



# House of Representatives

General Assembly

**File No. 553**

February Session, 2014

Substitute House Bill No. 5590

*House of Representatives, April 15, 2014*

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT ESTABLISHING A PILOT PROGRAM FOR THE MEDIATION OF CONDOMINIUM-RELATED DISPUTES.***

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

1 Section 1. (NEW) (*Effective October 1, 2014*) (a) As used in this  
2 section:

3 (1) "Association" has the same meaning as provided in section 47-  
4 202 of the general statutes, and includes an "association of unit  
5 owners", as defined in section 47-68a of the general statutes;

6 (2) "Executive board" has the same meaning as provided in section  
7 47-202 of the general statutes, and includes a "board of directors", as  
8 defined in section 47-68a of the general statutes;

9 (3) "Unit" has the same meaning as provided in section 47-202 of the  
10 general statutes, and includes a "unit", as defined in section 47-68a of  
11 the general statutes; and

12 (4) "Unit owner" has the same meaning as provided in section 47-

13 202 of the general statutes, and includes a "unit owner", as defined in  
14 section 47-68a of the general statutes.

15 (b) The Chief Court Administrator of the Judicial Branch shall,  
16 within available appropriations, establish a pilot program for the  
17 mediation of disputes between two individual unit owners or a unit  
18 owner and the executive board of an association concerning the  
19 application and interpretation of (1) an association's bylaws, rules or  
20 regulations, (2) the declaration establishing the condominium or  
21 common interest community, or (3) the provisions of chapters 825 and  
22 828 of the general statutes. Disputes related to a foreclosure action  
23 initiated against a unit owner shall not be eligible for the pilot  
24 program. The Chief Court Administrator shall establish the pilot  
25 program in the Hartford, New Haven and Stamford-Norwalk judicial  
26 districts.

27 (c) Any unit owner or executive board member acting on behalf of  
28 an association with a dispute described in subsection (b) of this section  
29 may file a request to participate in the pilot program. Such request  
30 shall be: (1) In writing, on such form as the Chief Court Administrator  
31 prescribes, which shall, at a minimum, set forth the names and  
32 addresses of any unit owner or executive board member acting on  
33 behalf of an association that may be a party to the dispute and a  
34 description of the specific nature of the dispute; (2) accompanied by a  
35 nonrefundable initiation fee of fifty dollars; and (3) filed at a court  
36 designated by the Chief Court Administrator to participate in the pilot  
37 program pursuant to subsection (b) of this section.

38 (d) Upon receipt of a request for participation in the pilot program,  
39 the court shall provide written notification of such request, by regular  
40 mail, to any unit owner or executive board member of an association  
41 identified in the request. Such written notification shall include any  
42 necessary forms that will need to be completed and returned by a unit  
43 owner or executive board member to the court in the event that such  
44 unit owner or executive board member elects to participate in  
45 mediation of the dispute. Any unit owner or executive board member

46 receiving a request to participate in mediation of the dispute may elect  
47 to accept or decline such request. If the unit owner or executive board  
48 member elects to participate in mediation, such unit owner or  
49 executive board member shall, not later than sixty days following the  
50 date of the written notification from the court, return to the court any  
51 forms that need to be completed in order to participate in the  
52 mediation along with a filing fee of two hundred fifty dollars. The two-  
53 hundred-fifty-dollar filing fee shall be refunded only if the unit owner  
54 or executive board member who initiated the request for participation  
55 in the pilot program fails to pay his or her filing fee. The court shall  
56 thereafter provide written notification, by regular mail, to the unit  
57 owner or executive board member who initiated the request for  
58 participation in the pilot program that: (1) Such request has been  
59 accepted, and (2) the mediation will be scheduled by the court upon  
60 payment of a nonrefundable two-hundred-dollar filing fee by the unit  
61 owner or executive board member who initiated the request for  
62 participation in the pilot program.

63 (e) Not later than ninety days after receipt of all filing forms and  
64 fees, the court shall set the date, time and place for the mediation  
65 session. The court shall provide written notification of the mediation  
66 session, by regular mail, to any unit owner or executive board member  
67 identified in the request for mediation. The presiding judge of the civil  
68 session of the court in which the request for mediation has been filed  
69 shall select a special master to conduct the mediation session from the  
70 list of special masters compiled by the Office of the Chief Court  
71 Administrator pursuant to section 2 of this act. The special master shall  
72 receive no compensation for his or her services.

73 (f) The special master shall attempt to mediate a voluntary  
74 resolution of the dispute. Either party to the mediation may withdraw  
75 from mediation at any time during the process after providing notice  
76 to the other party and the special master. In addition, the special  
77 master may terminate the mediation upon finding that further efforts  
78 to mediate the dispute would be futile. If a resolution of the dispute is  
79 achieved, the special master shall assist the parties to the dispute in the

80 preparation of a written agreement setting forth the specific terms of  
81 the agreement. The written agreement shall be signed by the parties to  
82 the mediation and the special master.

83 (g) No participant in the mediation shall voluntarily disclose or,  
84 through discovery or compulsory process, be required to disclose any  
85 oral or written communication received or obtained during the course  
86 of the mediation, unless (1) each of the other participants agree in  
87 writing to such disclosure, (2) the disclosure is necessary to enforce a  
88 written agreement that resulted from the mediation, (3) the disclosure  
89 is required by statute or regulation, or by any court, after notice is  
90 provided to all participants in the mediation, or (4) the disclosure is  
91 required as a result of circumstances in which a court finds that the  
92 interest of justice outweighs the need for confidentiality, consistent  
93 with the principles of law.

94 (h) The remedies provided under this section are not exclusive and  
95 are in addition to any other remedies in any section of the general  
96 statutes or which are available under common law.

97 (i) The presiding judge of the civil session of a court that has been  
98 selected to participate in the pilot program shall maintain statistical  
99 data, on an annual basis, concerning the administration of the pilot  
100 program. Such data shall include, but not be limited to, the number of  
101 requests received: (1) To participate in the pilot program, (2) that  
102 resulted in a mediation session being held, and (3) that resulted in  
103 resolution of the dispute.

104 (j) Not later than January 15, 2017, the Chief Court Administrator  
105 shall report, in accordance with the provisions of section 11-4a of the  
106 general statutes, to the joint standing committee of the General  
107 Assembly having cognizance of matters relating to the judiciary on the  
108 pilot program data compiled pursuant to subsection (i) of this section.

109 Sec. 2. (NEW) (*Effective from passage*) (a) On or before September 30,  
110 2014, the Chief Court Administrator shall prescribe the qualifications  
111 that an attorney must possess in order to serve as special master for the

112 pilot program established under section 1 of this act. The qualifications  
113 prescribed by the Chief Court Administrator shall, at a minimum,  
114 require that such attorney: (1) Be a member of the bar of this state, (2)  
115 has engaged in the practice of law for not less than ten years, and (3)  
116 has engaged in the practice of community association law for not less  
117 than seven years.

118 (b) Upon the establishment of special master qualifications by the  
119 Chief Court Administrator under subsection (a) of this section, the  
120 Office of the Chief Court Administrator shall develop an application  
121 process for any attorney who seeks to serve as special master for the  
122 pilot program established under section 1 of this act. The Office of the  
123 Chief Court Administrator shall maintain a list of those attorneys who  
124 are qualified to serve as a special master for the pilot program and  
125 make such list available to each presiding judge of the civil session of a  
126 court designated to participate in the pilot program.

127 Sec. 3. Section 47-216 of the general statutes is repealed and the  
128 following is substituted in lieu thereof (*Effective October 1, 2014*):

129 (a) Except as provided in section 47-217, sections 47-202, 47-204, 47-  
130 205, 47-206, 47-218, 47-221, 47-222, 47-223, subsections (b), (d), (i) and  
131 (j) of section 47-236, sections 47-237, 47-240 and 47-244, subsection (f) of  
132 section 47-245, and sections 47-250, 47-251, 47-252, 47-253, 47-255, 47-  
133 257, 47-258, 47-260, 47-261b, 47-261c, 47-261d, 47-261e, 47-270, [and] 47-  
134 278, 1 and 2 of this act, to the extent necessary in construing any of  
135 those sections, apply to all common interest communities created in  
136 this state before January 1, 1984; but those sections apply only with  
137 respect to events and circumstances occurring after January 1, 1984,  
138 and do not invalidate existing provisions of the declaration, bylaws or  
139 surveys or plans of those common interest communities.

140 (b) Section 47-210 and subsections (b) to (d), inclusive, of section 47-  
141 225 apply to all common interest communities created in this state  
142 prior to January 1, 1984, but shall not invalidate existing provisions of  
143 the declarations, bylaws or surveys or plans of those common interest  
144 communities.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>October 1, 2014</i>	47-216

**Statement of Legislative Commissioners:**

In section 1, subsections (b) to (f), inclusive, and subsection (i) were redrafted for clarity and conciseness.

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 15 \$</b>	<b>FY 16 \$</b>
Judicial Dept.	GF - Potential Cost	158,107	206,522
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Potential Cost	16,028	33,979
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below

**Municipal Impact:** None

**Explanation**

The bill requires the Judicial Department to establish, within available appropriations, a pilot mediation program for disputes between condominium owners and results in a cost of \$158,107 in FY 15 and \$206,522 in FY 16 to the Judicial Department. This cost includes three clerks, associated other expenses and equipment funding, and funding for per diem special master mediators. There is an additional cost of \$16,028 in FY 15 and \$33,979 in FY 16 for fringe benefits. Funding was not provided in HB 5030, the budget bill, and if implemented, resources may have to be diverted from other programs.

The bill results in a potential General Fund revenue gain for fees. If both parties agree to mediation, the parties must pay a combined total of \$500 to conduct the mediation.

**The Out Years**

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<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 36.66% of payroll in FY 15 and FY 16.

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and the number of applications for mediation.

**OLR Bill Analysis**

**sHB 5590**

***AN ACT ESTABLISHING A PILOT PROGRAM FOR THE  
MEDIATION OF CONDOMINIUM-RELATED DISPUTES.***

**SUMMARY:**

This bill requires the chief court administrator, within available appropriations, to establish a pilot mediation program for disputes between two unit owners, or a unit owner and the executive board, of a condominium or other common interest community. The administrator must establish the pilot program in the Hartford, New Haven, and Stamford-Norwalk judicial districts.

The bill establishes a process for a party to request mediation. Participation is voluntary for both parties. The requesting party must pay a \$50 initiation fee, and an additional \$200 fee if the other party agrees to mediate and pays a \$250 filing fee.

If mediation is successful, the bill requires the parties and the special master conducting the mediation to prepare and sign a written agreement.

Among other things, it also requires the chief court administrator to establish qualifications for attorneys experienced in community association law to serve as special masters for the mediations. His office must then (1) develop a process for attorneys to apply to serve as special masters and (2) create a list of such attorneys and make it available to participating courts.

The bill requires the civil session presiding judge of any participating courts to maintain annual statistical data on the pilot program. The data must include (1) the number of requests to participate, (2) the number of requests resulting in mediation, and (3)

whether mediation resolved the dispute. The bill requires the chief court administrator, by January 15, 2017, to report this data to the Judiciary Committee.

EFFECTIVE DATE: October 1, 2014, except for the provisions on establishing the special master qualifications and list, which are effective upon passage.

## **PILOT MEDIATION PROGRAM**

### ***Applicability***

Under the bill, the program is available to unit owners or boards of associations governed by the Common Interest Ownership Act (CIOA) (regardless of when the community was created) or the Condominium Act (see BACKGROUND). The program is for mediation of disputes concerning the application and interpretation of (1) the association's bylaws, rules, or regulations; (2) the common interest community's declaration; or (3) CIOA or the Condominium Act. Foreclosure disputes are not eligible.

### ***Process to Request Mediation***

The bill requires a unit owner, or executive board member acting on behalf of the association, seeking mediation to file a written request at a participating court as designated by the chief court administrator and on a form he prescribes. The form must at least (1) list the names and addresses of the parties to the dispute and (2) describe the nature of the dispute. Along with the form, the requestor must include a nonrefundable \$50 initiation fee.

When the court receives such a request, it must notify the other party identified in the request, by regular mail. That party's participation is optional. The notification must include any forms the party will need to complete and return to the court if he or she chooses to participate in mediation.

If the party chooses to participate, he or she must return to the court any required forms and a \$250 filing fee, within 60 days of the court's written notification. The court must then, using regular mail, notify

the party that initiated the mediation request that (1) the other party accepted and (2) the court will schedule the mediation after the initiating party pays a \$200 nonrefundable filing fee.

If the initiating party fails to pay this fee, the other party is refunded the \$250 fee he or she sent when accepting the request to participate. Otherwise, that fee is nonrefundable.

### ***Mediation***

The bill requires the court to schedule a date, time, and place for mediation within 90 days of receiving all required filing forms and fees. The court must notify the parties about the mediation session, by regular mail.

To conduct the mediation session, the court's civil session presiding judge must choose a special master with demonstrated knowledge in community association law from the list compiled by the office of the chief court administrator, as described below. The special master is not paid for serving in this role.

The bill requires the special master to attempt to mediate a voluntary resolution of the parties' dispute. It allows either party to withdraw from mediation at any time, after notifying the other party and the special master. It also allows the special master to end the mediation if he or she finds that further efforts to mediate would be futile.

If the parties resolve the dispute through mediation, the special master must help them prepare a written agreement that specifies the terms of the resolution. Both parties and the special master must sign the agreement.

The bill generally prohibits either party or the special master from (1) voluntarily disclosing any oral or written communication received or obtained during the mediation or (2) being required to disclose such communications through discovery or compulsory process. But these prohibitions do not apply if:

1. each of the other participants agree in writing to the disclosure;
2. the disclosure is needed to enforce a written agreement resulting from the mediation;
3. the disclosure is required by statute, regulation, or a court, and the person first notifies the other participants; or
4. the disclosure is required because a court finds that the interest of justice outweighs the need for confidentiality, consistent with the principles of law.

The bill specifies that remedies provided under it are not exclusive and are in addition to any other remedies available under Connecticut statutes or common law. By law, unit owners or associations can file lawsuits to enforce CIOA or the Condominium Act, as applicable, or the association's governing instruments (CGS §§ 47-74, 47-278).

### ***Special Masters' Qualifications and List***

The bill requires the chief court administrator, by September 30, 2014, to prescribe the qualifications for attorneys to serve as special masters for the pilot program. At a minimum, those qualifications must require that the attorney (1) be admitted to the Connecticut bar and (2) have engaged in the practice of law for at least 10 years, including at least seven years in community association law.

After the chief court administrator establishes these qualifications, his office must develop an application process for attorneys seeking to serve as special masters. The office must maintain a list of qualified attorneys and make it available to the civil session presiding judges in the courts designated to participate in the program.

## **BACKGROUND**

### ***Common Interest Ownership Act (CIOA) and Condominium Act***

CIOA governs the creation, alteration, management, termination, and sale of condominiums and other common interest communities formed in Connecticut on and after January 1, 1984 (CGS § 47-200 et

seq.). Certain CIOA provisions also apply to common interest communities created in Connecticut before January 1, 1984, but do not invalidate existing provisions of the communities' governing instruments. Common interest communities created before then can amend their governing instruments to conform to portions of CIOA that do not automatically apply (CGS §§ 47-214, -216, -218).

The Condominium Act (CGS §§ 47-68a to 47-90c) governs condominiums created from 1977 through 1983, except when CIOA applies.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 35    Nay 3    (03/28/2014)