



General Assembly

February Session, 2000

Raised Bill No. 5107

LCO No. 885

Referred to Committee on Select Committee on Housing

Introduced by:
(HSG)

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2 public act 99-261, is repealed and the following is substituted in lieu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 (A) assisted housing or (B) [in which not
7 less than twenty-five per cent of the dwelling units will be conveyed
8 by deeds containing covenants or restrictions which shall require that,
9 for 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] a set-aside development;

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

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

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

36 (5) ["municipality"] "Municipality" means any town, city or
37 borough, whether consolidated or unconsolidated.

38 (6) "Set-aside development" means a development in which not less
39 than thirty per cent of the dwelling units will be conveyed by deeds
40 containing covenants or restrictions which shall require that, for at
41 least fifty years after the initial occupation of the proposed
42 development, such dwelling units shall be sold or rented at, or below,
43 prices which will preserve the units as housing for which persons and
44 families pay thirty per cent or less of their annual income, where such
45 income is less than or equal to eighty per cent of the median income.
46 In a set-aside development, of the dwelling units conveyed by deeds

47 containing covenants or restrictions, a number of dwelling units equal
48 to not less than fifteen per cent of all dwelling units in the
49 development shall be sold or rented to persons and families whose
50 income is less than or equal to sixty per cent of the median income and
51 the remainder of the dwelling units conveyed by deeds containing
52 covenants or restrictions shall be sold or rented to persons and families
53 whose income is less than or equal to eighty per cent of the median
54 income;

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

60 (8) "Commissioner" means the Commissioner of Economic and
61 Community Development.

62 (b) (1) Any person filing an affordable housing application with a
63 commission shall submit, as part of the application, an affordability
64 plan which shall include at least the following: (A) Designation of the
65 person, entity, or agency that will be responsible, for the duration of
66 any affordability restrictions, for the administration of the affordability
67 plan and its compliance with the income limits and sale price or rental
68 restrictions of this chapter; (B) an affirmative fair housing marketing
69 plan governing the sale or rental of all dwelling units; (C) a sample
70 calculation of the maximum sales prices or rents of the intended
71 affordable dwelling units; (D) a description of the projected sequence
72 in which, within a set-aside development, the affordable dwelling
73 units will be built and offered for occupancy, and the general location
74 of such units within the proposed development; and (E) draft zoning
75 regulations, conditions of approvals, deeds, restrictive covenants, or
76 lease provisions that will govern the affordable dwelling units.

77 (2) The commissioner shall adopt regulations pursuant to chapter 54
78 regarding the affordability plan. Such regulations may include
79 additional criteria for preparing an affordability plan, and shall

80 include: (A) A formula for determining rent levels and sale prices,
81 including establishing maximum allowable down payments to be used
82 in the calculation of maximum allowable sales prices; (B) a clarification
83 of the costs that are to be included when calculating maximum
84 allowed rents and sale prices; (C) a clarification as to how family size
85 and bedroom counts are to be equated in establishing maximum rental
86 and sale prices for the affordable units; and (D) a listing of the
87 considerations to be included in the computation of income under this
88 section.

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

95 (d) For any affordable dwelling unit that is rented as part of a set-
96 aside development, if the maximum monthly housing cost, as
97 calculated in accordance with subdivision (6) of subsection (a), would
98 exceed one hundred per cent of the section 8 fair market rent as
99 determined by the United States Department of Housing and Urban
100 Development, in the case of units set aside for persons and families
101 whose income is less than or equal to sixty per cent of median income,
102 then such maximum monthly housing cost shall not exceed one
103 hundred per cent of such section 8 fair market rent. If the maximum
104 monthly housing cost, as calculated in accordance with subdivision (6)
105 of subsection (a) would exceed one hundred twenty per cent of the
106 section 8 fair market rent, as determined by the United States
107 Department of Housing and Urban Development, in the case of units
108 set aside for persons and families whose income is less than or equal to
109 eighty per cent of median income, then such maximum monthly
110 housing cost shall not exceed one hundred twenty per cent of such
111 section 8 fair market rent.

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

118 [(b)] (f) Any person whose affordable housing application is denied
119 or is approved with restrictions which have a substantial adverse
120 impact on the viability of the affordable housing development or the
121 degree of affordability of the affordable dwelling units [, specified in
122 subparagraph (B) of subdivision (1) of subsection (a) of this section,
123 contained in the affordable housing development] in a set-aside
124 development, may appeal such decision pursuant to the procedures of
125 this section. Such appeal shall be filed within the time period for filing
126 appeals as set forth in section 8-8, as amended by section 5 of public act
127 99-238, 8-9, 8-28, 8-30 or 8-30a, as applicable, and shall be made
128 returnable to the superior court for the judicial district where the real
129 property which is the subject of the application is located. Affordable
130 housing appeals, including pretrial motions, shall be heard by a judge
131 assigned by the Chief Court Administrator to hear such appeals. To
132 the extent practicable, efforts shall be made to assign such cases to a
133 small number of judges, sitting in geographically diverse parts of the
134 state, so that a consistent body of expertise can be developed. Unless
135 otherwise ordered by the Chief Court Administrator, such appeals,
136 including pretrial motions, shall be heard by such assigned judges in
137 the judicial district in which such judge is sitting. Appeals taken
138 pursuant to this subsection shall be privileged cases to be heard by the
139 court as soon after the return day as is practicable. Except as otherwise
140 provided in this section, appeals involving an affordable housing
141 application shall proceed in conformance with the provisions of said
142 section 8-8, as amended by section 5 of public act 99-238, 8-9, 8-28, 8-30
143 or 8-30a, as applicable.

144 [(c)] (g) Upon an appeal taken under subsection [(b)] (f) of this

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

163 ~~[(d)]~~ (h) Following a decision by a commission to reject an
164 affordable housing application or to approve an application with
165 restrictions which have a substantial adverse impact on the viability of
166 the affordable housing development or the degree of affordability of
167 the affordable dwelling units, the applicant may, within the period for
168 filing an appeal of such decision, submit to the commission a proposed
169 modification of its proposal responding to some or all of the objections
170 or restrictions articulated by the commission, which shall be treated as
171 an amendment to the original proposal. The day of receipt of such a
172 modification shall be determined in the same manner as the day of
173 receipt is determined for an original application. The filing of such a
174 proposed modification shall stay the period for filing an appeal from
175 the decision of the commission on the original application. [The
176 commission may hold a public hearing and shall render a decision on
177 the proposed modification within forty-five days of the receipt of such
178 proposed modification.] The commission shall hold a public hearing

179 on the proposed modification if it held a public hearing on the original
180 application and may hold a public hearing on the proposed
181 modification if it did not hold a public hearing on the original
182 application. The commission shall render a decision on the proposed
183 modification within sixty-five days of the receipt of such proposed
184 modification, provided that if, in connection with a modification
185 submitted under this subsection, the applicant applies for a permit for
186 an activity regulated pursuant to sections 22a-36 to 22a-45, inclusive, as
187 amended, and the time for a decision by the commission on such
188 modification under this subsection would lapse prior to the thirty-fifth
189 day after a decision by an inland wetlands and watercourses agency,
190 the time period for decision by the commission on the modification
191 under this subsection shall be extended to thirty five days after the
192 decision of such agency. The commission shall issue notice of its
193 decision as provided by law. Failure of the commission to render a
194 decision within said [forty-five days] ~~sixty-five days~~ or subsequent
195 extension period permitted by this subsection shall constitute a
196 rejection of the proposed modification. Within the time period for
197 filing an appeal on the proposed modification as set forth in section 8-
198 8, ~~as amended by section 5 of public act 99-238,~~ 8-9, 8-28, 8-30 or 8-30a,
199 as applicable, the applicant may appeal the commission's decision on
200 the original application and the proposed modification in the manner
201 set forth in this section. Nothing in this subsection shall be construed
202 to limit the right of an applicant to appeal the original decision of the
203 commission in the manner set forth in this section without submitting
204 a proposed modification or to limit the issues which may be raised in
205 any appeal under this section.

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

209 (j) A commission or its designated authority shall have, with respect
210 to compliance of an affordable housing development with the
211 provisions of this chapter, the same powers and remedies provided to

212 commissions by section 8-12.

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

234 [(g)] Notwithstanding the provisions of subsections (a) to (e),
235 inclusive, of this section, the affordable housing appeals procedure
236 shall not be applicable to an affordable housing application filed with a
237 commission during the one-year period after a certification of
238 affordable housing project completion issued by the Commissioner of
239 Economic and Community Development is published in the
240 Connecticut Law Journal. The Commissioner of Economic and
241 Community Development shall issue a certification of affordable
242 housing project completion for the purposes of this subsection upon
243 finding that (1) the municipality has completed an initial eligible
244 housing development or developments pursuant to section 8-336f or

245 sections 8-386 and 8-387 which create affordable dwelling units equal
246 to at least one per cent of all dwelling units in the municipality and (2)
247 the municipality is actively involved in the Connecticut housing
248 partnership program or the regional fair housing compact pilot
249 program under said sections. The affordable housing appeals
250 procedure shall be applicable to affordable housing applications filed
251 with a commission after such one-year period, except as otherwise
252 provided in subsection (f) of this section.]

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

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

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

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

277 decennial census, or seventy-five housing unit-equivalent points.

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

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

299 (7) Points shall be awarded only for dwelling units which were (A)
300 newly-constructed units in an affordable housing development, as that
301 term was defined at the time of the affordable housing application, for
302 which a certificate of occupancy was issued after July 1, 1990, or (B)
303 newly subjected after July 1, 1990, to deeds containing covenants or
304 restrictions which require that, for at least the duration required by
305 subsection (a) of this section for set-aside developments on the date
306 when such covenants or restrictions took effect, such dwelling units
307 shall be sold or rented at, or below, prices which will preserve the
308 units as affordable housing for persons or families whose income does

309 not exceed eighty per cent of median income.

310 (8) Points shall be subtracted, applying the formula in subdivision
311 (6) of this subsection, for any affordable dwelling units which have
312 been demolished on or after July 1, 1990.

313 (9) A newly-constructed unit shall be counted toward a moratorium
314 when it receives a certificate of occupancy. A newly-restricted unit
315 shall be counted toward a moratorium when its deed restriction takes
316 effect.

317 (10) The affordable housing appeals procedure shall be applicable to
318 affordable housing applications filed with a commission after a three-
319 year moratorium expires, except (A) as otherwise provided in
320 subsection (k) of this section or (B) when sufficient unit-equivalent
321 points have been created within the municipality during one
322 moratorium to qualify for a subsequent moratorium. The
323 commissioner shall adopt regulations in accordance with chapter 54 to
324 carry out the purposes of this subsection. Such regulations shall
325 specify the procedure to be followed by a municipality to obtain a
326 moratorium, and shall include the manner in which a municipality is
327 to document the units to be counted toward a moratorium.

Statement of Purpose:

To implement the recommendations of the Blue Ribbon Commission to Study Affordable Housing.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]