



General Assembly

February Session, 2010

Raised Bill No. 5240

LCO No. 959

00959_____ENV

Referred to Committee on Environment

Introduced by:
(ENV)

AN ACT CONCERNING AFFORDABLE HOUSING DEVELOPMENTS IN ENVIRONMENTALLY REGULATED AREAS.

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 Section 8-30g of the general statutes is repealed and the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, 2010*):

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, 8-9, 8-28, 8-30 or 8-30a, as applicable,
108 and shall be made returnable to the superior court for the judicial
109 district where the real property which is the subject of the application
110 is located. Affordable housing appeals, including pretrial motions,

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

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

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

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

183 (i) Nothing in this section shall be deemed to preclude any right of
184 appeal under the provisions of section 8-8, 8-9, 8-28, 8-30 or 8-30a.

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

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

210 environment or natural resources prohibit or substantially limit any
211 development. The municipalities meeting the criteria set forth in [this
212 subsection] subdivision (1) of this subsection shall be listed in the
213 report submitted under section 32-1m. As used in [this subsection]
214 subdivision (1) of this subsection, "accessory apartment" means a
215 separate living unit that [(A)] (i) is attached to the main living unit of a
216 house, which house has the external appearance of a single-family
217 residence, [(B)] (ii) has a full kitchen, [(C)] (iii) has a square footage that
218 is not more than thirty per cent of the total square footage of the house,
219 [(D)] (iv) has an internal doorway connecting to the main living unit of
220 the house, [(E)] (v) is not billed separately from such main living unit
221 for utilities, and [(F)] (vi) complies with the building code and health
222 and safety regulations.

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

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

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

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

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

275 which case, such moratorium shall take effect upon such publication.
276 The municipality shall send a copy of such notice to the commissioner.
277 Such provisional approval shall remain in effect unless the
278 commissioner subsequently acts upon and rejects the application, in
279 which case the moratorium shall terminate upon notice to the
280 municipality by the commissioner.

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. (F) A set-aside development containing family
302 units which are rental units shall be awarded additional points equal
303 to twenty-two per cent of the total points awarded to such
304 development, provided the application for such development was filed
305 with the commission prior to July 6, 1995.

306 (7) Points shall be awarded only for dwelling units which were (A)

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

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

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

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

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

339 to, as well as after, such regulations are adopted.

340 (m) The commissioner shall, pursuant to regulations adopted in
341 accordance with the provisions of chapter 54, promulgate model deed
342 restrictions which satisfy the requirements of this section. A
343 municipality may waive any fee which would otherwise be required
344 for the filing of any long-term affordability deed restriction on the land
345 records.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2010	8-30g

Statement of Purpose:

To discontinue the practice of having affordable housing development take precedence over the protection of the environment and natural resources.

[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.]