



# House of Representatives

General Assembly

**File No. 261**

February Session, 2002

Substitute House Bill No. 5434

*House of Representatives, April 2, 2002*

The Committee on Planning and Development reported through REP. DAVIS of the 50th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING THE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE.**

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

1 Section 1. Subdivision (1) of subsection (l) of section 8-30g of the  
2 general statutes is repealed and the following is substituted in lieu  
3 thereof (*Effective October 1, 2002*):

4 (l) (1) Notwithstanding the provisions of subsections (a) to (j),  
5 inclusive, of this section, the affordable housing appeals procedure  
6 established under this section shall not be applicable to an affordable  
7 housing application filed with a commission during a moratorium,  
8 which shall be the [three-year] four-year period after (A) a certification  
9 of affordable housing project completion issued by the commissioner is  
10 published in the Connecticut Law Journal, or (B) after notice of a  
11 provisional approval is published pursuant to subdivision (4) of this  
12 subsection. Any moratorium that is in effect on the effective date of

13 this section is extended by one year.

14 Sec. 2. Section 12-81bb of the general statutes is repealed and the  
15 following is substituted in lieu thereof (*Effective October 1, 2002*):

16 (a) As used in this section:

17 (1) "Residential property" means a single parcel of property on  
18 which is situated a single-family residence or a multi-family building;  
19 [in which the owner is an occupant;]

20 (2) "Affordable housing deed restrictions" means deed restrictions  
21 filed on the land records of the municipality, containing covenants or  
22 restrictions that require such single-family residence or the dwelling  
23 units in such multi-family building to be sold or rented only to persons  
24 or families whose income is less than or equal to eighty per cent of the  
25 area median income or the state median income, whichever is less, and  
26 that shall constitute "affordable housing" within the meaning of section  
27 8-39a;

28 (3) "Long term" means a time period no shorter in duration than the  
29 minimum time period for affordability covenants or restrictions in  
30 deeds pursuant to subsection (a) of section 8-30g; and

31 (4) "Binding" means not subject to revocation, either by the owner or  
32 a subsequent owner acting unilaterally, or by the owner or a  
33 subsequent owner acting jointly with others, until the expiration of the  
34 long-term deed restriction time period and enforceable for the  
35 duration of the long-term deed restriction time period both by the  
36 municipality and by any resident of the municipality.

37 (b) Any municipality may, by ordinance adopted by its legislative  
38 body, provide property tax credits to owners of residential property  
39 who place long-term, binding affordable housing deed restrictions on  
40 such residential property in accordance with the provisions of this  
41 section.

42 Sec. 3. Subsection (a) of section 8-25 of the general statutes, as

43 amended by public act 01-52, is repealed and the following is  
44 substituted in lieu thereof (*Effective October 1, 2002*):

45 (a) No subdivision of land shall be made until a plan for such  
46 subdivision has been approved by the commission. Any person, firm  
47 or corporation making any subdivision of land without the approval of  
48 the commission shall be fined not more than five hundred dollars for  
49 each lot sold or offered for sale or so subdivided. Any plan for  
50 subdivision shall, upon approval, or when taken as approved by  
51 reason of the failure of the commission to act, be filed or recorded by  
52 the applicant in the office of the town clerk within ninety days of the  
53 expiration of the appeal period under section 8-8, as amended, or in  
54 the case of an appeal, within ninety days of the termination of such  
55 appeal by dismissal, withdrawal or judgment in favor of the applicant  
56 but, if it is a plan for subdivision wholly or partially within a district, it  
57 shall be filed in the offices of both the district clerk and the town clerk,  
58 and any plan not so filed or recorded within the prescribed time shall  
59 become null and void, except that the commission may extend the time  
60 for such filing for two additional periods of ninety days and the plan  
61 shall remain valid until the expiration of such extended time. All such  
62 plans shall be delivered to the applicant for filing or recording not  
63 more than thirty days after the time for taking an appeal from the  
64 action of the commission has elapsed or not more than thirty days after  
65 the date that plans modified in accordance with the commission's  
66 approval and that comply with section 7-31 are delivered to the  
67 commission, whichever is later, and in the event of an appeal, not more  
68 than thirty days after the termination of such appeal by dismissal,  
69 withdrawal or judgment in favor of the applicant or not more than  
70 thirty days after the date that plans modified in accordance with the  
71 commission's approval and that comply with section 7-31 are delivered  
72 to the commission, whichever is later. No such plan shall be recorded  
73 or filed by the town clerk or district clerk or other officer authorized to  
74 record or file plans until its approval has been endorsed thereon by the  
75 chairman or secretary of the commission, and the filing or recording of  
76 a subdivision plan without such approval shall be void. Before  
77 exercising the powers granted in this section, the commission shall

78 adopt regulations covering the subdivision of land. No such  
79 regulations shall become effective until after a public hearing, notice of  
80 the time, place and purpose of which shall be given by publication in a  
81 newspaper of general circulation in the municipality at least twice, at  
82 intervals of not less than two days, the first not more than fifteen days  
83 nor less than ten days, and the last not less than two days prior to the  
84 date of such hearing. Such regulations shall provide that the land to be  
85 subdivided shall be of such character that it can be used for building  
86 purposes without danger to health or the public safety, that proper  
87 provision shall be made for water, sewerage and drainage, including  
88 the upgrading of any downstream ditch, culvert or other drainage  
89 structure which, through the introduction of additional drainage due  
90 to such subdivision, becomes undersized and creates the potential for  
91 flooding on a state highway, and, in areas contiguous to brooks, rivers  
92 or other bodies of water subject to flooding, including tidal flooding,  
93 that proper provision shall be made for protective flood control  
94 measures and that the proposed streets are in harmony with existing  
95 or proposed principal thoroughfares shown in the plan of conservation  
96 and development as described in section 8-23, as amended, especially  
97 in regard to safe intersections with such thoroughfares, and so  
98 arranged and of such width, as to provide an adequate and convenient  
99 system for present and prospective traffic needs. Such regulations shall  
100 also provide that the commission may require the provision of open  
101 spaces, parks and playgrounds when, and in places, deemed proper by  
102 the planning commission, which open spaces, parks and playgrounds  
103 shall be shown on the subdivision plan. Such regulations may, with  
104 the approval of the commission, authorize the applicant to pay a fee to  
105 the municipality or pay a fee to the municipality and transfer land to  
106 the municipality in lieu of any requirement to provide open spaces.  
107 Such payment or combination of payment and the fair market value of  
108 land transferred shall be equal to not more than ten per cent of the fair  
109 market value of the land to be subdivided prior to the approval of the  
110 subdivision. The fair market value shall be determined by an appraiser  
111 jointly selected by the commission and the applicant. A fraction of  
112 such payment the numerator of which is one and the denominator of

113 which is the number of approved parcels in the subdivision shall be  
114 made at the time of the sale of each approved parcel of land in the  
115 subdivision and placed in a fund in accordance with the provisions of  
116 section 8-25b. The open space requirements of this section shall not  
117 apply if the transfer of all land in a subdivision of less than five parcels  
118 is to a parent, child, brother, sister, grandparent, grandchild, aunt,  
119 uncle or first cousin for no consideration. [ or if the subdivision is to  
120 contain affordable housing, as defined in section 8-39a, equal to twenty  
121 per cent or more of the total housing to be constructed in such  
122 subdivision.] Such regulations, on and after July 1, 1985, shall provide  
123 that proper provision be made for soil erosion and sediment control  
124 pursuant to section 22a-329. Such regulations shall not impose  
125 conditions and requirements on manufactured homes having as their  
126 narrowest dimension twenty-two feet or more and built in accordance  
127 with federal manufactured home construction and safety standards or  
128 on lots containing such manufactured homes which are substantially  
129 different from conditions and requirements imposed on single-family  
130 dwellings and lots containing single-family dwellings. Such  
131 regulations shall not impose conditions and requirements on  
132 developments to be occupied by manufactured homes having as their  
133 narrowest dimension twenty-two feet or more and built in accordance  
134 with federal manufactured home construction and safety standards  
135 which are substantially different from conditions and requirements  
136 imposed on multifamily dwellings, lots containing multifamily  
137 dwellings, cluster developments or planned unit developments. The  
138 commission may also prescribe the extent to which and the manner in  
139 which streets shall be graded and improved and public utilities and  
140 services provided and, in lieu of the completion of such work and  
141 installations previous to the final approval of a plan, the commission  
142 may accept a bond in an amount and with surety and conditions  
143 satisfactory to it securing to the municipality the actual construction,  
144 maintenance and installation of such improvements and utilities  
145 within a period specified in the bond. Such regulations may provide,  
146 in lieu of the completion of the work and installations above referred  
147 to, previous to the final approval of a plan, for an assessment or other

148 method whereby the municipality is put in an assured position to do  
 149 such work and make such installations at the expense of the owners of  
 150 the property within the subdivision. Such regulations may provide  
 151 that in lieu of either the completion of the work or the furnishing of a  
 152 bond as provided in this section, the commission may authorize the  
 153 filing of a plan with a conditional approval endorsed thereon. Such  
 154 approval shall be conditioned on (1) the actual construction,  
 155 maintenance and installation of any improvements or utilities  
 156 prescribed by the commission, or (2) the provision of a bond as  
 157 provided in this section. Upon the occurrence of either of such events,  
 158 the commission shall cause a final approval to be endorsed thereon in  
 159 the manner provided by this section. Any such conditional approval  
 160 shall lapse five years from the date it is granted, provided the  
 161 applicant may apply for and the commission may, in its discretion,  
 162 grant a renewal of such conditional approval for an additional period  
 163 of five years at the end of any five-year period, except that the  
 164 commission may, by regulation, provide for a shorter period of  
 165 conditional approval or renewal of such approval. Any person, firm or  
 166 corporation who, prior to such final approval, sells or offers for sale  
 167 any lot subdivided pursuant to a conditional approval shall be fined  
 168 not more than five hundred dollars for each lot sold or offered for sale.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>

**HSG**      *Joint Favorable Subst. C/R*      PD  
**PD**      *Joint Favorable*

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:

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**OFA Fiscal Note**

**State Impact:**

<b>Fund-Type</b>	<b>Agency Affected</b>	<b>FY 03 \$</b>	<b>FY 04 \$</b>
GF - None	Econ. & Com. Development, Dept.	None	None
GF - Savings	Judicial Dept.	Potential Minimal	Potential Minimal

Note: GF=General Fund

**Municipal Impact:**

<b>Effect</b>	<b>Municipalities</b>
See Below	Various Municipalities

**Explanation**

The Department of Economic and Community Development (DECD) reviews and approves municipal applications for the affordable housing appeals procedure moratorium, and is also responsible for tracking the term of those moratoria. It is anticipated that DECD can handle the requirements of this bill within existing budgetary resources.

The bill extends the affordable housing appeals procedure moratorium by one year. Extending the moratorium may lower the caseload before the state’s Superior Court, resulting in minimal savings to the Judicial Department.

Trumbull is the only municipality that qualifies for the affordable housing appeals procedure moratorium. One municipality is currently in the last stages of the moratorium application process.

As the bill extends the moratorium on affordable housing appeals by one year, it may result in a small administrative savings to the town

of Trumbull. Any such savings is expected to have a minimal fiscal impact.

The bill also eliminates the requirement that residential properties be owner-occupied to be eligible for local-option deed-restricted property tax credits. Municipalities electing to provide property tax credits to residential property owners would experience a revenue loss.

Certain municipalities may also realize a savings as the bill increases deed-restricted properties that count toward a moratorium and an exemption from the appeals procedure. If a municipality is approved for a moratorium, or if a town's housing stock exceeds the 10% threshold, it may realize administrative and legal savings as a result of a reduction in the number of affordable housing land use decisions that are appealed to Superior Court. The potential savings are expected to be minimal.

The bill also makes affordable housing development proposals subject to municipal open space, parks and playgrounds regulations. It is anticipated that this provision will not have a fiscal impact on municipalities.

**OLR Bill Analysis**

sHB 5434

***AN ACT CONCERNING THE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE*****SUMMARY:**

This bill extends, from three to four years, the length of an affordable housing appeals procedure moratorium a town can obtain. It also extends, by one year, any moratorium in effect on the bill's effective date (October 1, 2002). By law, a town qualifies for a moratorium by obtaining a certification from the economic and community development commissioner showing it has met a specific threshold of new affordable housing units created since 1990.

The bill also makes affordable housing development proposals subject to local subdivision open space, park, and playground regulations. Under current law, they are exempt.

Finally, the bill eliminates the owner-occupied requirement for local-option property tax credits triggered by an affordable housing deed restriction. Under current law, a town may adopt an ordinance providing such credits to owner-occupants of single-family or multi-family dwellings who place long-term affordable housing deed restrictions on the dwellings. By law, the deed restrictions must be covenants or restrictions filed in the land record requiring the dwellings to be sold or rented only to people whose income is 80% or less of the area or state median income, whichever is less. The restriction must remain for 40 years and cannot be revoked by the owner or subsequent owner until it expires.

EFFECTIVE DATE: October 1, 2002

**BACKGROUND*****Appeals procedure***

Under the procedure, a town bears the burden of proving certain facts in court if a developer appeals its decision rejecting a proposed

affordable housing development. (Normally, developers bear this burden in land use appeals.) The procedure applies to towns with less than 10% of their housing stock in affordable housing, as defined by law. Currently, the procedure applies to 137 towns, with the remaining 32 towns exempt (because they have at least 10% of their housing stock certified as affordable).

**Procedure Moratorium**

By law, a town qualifies for a moratorium each time it adds certain types of affordable housing units that equal 2% of the total number of housing units it had as of the last 10-year census or 75 unit-equivalent points, whichever is greater. A unit-equivalent point is the value the law assigns to types of units. The lower the income level of the unit's tenant or buyer, the more points are awarded for that unit. For example, family units restricted for tenants with incomes at or below 80% of median income are awarded one and one-half points each. When the income level is restricted to 60% and 40% median, the units are awarded two and two and one-half points each, respectively.

**COMMITTEE ACTION**

Select Committee on Housing

Joint Favorable Substitute Change of Reference  
Yea 10    Nay 2

Planning and Development Committee

Joint Favorable Report  
Yea 17    Nay 0