



General Assembly

February Session, 2008

**Raised Bill No. 434**

LCO No. 2116

\*02116\_\_\_\_\_ENV\*

Referred to Committee on Environment

Introduced by:  
(ENV)

**AN ACT EXCLUDING ENVIRONMENTALLY SENSITIVE AREAS FROM  
THE AFFORDABLE HOUSING LAND USE APPEALS PROCESS.**

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

1 Section 1. Section 8-30g of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) As used in this section:

4 (1) "Affordable housing development" means a proposed housing  
5 development which is (A) assisted housing, or (B) a set-aside  
6 development;

7 (2) "Affordable housing application" means any application made to  
8 a commission in connection with an affordable housing development  
9 by a person who proposes to develop such affordable housing;

10 (3) "Assisted housing" means housing which is receiving, or will  
11 receive, financial assistance under any governmental program for the  
12 construction or substantial rehabilitation of low and moderate income  
13 housing, and any housing occupied by persons receiving rental  
14 assistance under chapter 319uu or Section 1437f of Title 42 of the

15 United States Code;

16 (4) "Commission" means a zoning commission, planning  
17 commission, planning and zoning commission, zoning board of  
18 appeals or municipal agency exercising zoning or planning authority;

19 (5) "Municipality" means any town, city or borough, whether  
20 consolidated or unconsolidated;

21 (6) "Set-aside development" means a development in which not less  
22 than thirty per cent of the dwelling units will be conveyed by deeds  
23 containing covenants or restrictions which shall require that, for at  
24 least forty years after the initial occupation of the proposed  
25 development, such dwelling units shall be sold or rented at, or below,  
26 prices which will preserve the units as housing for which persons and  
27 families pay thirty per cent or less of their annual income, where such  
28 income is less than or equal to eighty per cent of the median income. In  
29 a set-aside development, of the dwelling units conveyed by deeds  
30 containing covenants or restrictions, a number of dwelling units equal  
31 to not less than fifteen per cent of all dwelling units in the  
32 development shall be sold or rented to persons and families whose  
33 income is less than or equal to sixty per cent of the median income and  
34 the remainder of the dwelling units conveyed by deeds containing  
35 covenants or restrictions shall be sold or rented to persons and families  
36 whose income is less than or equal to eighty per cent of the median  
37 income;

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

43 (8) "Commissioner" means the Commissioner of Economic and  
44 Community Development.

45 (b) (1) Any person filing an affordable housing application with a  
46 commission shall submit, as part of the application, an affordability  
47 plan which shall include at least the following: (A) Designation of the  
48 person, entity or agency that will be responsible for the duration of any  
49 affordability restrictions, for the administration of the affordability  
50 plan and its compliance with the income limits and sale price or rental  
51 restrictions of this chapter; (B) an affirmative fair housing marketing  
52 plan governing the sale or rental of all dwelling units; (C) a sample  
53 calculation of the maximum sales prices or rents of the intended  
54 affordable dwelling units; (D) a description of the projected sequence  
55 in which, within a set-aside development, the affordable dwelling  
56 units will be built and offered for occupancy and the general location  
57 of such units within the proposed development; and (E) draft zoning  
58 regulations, conditions of approvals, deeds, restrictive covenants or  
59 lease provisions that will govern the affordable dwelling units.

60 (2) The commissioner shall, within available appropriations, adopt  
61 regulations pursuant to chapter 54 regarding the affordability plan.  
62 Such regulations may include additional criteria for preparing an  
63 affordability plan and shall include: (A) A formula for determining  
64 rent levels and sale prices, including establishing maximum allowable  
65 down payments to be used in the calculation of maximum allowable  
66 sales prices; (B) a clarification of the costs that are to be included when  
67 calculating maximum allowed rents and sale prices; (C) a clarification  
68 as to how family size and bedroom counts are to be equated in  
69 establishing maximum rental and sale prices for the affordable units;  
70 and (D) a listing of the considerations to be included in the  
71 computation of income under this section.

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

78 (d) For any affordable dwelling unit that is rented as part of a set-  
79 aside development, if the maximum monthly housing cost, as  
80 calculated in accordance with subdivision (6) of subsection (a) of this  
81 section, would exceed one hundred per cent of the Section 8 fair  
82 market rent as determined by the United States Department of  
83 Housing and Urban Development, in the case of units set aside for  
84 persons and families whose income is less than or equal to sixty per  
85 cent of median income, then such maximum monthly housing cost  
86 shall not exceed one hundred per cent of said Section 8 fair market  
87 rent. If the maximum monthly housing cost, as calculated in  
88 accordance with subdivision (6) of subsection (a) of this section, would  
89 exceed one hundred twenty per cent of the Section 8 fair market rent,  
90 as determined by the United States Department of Housing and Urban  
91 Development, in the case of units set aside for persons and families  
92 whose income is less than or equal to eighty per cent of median  
93 income, then such maximum monthly housing cost shall not exceed  
94 one hundred twenty per cent of such Section 8 fair market rent.

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

101 (f) Any person whose affordable housing application is denied or is  
102 approved with restrictions which have a substantial adverse impact on  
103 the viability of the affordable housing development or the degree of  
104 affordability of the affordable dwelling units in a set-aside  
105 development, may appeal such decision pursuant to the procedures of  
106 this section. Such appeal shall be filed within the time period for filing  
107 appeals as set forth in section 8-8 of the 2008 supplement to the general  
108 statutes, 8-9, 8-28, 8-30 or 8-30a, as applicable, and shall be made  
109 returnable to the superior court for the judicial district where the real  
110 property which is the subject of the application is located. Affordable

111 housing appeals, including pretrial motions, shall be heard by a judge  
112 assigned by the Chief Court Administrator to hear such appeals. To  
113 the extent practicable, efforts shall be made to assign such cases to a  
114 small number of judges, sitting in geographically diverse parts of the  
115 state, so that a consistent body of expertise can be developed. Unless  
116 otherwise ordered by the Chief Court Administrator, such appeals,  
117 including pretrial motions, shall be heard by such assigned judges in  
118 the judicial district in which such judge is sitting. Appeals taken  
119 pursuant to this subsection shall be privileged cases to be heard by the  
120 court as soon after the return day as is practicable. Except as otherwise  
121 provided in this section, appeals involving an affordable housing  
122 application shall proceed in conformance with the provisions of [said]  
123 section 8-8 of the 2008 supplement to the general statutes, 8-9, 8-28, 8-  
124 30 or 8-30a, as applicable.

125 (g) Upon an appeal taken under subsection (f) of this section, the  
126 burden shall be on the commission to prove, based upon the evidence  
127 in the record compiled before such commission that the decision from  
128 which such appeal is taken and the reasons cited for such decision are  
129 supported by sufficient evidence in the record. The commission shall  
130 also have the burden to prove, based upon the evidence in the record  
131 compiled before such commission, that (1) (A) the decision is necessary  
132 to protect substantial public interests in health, safety, or other matters  
133 which the commission may legally consider; (B) such public interests  
134 clearly outweigh the need for affordable housing; and (C) such public  
135 interests cannot be protected by reasonable changes to the affordable  
136 housing development, or (2) (A) the application which was the subject  
137 of the decision from which such appeal was taken would locate  
138 affordable housing in an area which is zoned for industrial use and  
139 which does not permit residential uses, and (B) the development is not  
140 assisted housing, as defined in subsection (a) of this section. If the  
141 commission does not satisfy its burden of proof under this subsection,  
142 the court shall wholly or partly revise, modify, remand or reverse the  
143 decision from which the appeal was taken in a manner consistent with  
144 the evidence in the record before it.

145 (h) Following a decision by a commission to reject an affordable  
146 housing application or to approve an application with restrictions  
147 which have a substantial adverse impact on the viability of the  
148 affordable housing development or the degree of affordability of the  
149 affordable dwelling units, the applicant may, within the period for  
150 filing an appeal of such decision, submit to the commission a proposed  
151 modification of its proposal responding to some or all of the objections  
152 or restrictions articulated by the commission, which shall be treated as  
153 an amendment to the original proposal. The day of receipt of such a  
154 modification shall be determined in the same manner as the day of  
155 receipt is determined for an original application. The filing of such a  
156 proposed modification shall stay the period for filing an appeal from  
157 the decision of the commission on the original application. The  
158 commission shall hold a public hearing on the proposed modification  
159 if it held a public hearing on the original application and may hold a  
160 public hearing on the proposed modification if it did not hold a public  
161 hearing on the original application. The commission shall render a  
162 decision on the proposed modification not later than sixty-five days  
163 after the receipt of such proposed modification, provided, if, in  
164 connection with a modification submitted under this subsection, the  
165 applicant applies for a permit for an activity regulated pursuant to  
166 sections 22a-36 to 22a-45, inclusive, and the time for a decision by the  
167 commission on such modification under this subsection would lapse  
168 prior to the thirty-fifth day after a decision by an inland wetlands and  
169 watercourses agency, the time period for decision by the commission  
170 on the modification under this subsection shall be extended to thirty-  
171 five days after the decision of such agency. The commission shall issue  
172 notice of its decision as provided by law. Failure of the commission to  
173 render a decision within said sixty-five days or subsequent extension  
174 period permitted by this subsection shall constitute a rejection of the  
175 proposed modification. Within the time period for filing an appeal on  
176 the proposed modification as set forth in section 8-8 of the 2008  
177 supplement to the general statutes, 8-9, 8-28, 8-30 or 8-30a, as  
178 applicable, the applicant may appeal the commission's decision on the

179 original application and the proposed modification in the manner set  
180 forth in this section. Nothing in this subsection shall be construed to  
181 limit the right of an applicant to appeal the original decision of the  
182 commission in the manner set forth in this section without submitting  
183 a proposed modification or to limit the issues which may be raised in  
184 any appeal under this section.

185 (i) Nothing in this section shall be deemed to preclude any right of  
186 appeal under the provisions of section 8-8 of the 2008 supplement to  
187 the general statutes, 8-9, 8-28, 8-30 or 8-30a.

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

192 (k) Notwithstanding the provisions of subsections (a) to (j),  
193 inclusive, of this section, the affordable housing appeals procedure  
194 established under this section shall not be available if the real property  
195 which is the subject of the application is located in a municipality in  
196 which at least ten per cent of all dwelling units in the municipality are  
197 (1) assisted housing, or (2) currently financed by Connecticut Housing  
198 Finance Authority mortgages, or (3) subject to binding recorded deeds  
199 containing covenants or restrictions which require that such dwelling  
200 units be sold or rented at, or below, prices which will preserve the  
201 units as housing for which persons and families pay thirty per cent or  
202 less of income, where such income is less than or equal to eighty per  
203 cent of the median income, or (4) mobile manufactured homes located  
204 in mobile manufactured home parks or legally-approved accessory  
205 apartments, which homes or apartments are subject to binding  
206 recorded deeds containing covenants or restrictions which require that  
207 such dwelling units be sold or rented at, or below, prices which will  
208 preserve the units as housing for which, for a period of not less than  
209 ten years, persons and families pay thirty per cent or less of income,  
210 where such income is less than or equal to eighty per cent of the

211 median income. The municipalities meeting the criteria set forth in this  
212 subsection shall be listed in the report submitted under section 32-1m  
213 of the 2008 supplement to the general statutes. As used in this  
214 subsection, "accessory apartment" means a separate living unit that (A)  
215 is attached to the main living unit of a house, which house has the  
216 external appearance of a single-family residence, (B) has a full kitchen,  
217 (C) has a square footage that is not more than thirty per cent of the  
218 total square footage of the house, (D) has an internal doorway  
219 connecting to the main living unit of the house, (E) is not billed  
220 separately from such main living unit for utilities, and (F) complies  
221 with the building code and health and safety regulations.

222 (l) (1) Notwithstanding the provisions of subsections (a) to (j),  
223 inclusive, of this section, the affordable housing appeals procedure  
224 established under this section shall not be applicable to an affordable  
225 housing application filed with a commission during a moratorium,  
226 which shall be the four-year period after (A) a certification of  
227 affordable housing project completion issued by the commissioner is  
228 published in the Connecticut Law Journal, or (B) after notice of a  
229 provisional approval is published pursuant to subdivision (4) of this  
230 subsection. Any moratorium that is in effect on October 1, 2002, is  
231 extended by one year.

232 (2) Notwithstanding the provisions of this subsection, such  
233 moratorium shall not apply to (A) affordable housing applications for  
234 assisted housing in which ninety-five per cent of the dwelling units are  
235 restricted to persons and families whose income is less than or equal to  
236 sixty per cent of median income, (B) other affordable housing  
237 applications for assisted housing containing forty or fewer dwelling  
238 units, or (C) affordable housing applications which were filed with a  
239 commission pursuant to this section prior to the date upon which the  
240 moratorium takes effect.

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

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

250 (B) A municipality may apply for a certificate of affordable housing  
251 project completion pursuant to this subsection by applying in writing  
252 to the commissioner, and including documentation showing that the  
253 municipality has accumulated the required number of points within  
254 the applicable time period. Such documentation shall include the  
255 location of each dwelling unit being counted, the number of points  
256 each dwelling unit has been assigned, and the reason, pursuant to this  
257 subsection, for assigning such points to such dwelling unit. Upon  
258 receipt of such application, the commissioner shall promptly cause a  
259 notice of the filing of the application to be published in the Connecticut  
260 Law Journal, stating that public comment on such application shall be  
261 accepted by the commissioner for a period of thirty days after the  
262 publication of such notice. Not later than ninety days after the receipt  
263 of such application, the commissioner shall either approve or reject  
264 such application. Such approval or rejection shall be accompanied by a  
265 written statement of the reasons for approval or rejection, pursuant to  
266 the provisions of this subsection. If the application is approved, the  
267 commissioner shall promptly cause a certificate of affordable housing  
268 project completion to be published in the Connecticut Law Journal. If  
269 the commissioner fails to either approve or reject the application  
270 within such ninety-day period, such application shall be deemed  
271 provisionally approved, and the municipality may cause notice of such  
272 provisional approval to be published in a conspicuous manner in a  
273 daily newspaper having general circulation in the municipality, in  
274 which case, such moratorium shall take effect upon such publication.  
275 The municipality shall send a copy of such notice to the commissioner.  
276 Such provisional approval shall remain in effect unless the

277 commissioner subsequently acts upon and rejects the application, in  
278 which case the moratorium shall terminate upon notice to the  
279 municipality by the commissioner.

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

283 (6) For purposes of this subsection, housing unit-equivalent points  
284 shall be determined by the commissioner as follows: (A) No points  
285 shall be awarded for a unit unless its occupancy is restricted to persons  
286 and families whose income is equal to or less than eighty per cent of  
287 median income, except that unrestricted units in a set-aside  
288 development shall be awarded one-fourth point each. (B) Family units  
289 restricted to persons and families whose income is equal to or less than  
290 eighty per cent of median income shall be awarded one point if an  
291 ownership unit and one and one-half points if a rental unit. (C) Family  
292 units restricted to persons and families whose income is equal to or  
293 less than sixty per cent of median income shall be awarded one and  
294 one-half points if an ownership unit and two points if a rental unit. (D)  
295 Family units restricted to persons and families whose income is equal  
296 to or less than forty per cent of median income shall be awarded two  
297 points if an ownership unit and two and one-half points if a rental  
298 unit. (E) Elderly units restricted to persons and families whose income  
299 is equal to or less than eighty per cent of median income shall be  
300 awarded one-half point. (F) A set-aside development containing family  
301 units which are rental units shall be awarded additional points equal  
302 to twenty-two per cent of the total points awarded to such  
303 development, provided the application for such development was filed  
304 with the commission prior to July 6, 1995.

305 (7) Points shall be awarded only for dwelling units which were (A)  
306 newly-constructed units in an affordable housing development, as that  
307 term was defined at the time of the affordable housing application, for  
308 which a certificate of occupancy was issued after July 1, 1990, or (B)

309 newly subjected after July 1, 1990, to deeds containing covenants or  
310 restrictions which require that, for at least the duration required by  
311 subsection (a) of this section for set-aside developments on the date  
312 when such covenants or restrictions took effect, such dwelling units  
313 shall be sold or rented at, or below, prices which will preserve the  
314 units as affordable housing for persons or families whose income does  
315 not exceed eighty per cent of median income.

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

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

325 (10) The affordable housing appeals procedure shall be applicable to  
326 affordable housing applications filed with a commission after a three-  
327 year moratorium expires, except (A) as otherwise provided in  
328 subsection (k) of this section, or (B) when sufficient unit-equivalent  
329 points have been created within the municipality during one  
330 moratorium to qualify for a subsequent moratorium.

331 (11) The commissioner shall, within available appropriations, adopt  
332 regulations in accordance with chapter 54 to carry out the purposes of  
333 this subsection. Such regulations shall specify the procedure to be  
334 followed by a municipality to obtain a moratorium, and shall include  
335 the manner in which a municipality is to document the units to be  
336 counted toward a moratorium. A municipality may apply for a  
337 moratorium in accordance with the provisions of this subsection prior  
338 to, as well as after, such regulations are adopted.

339 (m) Notwithstanding the provisions of subsections (a) to (j),

340 inclusive, of this section, the affordable housing appeals procedure  
341 established under this section shall not be available if the real property  
342 which is the subject of the application is located in an environmentally  
343 sensitive area. "Environmentally sensitive area" includes, but is not  
344 limited to: Agricultural land, forest, open space land, freshwater and  
345 coastal wetlands, fish and wildlife habitats, drinking water supply  
346 reservoirs, recharge areas for potable water aquifers, land containing  
347 mineral resources, and land with other significant topographical,  
348 geological or ecological features.

349 [(m)] (n) The commissioner shall, pursuant to regulations adopted  
350 in accordance with the provisions of chapter 54, promulgate model  
351 deed restrictions which satisfy the requirements of this section. A  
352 municipality may waive any fee which would otherwise be required  
353 for the filing of any long-term affordability deed restriction on the land  
354 records.

|   |                 |       |
|---|-----------------|-------|
| This act shall take effect as follows and shall amend the following sections: |                 |       |
| Section 1   | October 1, 2008 | 8-30g |

**Statement of Purpose:**

To exclude environmentally sensitive areas from the affordable housing land use appeals process.

*[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.]*