



SUMMARY OF SENATE AMENDMENT LCO #6101

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ISSUE

Summarize LCO #6101, which would amend SB 407, *An Act Concerning the Affordable Housing Land Use Appeals Procedure*, and describe how it differs from the underlying bill.

SUMMARY

LCO #6101 is identical to the underlying bill, except that it sunsets each of the bill's changes in five years. It makes the same changes as the underlying bill to the (1) affordable housing land use appeals procedure ("procedure") and (2) definition of "median income" under the incentive housing zones (IHZ) statutes. However, under LCO #6101, these changes are effective only from October 1, 2015 through September 30, 2020. On October 1, 2020, the affected provisions revert to their status as of September 30, 2015 and current law's provisions take effect.

UNDERLYING BILL'S PROVISIONS

This bill narrows the circumstances in which the procedure is available to developers by making it available only in appeals concerning developments with at least four affordable units. The underlying bill also makes it easier for municipalities to qualify for a four-year exemption from the procedure (i.e., moratorium) by (1) expanding the unit types that qualify toward the moratorium and (2) establishing "bonus points" for certain unit types.

The procedure is a set of rules requiring zoning and planning commissions to defend their decisions denying affordable housing developments or approving them with certain conditions. In traditional zoning appeals, the developer must convince the court that the municipality acted illegally or arbitrarily, or abused its discretion by rejecting the proposed development. The procedure instead places the burden of proof on municipalities.

By law, a developer cannot appeal under the procedure in a municipality (1) in which the Department of Housing (DOH) determines at least 10% of the housing stock is affordable or (2) that obtains a four-year moratorium. A municipality is eligible for a moratorium each time it shows it has added a certain number of affordable housing units since the last census.

Additionally, the underlying bill changes the definition of “median income” applicable to the IHZ statutes, conforming it to the affordable housing land use appeals procedure statutes. IHZs are overlay zones in which developers can build, as a matter of right, high-density housing.

AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE

Availability of Procedure to Developers

The underlying bill prevents developers from appealing, under the procedure, a decision concerning a development with fewer than four affordable units. Under current law, a developer can appeal under the procedure if he or she proposes to build at least one affordable unit. However, both existing law and the bill prohibit a developer from appealing under the procedure when (1) at least 10% of the municipality's housing stock is affordable or (2) the municipality obtained a moratorium.

Moratoria: Required Housing Unit Equivalent (HUE) Points

Under current law, a municipality is eligible for a moratorium if it shows it has added affordable housing units, measured in HUE points, equaling the greater of (1) 2% of the housing stock, as of the last census or (2) 75 HUE points (see BACKGROUND). The underlying bill retains the 2% standard but lowers, from 75 to 50, the minimum number of HUE points municipalities need to qualify for a four-year moratorium.

Moratoria: Incentive Housing Development (IHD) Units

An IHD is a residential or mixed-use development (1) located within an IHZ and (2) in which at least 20% of the units are income-restricted (“restricted”) for at least 30 years. Under current law, IHD units do not qualify for HUE points if they are not restricted for at least 40 years. The underlying bill makes all restricted IHD units in an IHZ eligible for HUE points, and thus, these units count toward a moratorium.

The restricted units qualify even if they are restricted for fewer than 40 years.

Moratoria: Bonus Points

The underlying bill makes three additional categories of housing units eligible for bonus HUE points, as shown in Table 1. Bonus points are awarded in addition to the base HUE points a unit receives (see BACKGROUND.) Family units with at least three bedrooms and restricted IHD units receive a quarter-point bonus. Restricted elderly units receive a half-point bonus, if at least 60% of the restricted units counted toward the moratorium are family units (i.e., elderly units will not receive a half-point bonus if they make up more than 40% of the restricted units counted toward the moratorium).

Table 1: Bonus Points

<i>Unit Type</i>	<i>Bonus Points</i>	
	<i>Current Law</i>	<i>Underlying Bill</i>
Owned or rented restricted family units with at least 3 bedrooms	No bonus	0.25 bonus
Owned or rented restricted family units in an IHD	No bonus	0.25 bonus
Owned or rented restricted elderly units, if at least 60% of restricted units used toward the moratorium are family units	No bonus	0.50 bonus
Rental family units in a set-aside development, if the developer applied for local approval before July 6, 1995	Bonus equal to 22% of the total points awarded to such development	No change

IHZ: DEFINITION OF MEDIAN INCOME

The underlying bill conforms the definition of “median income” applicable to IHDs to the definition applicable to the affordable housing land use appeals procedure statutes. Under current law, restricted units in an IHD must be affordable to individuals earning 80% or less than the area median income (AMI). The underlying bill instead requires restricted units in an IHD to be affordable to individuals earning 80% or less of the AMI or state median income (SMI), whichever is less. The new definition of “median income” does not apply to IHDs in IHZs that DOH approves, or approves grants for, before October 1, 2015.

BACKGROUND

Affordable Housing Developments

Under the procedure, "affordable housing development" means a housing development that is (1) assisted housing or (2) a set-aside development. "Assisted housing" means housing that receives government assistance to construct or rehabilitate low- and moderate- income housing, or, housing occupied by individuals receiving rental assistance (e.g., Section 8). A "set-aside development" is a development in which, for at least 40 years after initial occupancy, at least (1) 15% of the units are deed restricted to households earning 60% or less of the AMI or SMI, whichever is less and (2) 15% of units are deed restricted to households earning 80% or less of the AMI or SMI, whichever is less.

Applicability of the Procedure

A municipality is subject to the procedure if less than 10% of its housing stock:

1. is assisted housing,
2. is currently financed by Connecticut Housing Finance Authority mortgages,
3. is subject to deeds and conditions restricting the sale or rental to low-and moderate-income people, or
4. consists of mobile homes or accessory apartments subject to similar deed restrictions.

However, municipalities are eligible for a four-year moratorium on appeals taken under the procedure each time the municipality shows it has added affordable housing units, measured in HUE points, equaling the greater of (1) 2% of the housing stock, as of the last census or (2) 75 HUE points. Table 2 shows the types of units that count toward a moratorium and their HUE point value, as established in [CGS § 8-30g](#).

Table 2: Base Points

<i>Unit Type</i>		<i>HUE point value (per unit)</i>
Owned or rented market-rate unit in a set-aside development		0.25
Owned or rented elderly unit restricted to households earning no more than 80% of the median income		0.50
Owned family unit restricted to households earning no more than:	80% of median income	1.00
	60% of median income	1.50
	40% of median income	2.00
Rented family unit restricted to households earning no more than:	80% of median income	1.50
	60% of median income	2.00
	40% of median income	2.50

IHZs and IHDs

An IHZ is an overlay zone allowing developers to build, as a matter of right, high-density housing close to (1) public transportation, (2) an area of concentrated development, or (3) existing or planned infrastructure. DOH is authorized to make grants to municipalities that adopt, or are working to adopt, IHZ regulations ([CGS § 8-13m et seq.](#)).

An IHD is a residential or mixed-use development (1) located within a DOH-approved IHZ and (2) eligible for grants. Additionally, at least 20% of the units must be affordable, for at least 30 years, to households earning 80% or less of the AMI. Income restrictions are guaranteed by various means, including deed restrictions, covenants, zoning regulations, and site plan approval conditions.

JSB:jk