shall include the
94 submission of a conceptual site plan describing the proposed
95 development's total number of residential units and their arrangement
96 on the property and the proposed development's roads and traffic
97 circulation, sewage disposal and water supply.

98 (d) For any affordable dwelling unit that is rented as part of a set-
99 aside development, if the maximum monthly housing cost, as
100 calculated in accordance with subdivision (6) of subsection (a) of this
101 section, would exceed one hundred per cent of the Section 8 fair
102 market rent as determined by the United States Department of

103 Housing and Urban Development, in the case of units set aside for
104 persons and families whose income is less than or equal to sixty per
105 cent of median income, then such maximum monthly housing cost
106 shall not exceed one hundred per cent of said Section 8 fair market
107 rent. If the maximum monthly housing cost, as calculated in
108 accordance with subdivision (6) of subsection (a) of this section, would
109 exceed one hundred twenty per cent of the Section 8 fair market rent,
110 as determined by the United States Department of Housing and Urban
111 Development, in the case of units set aside for persons and families
112 whose income is less than or equal to eighty per cent of median
113 income, then such maximum monthly housing cost shall not exceed
114 one hundred twenty per cent of such Section 8 fair market rent.

115 (e) For any affordable dwelling unit that is rented in order to
116 comply with the requirements of a set-aside development, no person
117 shall impose on a prospective tenant who is receiving governmental
118 rental assistance a maximum percentage-of-income-for-housing
119 requirement that is more restrictive than the requirement, if any,
120 imposed by such governmental assistance program.

121 [(b)] (f) Any person whose affordable housing application is denied
122 or is approved with restrictions which have a substantial adverse
123 impact on the viability of the affordable housing development or the
124 degree of affordability of the affordable dwelling units [, specified in
125 subparagraph (B) of subdivision (1) of subsection (a) of this section,
126 contained in the affordable housing development] in a set-aside
127 development, may appeal such decision pursuant to the procedures of
128 this section. Such appeal shall be filed within the time period for filing
129 appeals as set forth in section 8-8, as amended by section 5 of public act
130 99-238, 8-9, 8-28, 8-30 or 8-30a, as applicable, and shall be made
131 returnable to the superior court for the judicial district where the real
132 property which is the subject of the application is located. Affordable
133 housing appeals, including pretrial motions, shall be heard by a judge
134 assigned by the Chief Court Administrator to hear such appeals. To

135 the extent practicable, efforts shall be made to assign such cases to a
136 small number of judges, sitting in geographically diverse parts of the
137 state, so that a consistent body of expertise can be developed. Unless
138 otherwise ordered by the Chief Court Administrator, such appeals,
139 including pretrial motions, shall be heard by such assigned judges in
140 the judicial district in which such judge is sitting. Appeals taken
141 pursuant to this subsection shall be privileged cases to be heard by the
142 court as soon after the return day as is practicable. Except as otherwise
143 provided in this section, appeals involving an affordable housing
144 application shall proceed in conformance with the provisions of said
145 section 8-8, as amended by section 5 of public act 99-238, 8-9, 8-28, 8-30
146 or 8-30a, as applicable.

147 [(c)] (g) Upon an appeal taken under subsection [(b)] (f) of this
148 section, the burden shall be on the commission to prove, based upon
149 the evidence in the record compiled before such commission that (1)
150 (A) the decision from which such appeal is taken and the reasons cited
151 for such decision are supported by sufficient evidence in the record;
152 and (B) as a matter of law (i) the decision is necessary to protect
153 substantial public interests in health, safety, or other matters which the
154 commission may legally consider; [(C)] (ii) such public interests clearly
155 outweigh the regional need for affordable housing; and [(D)] (iii) such
156 public interests cannot be protected by reasonable changes to the
157 affordable housing development, or (2) (A) the application which was
158 the subject of the decision from which such appeal was taken would
159 locate affordable housing in an area which is zoned for industrial use
160 and which does not permit residential uses, and (B) the development is
161 not assisted housing, as defined in subsection (a) of this section. If the
162 commission does not satisfy its burden of proof under this subsection,
163 the court shall wholly or partly revise, modify, remand or reverse the
164 decision from which the appeal was taken in a manner consistent with
165 the evidence in the record before it.

166 [(d)] (h) Following a decision by a commission to reject an

167 affordable housing application or to approve an application with
168 restrictions which have a substantial adverse impact on the viability of
169 the affordable housing development or the degree of affordability of
170 the affordable dwelling units, the applicant may, within the period for
171 filing an appeal of such decision, submit to the commission a proposed
172 modification of its proposal responding to some or all of the objections
173 or restrictions articulated by the commission, which shall be treated as
174 an amendment to the original proposal. The day of receipt of such a
175 modification shall be determined in the same manner as the day of
176 receipt is determined for an original application. The filing of such a
177 proposed modification shall stay the period for filing an appeal from
178 the decision of the commission on the original application. [The
179 commission may hold a public hearing and shall render a decision on
180 the proposed modification within forty-five days of the receipt of such
181 proposed modification.] The commission shall hold a public hearing
182 on the proposed modification if it held a public hearing on the original
183 application and may hold a public hearing on the proposed
184 modification if it did not hold a public hearing on the original
185 application. The commission shall render a decision on the proposed
186 modification within sixty-five days of the receipt of such proposed
187 modification, provided, if, in connection with a modification submitted
188 under this subsection, the applicant applies for a permit for an activity
189 regulated pursuant to sections 22a-36 to 22a-45, inclusive, as amended,
190 and the time for a decision by the commission on such modification
191 under this subsection would lapse prior to the thirty-fifth day after a
192 decision by an inland wetlands and watercourses agency, the time
193 period for decision by the commission on the modification under this
194 subsection shall be extended to thirty-five days after the decision of
195 such agency. The commission shall issue notice of its decision as
196 provided by law. Failure of the commission to render a decision within
197 said [forty-five days] sixty-five days or subsequent extension period
198 permitted by this subsection shall constitute a rejection of the proposed
199 modification. Within the time period for filing an appeal on the

200 proposed modification as set forth in section 8-8, as amended by
201 section 5 of public act 99-238, 8-9, 8-28, 8-30 or 8-30a, as applicable, the
202 applicant may appeal the commission's decision on the original
203 application and the proposed modification in the manner set forth in
204 this section. Nothing in this subsection shall be construed to limit the
205 right of an applicant to appeal the original decision of the commission
206 in the manner set forth in this section without submitting a proposed
207 modification or to limit the issues which may be raised in any appeal
208 under this section.

209 [(e)] (i) Nothing in this section shall be deemed to preclude any right
210 of appeal under the provisions of section 8-8, as amended by section 5
211 of public act 99-238, 8-9, 8-28, 8-30 or 8-30a.

212 (j) A commission or its designated authority shall have, with respect
213 to compliance of an affordable housing development with the
214 provisions of this chapter, the same powers and remedies provided to
215 commissions by section 8-12.

216 [(f)] (k) Notwithstanding the provisions of subsections (a) to [(e)] (j),
217 inclusive, of this section, the affordable housing appeals procedure
218 established under this section shall not be available if the real property
219 which is the subject of the application is located in a municipality in
220 which at least ten per cent of all dwelling units in the municipality are
221 (1) assisted housing or (2) currently financed by Connecticut Housing
222 Finance Authority mortgages or (3) subject to deeds containing
223 covenants or restrictions which require that such dwelling units be
224 sold or rented at, or below, prices which will preserve the units as
225 [affordable housing, as defined in section 8-39a, for persons and
226 families whose] housing for which persons and families pay thirty per
227 cent or less of income, where such income is less than or equal to
228 eighty per cent of the [area] median income. The Commissioner of
229 Economic and Community Development shall, pursuant to regulations
230 adopted under the provisions of chapter 54, promulgate a list of

231 municipalities which satisfy the criteria contained in this subsection
232 and shall update such list not less than annually. For the purpose of
233 determining the percentage required by this subsection, the
234 commissioner shall use as the denominator the number of dwelling
235 units in the municipality, as reported in the most recent United States
236 decennial census.

237 [(g) Notwithstanding the provisions of subsections (a) to (e),
238 inclusive, of this section, the affordable housing appeals procedure
239 shall not be applicable to an affordable housing application filed with a
240 commission during the one-year period after a certification of
241 affordable housing project completion issued by the Commissioner of
242 Economic and Community Development is published in the
243 Connecticut Law Journal. The Commissioner of Economic and
244 Community Development shall issue a certification of affordable
245 housing project completion for the purposes of this subsection upon
246 finding that (1) the municipality has completed an initial eligible
247 housing development or developments pursuant to section 8-336f or
248 sections 8-386 and 8-387 which create affordable dwelling units equal
249 to at least one per cent of all dwelling units in the municipality and (2)
250 the municipality is actively involved in the Connecticut housing
251 partnership program or the regional fair housing compact pilot
252 program under said sections. The affordable housing appeals
253 procedure shall be applicable to affordable housing applications filed
254 with a commission after such one-year period, except as otherwise
255 provided in subsection (f) of this section.]

256 (l) (1) Notwithstanding the provisions of subsections (a) to (j),
257 inclusive, of this section, the affordable housing appeals procedure
258 established under this section shall not be applicable to an affordable
259 housing application filed with a commission during a moratorium,
260 which shall be the three-year period after a certification of affordable
261 housing project completion issued by the commissioner is published in
262 the Connecticut Law Journal.

263 (2) Notwithstanding the provisions of this subsection, such
264 moratorium shall not apply to (A) affordable housing applications for
265 assisted housing in which ninety-five per cent of the dwelling units are
266 restricted to persons and families whose income is less than or equal to
267 sixty per cent of median income, (B) other affordable housing
268 applications for assisted housing containing forty or fewer dwelling
269 units, or (C) affordable housing applications which were filed with a
270 commission pursuant to this section prior to the date upon which the
271 moratorium takes effect.

272 (3) Eligible units completed after a moratorium has begun may be
273 counted toward establishing eligibility for a subsequent moratorium.

274 (4) The commissioner shall issue a certificate of affordable housing
275 project completion for the purposes of this subsection upon finding
276 that there has been completed within the municipality one or more
277 affordable housing developments which create housing unit-
278 equivalent points equal to the greater of two per cent of all dwelling
279 units in the municipality, as reported in the most recent United States
280 decennial census, or seventy-five housing unit-equivalent points.

281 (5) For purposes of this subsection, "elderly units" are dwelling units
282 whose occupancy is restricted by age and "family units" are dwelling
283 units whose occupancy is not restricted by age.

284 (6) For purposes of this subsection, housing unit-equivalent points
285 shall be determined by the commissioner as follows: (A) No points
286 shall be awarded for a unit unless its occupancy is restricted to persons
287 and families whose income is equal to or less than eighty per cent of
288 median income, except that unrestricted units in a set-aside
289 development shall be awarded one-fourth point each. (B) Family units
290 restricted to persons and families whose income is equal to or less than
291 eighty per cent of median income shall be awarded one point if an
292 ownership unit and one and one-half points if a rental unit. (C) Family
293 units restricted to persons and families whose income is equal to or

294 less than sixty per cent of median income shall be awarded one and
295 one-half points if an ownership unit and two points if a rental unit. (D)
296 Family units restricted to persons and families whose income is equal
297 to or less than forty per cent of median income shall be awarded two
298 points if an ownership unit and two and one-half points if a rental
299 unit. (E) Elderly units restricted to persons and families whose income
300 is equal to or less than eighty per cent of median income shall be
301 awarded one-half point.

302 (7) Points shall be awarded only for dwelling units which were (A)
303 newly-constructed units in an affordable housing development, as that
304 term was defined at the time of the affordable housing application, for
305 which a certificate of occupancy was issued after July 1, 1990, or (B)
306 newly subjected after July 1, 1990, to deeds containing covenants or
307 restrictions which require that, for at least the duration required by
308 subsection (a) of this section for set-aside developments on the date
309 when such covenants or restrictions took effect, such dwelling units
310 shall be sold or rented at, or below, prices which will preserve the
311 units as affordable housing for persons or families whose income does
312 not exceed eighty per cent of median income.

313 (8) Points shall be subtracted, applying the formula in subdivision
314 (6) of this subsection, for any affordable dwelling unit which, on or
315 after July 1, 1990, was affected by any action taken by a municipality
316 which caused such dwelling unit to cease being counted as an
317 affordable dwelling unit.

318 (9) A newly-constructed unit shall be counted toward a moratorium
319 when it receives a certificate of occupancy. A newly-restricted unit
320 shall be counted toward a moratorium when its deed restriction takes
321 effect.

322 (10) The affordable housing appeals procedure shall be applicable to
323 affordable housing applications filed with a commission after a three-
324 year moratorium expires, except (A) as otherwise provided in

325 subsection (k) of this section, or (B) when sufficient unit-equivalent
326 points have been created within the municipality during one
327 moratorium to qualify for a subsequent moratorium. The
328 commissioner shall adopt regulations in accordance with chapter 54 to
329 carry out the purposes of this subsection. Such regulations shall
330 specify the procedure to be followed by a municipality to obtain a
331 moratorium, and shall include the manner in which a municipality is
332 to document the units to be counted toward a moratorium.

HSG Committee Vote: Yea 11 Nay 0 JFS C/R PD
PD Committee Vote: Yea 14 Nay 2 JF C/R JUD
JUD Committee Vote: Yea 38 Nay 2 JF

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Cost

Affected Agencies: Department of Economic and Community Development

Municipal Impact: See Explanation Below

Explanation

State Impact:

This bill makes several changes to the affordable housing appeals procedures that may lead to additional costs for the Department of Economic and Community Development (DECD). The bill requires DECD to adopt new regulations concerning the moratorium on affordable housing appeals as well as requiring the department to certify whether towns meet the criteria necessary to invoke this moratorium. Depending upon the requirements adopted in these new regulations, this certification may require extensive data collection in excess of the department's current efforts. It is expected that the development of the complex regulations, certification and data collection will require up to two full-time equivalent positions. The department is also required to adopt regulations concerning the new affordability guidelines. The new requirements for DECD in this bill may result in additional annual administrative costs of \$150,000 to \$200,000.

Municipal Impact:

The municipal impact from this is uncertain. The various changes to the affordable housing appeals procedure included in the bill may result in a change in the number of towns that are subject to the procedure as well as changes in the number of decisions that are appealed. To the extent that there is a reduction in the number of decisions that any town has appealed, the town could realize savings through reduced administrative and legal costs. However, the overall affect from this bill on the number of appeals cannot be determined at this time.

The bill specifies that DECD's new regulations must include the manner in which each town must document the number of housing units to be counted for the moratorium calculation. To the extent that these regulations include requirements that are in excess of towns' current efforts, the towns may incur additional administrative costs.

OLR Bill Analysis

sHB 5107

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE BLUE RIBBON COMMISSION TO STUDY AFFORDABLE HOUSING REGARDING THE AFFORDABLE HOUSING APPEALS PROCEDURE.

SUMMARY:

This bill makes many changes to the affordable housing land use appeals procedure. Under this procedure, towns have the burden of proving certain facts to prevent a proposed affordable housing development from going forward. The procedure is available in towns with little or no affordable housing, as defined by law. Currently, 137 towns fall into this category.

The bill changes one of the factors the Department of Economic and Community Development (DECD) must use when it annually identifies the towns where the procedure can be used. It requires DECD to compute a town's the share of affordable units based on its housing stock as of the last U.S. census instead of its current stock.

The bill increases the percent of units developers must agree to make affordable in order to use the procedure and lengthens the time during which they must remain affordable. It also imposes new conditions limiting the amount of rent that developers can charge for the affordable units.

The bill gives local land use commissions more tools to assess proposed affordable housing developments. It requires developers to submit plans showing how they intend to comply with the law's affordability requirements. The DECD commissioner must adopt regulations delineating some of the elements the plans must contain. The bill allows commissions to require developers to submit conceptual site plans if they need a zone change to build an affordable housing development.

The bill changes several procedural requirements for acting on an application after a developer modifies and resubmits it to the commission that initially acted on it.

The bill requires the court to determine for itself if the record of an affordable housing appeal supports the commission's conclusion. The court must still determine, as current law requires, whether there is sufficient evidence in that record to support the commission's decision and the reasons cited. But the bill then requires the court to decide for itself if the decision was necessary to protect public interests, that those interests outweighed the need for affordable housing, and that the proposed development could not be changed in a way that does not harm the interests.

To meet the burden of proof, the bill requires commissions to specifically show that the region's need for affordable housing does not outweigh public health, safety, and the other matters they may consider. Current law is silent as to whether the need is local or regional.

The bill gives any land use commission that acted on an affordable housing development the same power to enforce the conditions for using the procedure that zoning commissions have to enforce their orders and regulations.

The bill changes the time period and conditions under which towns can obtain a moratorium on affordable housing appeals. Currently, towns can obtain a one-time, one-year moratorium on affordable housing appeals if they participate in certain state housing programs and create units that equal 1% of their current housing stock.

The bill allows towns to obtain a three-year moratorium each time the total number of certain types of housing units equals 2% of the housing stock as of the last census or 75 unit-equivalent points, whichever is greater. The bill specifies the types of units that count toward a moratorium and assigns points to them. The DECD must adopt regulations specifying how towns can obtain a moratorium and certify whether they qualify for one.

EFFECTIVE DATE: October 1, 2000

DETERMINING IF A TOWN IS SUBJECT TO THE PROCEDURE

The bill changes one of the factors DECD must use to identify the towns where developers can use the procedure. Under current law, developers can use the procedure in towns where less than 10% of their current housing stock is affordable under the law. DECD annually calculates the percent of affordable units in each town and lists those where developers can use the procedure.

The bill changes the denominator DECD must use to determine if a town's affordable housing stock exceeds the 10% threshold. It requires it to tally the number of affordable units a town currently has and determine if this number exceeds 10% of the total units the town had as of the last 10-year U.S. census. This change freezes the base and theoretically allows the number of affordable units to grow at a faster rate than the other units.

SET-ASIDE DEVELOPMENTS

Unit Set-Aside Requirements

The bill tightens the conditions proposed, privately-financed developments must meet if their developers intend to use the procedure (i.e., "set-aside developments"). The law requires developers to make a portion of the units in these developments affordable to low- and moderate-income people. People fall into this category if they earn no more than 80% of the median income for the area where the housing is located. They can afford the units if they cost them no more than 30% of their income.

The bill requires developers to make these units affordable based on the state's median income if it is less than the area median income. It increases from 25% to 30% the total share of units developers must make affordable to people in the low- and moderate-income range and lengthens the period during which they must remain affordable from 30 years to 50 years. Developers must place deeds on these units with provisions restricting their sale or rental to prices these people can afford during the required period.

The law requires developers to reserve a portion of the affordable units for people at the lower end of the income scale (i.e., those earning less than 60% of the area's or state's median income, whichever is less). The bill increases this portion from at least 10% to at least 15%. And they must make that number of units affordable to people at the higher end of the scale needed to reach the bill's minimum 30% unit set-aside requirement. People in this range have incomes ranging from 60% to 80% of the area's or the state's median income, whichever is less.

Limits on Rents for the Set-aside Units

The bill limits the rents developers can charge for the set-aside units to the fair market rents (FMR) the U.S. Department of Housing and Urban Development calculates for its Section 8 rent subsidy program. The limits are different for the two types of set-aside units.

The bill limits the rents to 100% of the FMR for those units reserved for people earning no more than 60% of the median income for the area or the state, whichever is less. And it limits the rents to 120% of the FMR for those people earning between 60% and 80% of the median income. Developers must base the rents on the maximum housing costs that people in these income ranges can afford to pay. That cost cannot exceed 30% of their income. If they do, developers cannot charge rents that exceed the FMR levels the bill specifies.

Housing Cost to Income Ratios

The bill bans developers from imposing housing cost to income ratios that exceed those for federal or state rental assistance programs. This provision applies only to prospective tenants receiving subsidies from these programs. The ratio defines how much income a person can devote to housing and still meet his other needs. Some rental assistance programs subsidize that portion of rent that exceeds 30% of the tenant's housing cost, which consists of several components defined in regulations.

DEVELOPER SUBMISSION REQUIREMENTS

Affordability Plan

The bill requires affordable housing applications to include a plan showing how the developer intends to make the project affordable. This requirement applies to government funded and privately financed set-aside developments.

The affordability plan must contain the following elements:

1. the person, entity, or agency responsible for administering the plan, the income limits, and sales or rental restrictions during the period in which the deed restrictions are effective;
2. an affirmative fair housing marketing plan governing the sale or rental of all units;
3. an example of how the developer intends to calculate the maximum rental or sales prices for the affordable units;
4. the sequence in which the developer intends to build the affordable units and offer them for occupancy and the location of these units within the overall development; and
5. draft zoning regulations, conditions of approvals, deeds, restrictive covenants, or lease provisions that will govern the affordable units.

The bill requires the DECD commissioner to adopt regulations regarding the affordability plan specifying:

1. the formula for determining rent levels and sales prices, including the maximum allowable down-payments when calculating maximum allowable sales prices;
2. the costs developers must include when calculating maximum allowed rents and sales prices;
3. how developers must equate family size and bedroom counts in establishing maximum rental and sales for the affordable units; and
4. the factors developers must consider when computing income.

The regulations may include other criteria for preparing affordability plans.

Conceptual Site Plan

The bill allows local land use commissions to adopt regulations under which they can require developers seeking zone changes to submit a conceptual site plan along with their affordable housing application. The plan must indicate the total number of units the developer plans to build, how he intends to arrange them on the site, and the proposed sewage disposal, water supply, and roads and traffic circulation.

APPROVING MODIFIED AFFORDABLE HOUSING APPLICATIONS

The bill changes some of the procedural requirements land use commissions must follow when acting on an affordable housing application after the developer modified and resubmitted it. The law allows a developer to modify and resubmit an application after the commission rejected or approved the original application with restrictions affecting the development's feasibility. He must do this within the time the law allows for filing an appeal.

The bill specifies that the rule for determining the day when the developer submitted the original application must also determine the day he resubmitted the modified application.

The bill also changes the conditions under which the commission must hold a public hearing on the modified application. Under current law the commission must hold the hearing and act on the modified application within 45 days after receiving it. Under the bill, the commission must hold a hearing only if it held one on the original application. Otherwise, the commission may hold it at its discretion.

The bill requires the commission to render a decision on the modified application within 65 days of receiving it. But it automatically adds 35 days if the applicant needs a wetlands permit and the commission's deadline expires before the 35 days the wetland agency has to issue the permit. The bill also makes a conforming technical change.

BURDEN OF PROOF

Scope of review

Current law places the burden on the commission to show that:

1. the record contains sufficient evidence to support the decision;
2. the decision was necessary to protect substantial public interests in health, safety, or other matters the commission may legally consider;
3. these interests clearly outweigh the need for affordable housing; and
4. the interests cannot be protected by making reasonable changes to the proposed development.

Connecticut Supreme Court ruled that the first standard (i.e., sufficient evidence in the record) sets the scope that courts must apply to the other standards. In other words, courts must review the record and determine if there is sufficient evidence to support the commission's decision regarding the second, third, and fourth standard. Courts do not weigh the evidence in the record to determine if they would have independently reached the same conclusion as the commission (*Christian Activities Council, Congregational v. Town Council of Glastonbury et al.* 249 Conn. 566 (1999)).

Under the bill, the court must still determine if the decision and the reasons cited for it are supported by sufficient evidence in the record. But it requires the court to independently determine, "as a matter of law," whether the commission met the burden of proof with respect to the second, third, and fourth standards. Apparently, the bill requires the court to independently decide whether the commission met its burden of showing that the decision:

1. was necessary to protect substantial public interests in health, safety, or other matters the commission may legally consider;
2. that these interests clearly outweigh the need for affordable housing; and

3. that the interests cannot be protected by making reasonable changes to the proposed development.

Regional Need

The bill changes one of the criteria commissions must meet to satisfy the burden of proof. As stated above, a commission must prove that its decision was necessary to protect substantial public interests and that these interests clearly outweigh the need for affordable housing. The bill requires commissions to show that the interests clearly outweigh the region's affordable housing needs.

ZONING ENFORCEMENT

The bill appears to give land use commissions or their designated authorities the power to force developers to comply with the terms and conditions governing affordable housing developments. It does this by giving them the same powers and remedies that zoning commissions already have to enforce their regulations.

The remedies include fines for violating zoning regulations and civil penalties for failing to comply with cease and desist orders. The fines range from \$10 to \$100 for each day a violation continues and from \$100 to \$250 per day, imprisonment for up to 10 days, or both if willful. The civil penalties can be up to \$2,500 for failing to comply with a cease and desist order.

MORATORIA

Time Period

The bill changes the time period, frequency, and conditions under which towns can obtain a moratorium on affordable housing appeals. Current law allows towns to obtain a one-time, one-year moratorium on these appeals. The bill allows towns to obtain a three-year moratorium each time they meet the bill's requirements for obtaining a moratorium.

Application

The bill imposes the moratorium on affordable housing appeals for applications that were filed with a commission after the moratorium took effect. But developers who submitted applications before the moratorium took effect can still use the procedure if the commission subsequently rejects their applications. Developers who submit applications after the moratorium took effect can still appeal decisions under the conventional procedure, which requires them to bear the burden of proof.

The bill exempts applications from the moratorium if the proposed development will receive government funds. In these situations, the developer can use the procedure during the moratorium period if:

1. 95% of the units in the proposed development are restricted to people or families earning 60% or less of the median income or
2. the development contains no more than 40 units, regardless of whether of any income restriction.

Moratoria under current law apply to all affordable housing applications.

Requirement for Obtaining a Moratorium

A town qualifies for a moratorium under the bill each time it adds certain types of units equal to 2% of the total number of units it had as of the last 10-year census or 75 unit-equivalent points, whichever is greater. (As discussed below, a unit-equivalent point is the value that the bill assigns to certain types of units.) The town qualifies for a moratorium under current law if it adds certain types of units equal to 1% of its current housing stock and it actively participates in certain state housing programs.

Eligible Units

The bill expands the range of units that must be added in a town before it qualifies for a moratorium. And it weights some of these units (i.e., unit-equivalent points). Under current law, a town qualifies for a moratorium only for units that were added under the Connecticut

Housing Partnership and Regional Fair Housing Compact programs, which are no longer active.

Under the bill, units that were added to a town’s housing stock after July 1, 1990 count toward a moratorium if they were:

1. constructed with government funds;
2. constructed with private funds and occupied by tenants receiving state or federal rent subsidies;
3. subject to deeds restricting their sale or rental to low- and moderate-income people for at least 50 years; and
4. developed under the appeals procedure (including both deed-restricted and market rate units).

The town cannot count a unit toward a moratorium until it receives its certificate of occupancy or the deed restrictions take effect.

The bill weights those units based on their tenancy and level of affordability. The weights apply to privately financed developments completed under the procedure and government funded new construction. Table 1 shows the weights the bill assigns to these units.

Table 1: Housing Unit-Equivalent Point Schedule

<i>Type of Unit</i>	<i>Points</i>
Market-rate units in a set-aside development	0.25
Family* ownership units affordable to people at or below 80% of median income	1.00
Family ownership units affordable to people at or below 60% of median income	1.50
Family ownership units affordable to people at or below 40% of median income	2.00
Family rental units affordable to people at or below 80% of median income	1.50
Family rental units affordable to people at or below 60% of median income	2.00
Family rental units affordable to people at or below 40% of median income	2.50
Units affordable to elderly people at or below 80% of median income	0.50

*Family units are those for without age restrictions.

It appears that the other units that count toward a moratorium receive one point each.

Towns must tally the number of units that count toward a moratorium and deduct those that are no longer affordable because of its actions. It is not clear if these units include those lost because of the actions of towns' housing authorities, which are quasi-public agencies with limited ties to the towns.

Units count toward a subsequent moratorium if they were included in an affordable housing development that was proposed before the moratorium took effect and completed during the moratorium period. The units must still meet the certificate of occupancy or deed restriction requirements before the town can count them toward the subsequent moratorium.

Applying for a Moratorium

The bill requires the DECD commissioner to adopt regulations specifying the process towns must follow to obtain a moratorium. The regulations must also specify the method towns must use to document the units they count toward a moratorium.

Moratorium Certification

The commissioner must certify whether a town meets the conditions for imposing a moratorium on affordable housing appeals. If they have, he must publish a notice to that effect in the *Connecticut Law Journal*. The moratorium period begins on the day he publishes the notice.

BACKGROUND

Related Bills

sSB 147 (File 254) allows towns to adopt ordinances providing property tax credits to residential owners if they agree to sell or rent the property only to low- and moderate-income people at prices they can afford. The owners must impose deeds restricting the sale or rental of the property to these groups for the same period during which developers must agree to restrict affordable units developed under the procedure. These units count toward the 10% threshold and toward a moratorium under the bill.

sHB 5427 modifies the second set of criteria towns have to meet to defeat an affordable housing appeals. It allows some residential uses in industrial zones that ban these uses without the town jeopardizing its ability to meet the burden of proof. The Judiciary Committee favorably reported this bill to the floor on March 20.

COMMITTEE ACTION

Select Committee on Housing

Joint Favorable Substitute Change of Reference

Yea 11 Nay 0

Planning and Development Committee

Joint Favorable Change of Reference

Yea 14 Nay 2

Judiciary Committee

Joint Favorable Report

Yea 38 Nay 2