



***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2 public act 99-261, is repealed and the following is substituted in lieu  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  
**APP Committee Vote:** Yea 28 Nay 10 JF