



House of Representatives

General Assembly

File No. 187

February Session, 2016

Substitute House Bill No. 5363

House of Representatives, March 24, 2016

The Committee on Housing reported through REP. BUTLER of the 72nd 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. Section 8-30g of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

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 Housing.

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

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

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

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

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

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

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

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

143 (h) Following a decision by a commission to reject an affordable
144 housing application or to approve an application with restrictions

145 which have a substantial adverse impact on the viability of the
146 affordable housing development or the degree of affordability of the
147 affordable dwelling units, the applicant may, within the period for
148 filing an appeal of such decision, submit to the commission a proposed
149 modification of its proposal responding to some or all of the objections
150 or restrictions articulated by the commission, which shall be treated as
151 an amendment to the original proposal. The day of receipt of such a
152 modification shall be determined in the same manner as the day of
153 receipt is determined for an original application. The filing of such a
154 proposed modification shall stay the period for filing an appeal from
155 the decision of the commission on the original application. The
156 commission shall hold a public hearing on the proposed modification
157 if it held a public hearing on the original application and may hold a
158 public hearing on the proposed modification if it did not hold a public
159 hearing on the original application. The commission shall render a
160 decision on the proposed modification not later than sixty-five days
161 after the receipt of such proposed modification, provided, if, in
162 connection with a modification submitted under this subsection, the
163 applicant applies for a permit for an activity regulated pursuant to
164 sections 22a-36 to 22a-45, inclusive, and the time for a decision by the
165 commission on such modification under this subsection would lapse
166 prior to the thirty-fifth day after a decision by an inland wetlands and
167 watercourses agency, the time period for decision by the commission
168 on the modification under this subsection shall be extended to thirty-
169 five days after the decision of such agency. The commission shall issue
170 notice of its decision as provided by law. Failure of the commission to
171 render a decision within said sixty-five days or subsequent extension
172 period permitted by this subsection shall constitute a rejection of the
173 proposed modification. Within the time period for filing an appeal on
174 the proposed modification as set forth in section 8-8, 8-9, 8-28 or 8-30a,
175 as applicable, the applicant may appeal the commission's decision on
176 the original application and the proposed modification in the manner
177 set forth in this section. Nothing in this subsection shall be construed
178 to limit the right of an applicant to appeal the original decision of the
179 commission in the manner set forth in this section without submitting

180 a proposed modification or to limit the issues which may be raised in
181 any appeal under this section.

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

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

188 (k) Notwithstanding the provisions of subsections (a) to (j),
189 inclusive, of this section, the affordable housing appeals procedure
190 established under this section shall not be available if the real property
191 which is the subject of the application is located in a municipality in
192 which at least ten per cent of all dwelling units in the municipality are
193 (1) assisted housing, or (2) currently financed by Connecticut Housing
194 Finance Authority mortgages, or (3) subject to binding recorded deeds
195 containing covenants or restrictions which require that such dwelling
196 units be sold or rented at, or below, prices which will preserve the
197 units as housing for which persons and families pay thirty per cent or
198 less of income, where such income is less than or equal to eighty per
199 cent of the median income, or (4) mobile manufactured homes located
200 in mobile manufactured home parks or legally approved accessory
201 apartments, which homes or apartments are subject to binding
202 recorded deeds containing covenants or restrictions which require that
203 such dwelling units be sold or rented at, or below, prices which will
204 preserve the units as housing for which, for a period of not less than
205 ten years, persons and families pay thirty per cent or less of income,
206 where such income is less than or equal to eighty per cent of the
207 median income. The municipalities meeting the criteria set forth in this
208 subsection shall be listed in the report submitted under section 8-
209 37qqq. As used in this subsection, "accessory apartment" means a
210 separate living unit that (A) is attached to the main living unit of a
211 house, which house has the external appearance of a single-family
212 residence, (B) has a full kitchen, (C) has a square footage that is not

213 more than thirty per cent of the total square footage of the house, (D)
214 has an internal doorway connecting to the main living unit of the
215 house, (E) is not billed separately from such main living unit for
216 utilities, and (F) complies with the building code and health and safety
217 regulations.

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

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

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

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

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

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

279 (6) For purposes of this subsection, housing unit-equivalent points

280 shall be determined by the commissioner as follows: (A) No points
281 shall be awarded for a unit unless its occupancy is restricted to persons
282 and families whose income is equal to or less than eighty per cent of
283 median income, except that unrestricted units in a set-aside
284 development shall be awarded one-fourth point each. (B) Family units
285 restricted to persons and families whose income is equal to or less than
286 eighty per cent of median income shall be awarded one point if an
287 ownership unit and one and one-half points if a rental unit. (C) Family
288 units restricted to persons and families whose income is equal to or
289 less than sixty per cent of median income shall be awarded one and
290 one-half points if an ownership unit and two points if a rental unit. (D)
291 Family units restricted to persons and families whose income is equal
292 to or less than forty per cent of median income shall be awarded two
293 points if an ownership unit and two and one-half points if a rental
294 unit. (E) Restricted family units containing at least three bedrooms
295 shall be awarded an additional one-fourth point. (F) Elderly units
296 restricted to persons and families whose income is equal to or less than
297 eighty per cent of median income shall be awarded one-half point. [(F)]
298 (G) If at least sixty per cent of the total restricted units submitted by a
299 municipality as part of an application for a certificate of affordable
300 housing project completion are family units, any elderly units
301 submitted within such application shall be awarded an additional one-
302 half point. (H) Restricted family units located within an approved
303 incentive housing development, as defined in section 8-13m, as
304 amended by this act, shall be awarded an additional one-fourth point.
305 (I) A set-aside development containing family units which are rental
306 units shall be awarded additional points equal to twenty-two per cent
307 of the total points awarded to such development, provided the
308 application for such development was filed with the commission prior
309 to July 6, 1995.

310 (7) Points shall be awarded only for dwelling units which were (A)
311 newly-constructed units in an affordable housing development, as that
312 term was defined at the time of the affordable housing application, for
313 which a certificate of occupancy was issued after July 1, 1990, [or] (B)
314 newly subjected after July 1, 1990, to deeds containing covenants or

315 restrictions which require that, for at least the duration required by
316 subsection (a) of this section for set-aside developments on the date
317 when such covenants or restrictions took effect, such dwelling units
318 shall be sold or rented at, or below, prices which will preserve the
319 units as affordable housing for persons or families whose income does
320 not exceed eighty per cent of median income, or (C) located within an
321 approved incentive housing development, as defined in section 8-13m,
322 as amended by this act.

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

328 (9) A newly-constructed unit shall be counted toward a moratorium
329 when it receives a certificate of occupancy. A newly-restricted unit
330 shall be counted toward a moratorium when its deed restriction takes
331 effect.

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

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

346 (m) The commissioner shall, pursuant to regulations adopted in

347 accordance with the provisions of chapter 54, promulgate model deed
348 restrictions which satisfy the requirements of this section. A
349 municipality may waive any fee which would otherwise be required
350 for the filing of any long-term affordability deed restriction on the land
351 records.

352 Sec. 2. Section 8-30g of the general statutes, as amended by section 1
353 of this act, is repealed and the following is substituted in lieu thereof
354 (*Effective October 1, 2021*):

355 (a) As used in this section:

356 (1) "Affordable housing development" means a proposed housing
357 development which is (A) assisted housing, or (B) a set-aside
358 development;

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

362 (3) "Assisted housing" means housing which is receiving, or will
363 receive, financial assistance under any governmental program for the
364 construction or substantial rehabilitation of low and moderate income
365 housing, and any housing occupied by persons receiving rental
366 assistance under chapter 319uu or Section 1437f of Title 42 of the
367 United States Code;

368 (4) "Commission" means a zoning commission, planning
369 commission, planning and zoning commission, zoning board of
370 appeals or municipal agency exercising zoning or planning authority;

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

373 (6) "Set-aside development" means a development in which not less
374 than thirty per cent of the dwelling units will be conveyed by deeds
375 containing covenants or restrictions which shall require that, for at
376 least forty years after the initial occupation of the proposed

377 development, such dwelling units shall be sold or rented at, or below,
378 prices which will preserve the units as housing for which persons and
379 families pay thirty per cent or less of their annual income, where such
380 income is less than or equal to eighty per cent of the median income. In
381 a set-aside development, of the dwelling units conveyed by deeds
382 containing covenants or restrictions, a number of dwelling units equal
383 to not less than fifteen per cent of all dwelling units in the
384 development shall be sold or rented to persons and families whose
385 income is less than or equal to sixty per cent of the median income and
386 the remainder of the dwelling units conveyed by deeds containing
387 covenants or restrictions shall be sold or rented to persons and families
388 whose income is less than or equal to eighty per cent of the median
389 income;

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

395 (8) "Commissioner" means the Commissioner of Housing.

396 (b) (1) Any person filing an affordable housing application with a
397 commission shall submit, as part of the application, an affordability
398 plan which shall include at least the following: (A) Designation of the
399 person, entity or agency that will be responsible for the duration of any
400 affordability restrictions, for the administration of the affordability
401 plan and its compliance with the income limits and sale price or rental
402 restrictions of this chapter; (B) an affirmative fair housing marketing
403 plan governing the sale or rental of all dwelling units; (C) a sample
404 calculation of the maximum sales prices or rents of the intended
405 affordable dwelling units; (D) a description of the projected sequence
406 in which, within a set-aside development, the affordable dwelling
407 units will be built and offered for occupancy and the general location
408 of such units within the proposed development; and (E) draft zoning
409 regulations, conditions of approvals, deeds, restrictive covenants or

410 lease provisions that will govern the affordable dwelling units.

411 (2) The commissioner shall, within available appropriations, adopt
412 regulations pursuant to chapter 54 regarding the affordability plan.
413 Such regulations may include additional criteria for preparing an
414 affordability plan and shall include: (A) A formula for determining
415 rent levels and sale prices, including establishing maximum allowable
416 down payments to be used in the calculation of maximum allowable
417 sales prices; (B) a clarification of the costs that are to be included when
418 calculating maximum allowed rents and sale prices; (C) a clarification
419 as to how family size and bedroom counts are to be equated in
420 establishing maximum rental and sale prices for the affordable units;
421 and (D) a listing of the considerations to be included in the
422 computation of income under this section.

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

429 (d) For any affordable dwelling unit that is rented as part of a set-
430 aside development, if the maximum monthly housing cost, as
431 calculated in accordance with subdivision (6) of subsection (a) of this
432 section, would exceed one hundred per cent of the Section 8 fair
433 market rent as determined by the United States Department of
434 Housing and Urban Development, in the case of units set aside for
435 persons and families whose income is less than or equal to sixty per
436 cent of median income, then such maximum monthly housing cost
437 shall not exceed one hundred per cent of said Section 8 fair market
438 rent. If the maximum monthly housing cost, as calculated in
439 accordance with subdivision (6) of subsection (a) of this section, would
440 exceed one hundred twenty per cent of the Section 8 fair market rent,
441 as determined by the United States Department of Housing and Urban
442 Development, in the case of units set aside for persons and families

443 whose income is less than or equal to eighty per cent of median
444 income, then such maximum monthly housing cost shall not exceed
445 one hundred twenty per cent of such Section 8 fair market rent.

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

452 (f) Any person whose affordable housing application is denied, or is
453 approved with restrictions which have a substantial adverse impact on
454 the viability of the affordable housing development or the degree of
455 affordability of the affordable dwelling units in a set-aside
456 development, may appeal such decision pursuant to the procedures of
457 this section. Such appeal shall be filed within the time period for filing
458 appeals as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, and
459 shall be made returnable to the superior court for the judicial district
460 where the real property which is the subject of the application is
461 located. Affordable housing appeals, including pretrial motions, shall
462 be heard by a judge assigned by the Chief Court Administrator to hear
463 such appeals. To the extent practicable, efforts shall be made to assign
464 such cases to a small number of judges, sitting in geographically
465 diverse parts of the state, so that a consistent body of expertise can be
466 developed. Unless otherwise ordered by the Chief Court
467 Administrator, such appeals, including pretrial motions, shall be heard
468 by such assigned judges in the judicial district in which such judge is
469 sitting. Appeals taken pursuant to this subsection shall be privileged
470 cases to be heard by the court as soon after the return day as is
471 practicable. Except as otherwise provided in this section, appeals
472 involving an affordable housing application shall proceed in
473 conformance with the provisions of said section 8-8, 8-9, 8-28 or 8-30a,
474 as applicable.

475 (g) Upon an appeal taken under subsection (f) of this section, the

476 burden shall be on the commission to prove, based upon the evidence
477 in the record compiled before such commission, that the decision from
478 which such appeal is taken and the reasons cited for such decision are
479 supported by sufficient evidence in the record. The commission shall
480 also have the burden to prove, based upon the evidence in the record
481 compiled before such commission, that (1) (A) the decision is necessary
482 to protect substantial public interests in health, safety or other matters
483 which the commission may legally consider; (B) such public interests
484 clearly outweigh the need for affordable housing; and (C) such public
485 interests cannot be protected by reasonable changes to the affordable
486 housing development, or (2) (A) the application which was the subject
487 of the decision from which such appeal was taken would locate
488 affordable housing in an area which is zoned for industrial use and
489 which does not permit residential uses; and (B) the development is not
490 assisted housing, as defined in subsection (a) of this section. If the
491 commission does not satisfy its burden of proof under this subsection,
492 the court shall wholly or partly revise, modify, remand or reverse the
493 decision from which the appeal was taken in a manner consistent with
494 the evidence in the record before it.

495 (h) Following a decision by a commission to reject an affordable
496 housing application or to approve an application with restrictions
497 which have a substantial adverse impact on the viability of the
498 affordable housing development or the degree of affordability of the
499 affordable dwelling units, the applicant may, within the period for
500 filing an appeal of such decision, submit to the commission a proposed
501 modification of its proposal responding to some or all of the objections
502 or restrictions articulated by the commission, which shall be treated as
503 an amendment to the original proposal. The day of receipt of such a
504 modification shall be determined in the same manner as the day of
505 receipt is determined for an original application. The filing of such a
506 proposed modification shall stay the period for filing an appeal from
507 the decision of the commission on the original application. The
508 commission shall hold a public hearing on the proposed modification
509 if it held a public hearing on the original application and may hold a
510 public hearing on the proposed modification if it did not hold a public

511 hearing on the original application. The commission shall render a
512 decision on the proposed modification not later than sixty-five days
513 after the receipt of such proposed modification, provided, if, in
514 connection with a modification submitted under this subsection, the
515 applicant applies for a permit for an activity regulated pursuant to
516 sections 22a-36 to 22a-45, inclusive, and the time for a decision by the
517 commission on such modification under this subsection would lapse
518 prior to the thirty-fifth day after a decision by an inland wetlands and
519 watercourses agency, the time period for decision by the commission
520 on the modification under this subsection shall be extended to thirty-
521 five days after the decision of such agency. The commission shall issue
522 notice of its decision as provided by law. Failure of the commission to
523 render a decision within said sixty-five days or subsequent extension
524 period permitted by this subsection shall constitute a rejection of the
525 proposed modification. Within the time period for filing an appeal on
526 the proposed modification as set forth in section 8-8, 8-9, 8-28 or 8-30a,
527 as applicable, the applicant may appeal the commission's decision on
528 the original application and the proposed modification in the manner
529 set forth in this section. Nothing in this subsection shall be construed
530 to limit the right of an applicant to appeal the original decision of the
531 commission in the manner set forth in this section without submitting
532 a proposed modification or to limit the issues which may be raised in
533 any appeal under this section.

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

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

540 (k) Notwithstanding the provisions of subsections (a) to (j),
541 inclusive, of this section, the affordable housing appeals procedure
542 established under this section shall not be available if the real property
543 which is the subject of the application is located in a municipality in

544 which at least ten per cent of all dwelling units in the municipality are
545 (1) assisted housing, or (2) currently financed by Connecticut Housing
546 Finance Authority mortgages, or (3) subject to binding recorded deeds
547 containing covenants or restrictions which require that such dwelling
548 units be sold or rented at, or below, prices which will preserve the
549 units as housing for which persons and families pay thirty per cent or
550 less of income, where such income is less than or equal to eighty per
551 cent of the median income, or (4) mobile manufactured homes located
552 in mobile manufactured home parks or legally approved accessory
553 apartments, which homes or apartments are subject to binding
554 recorded deeds containing covenants or restrictions which require that
555 such dwelling units be sold or rented at, or below, prices which will
556 preserve the units as housing for which, for a period of not less than
557 ten years, persons and families pay thirty per cent or less of income,
558 where such income is less than or equal to eighty per cent of the
559 median income. The municipalities meeting the criteria set forth in this
560 subsection shall be listed in the report submitted under section 8-
561 37qqq. As used in this subsection, "accessory apartment" means a
562 separate living unit that (A) is attached to the main living unit of a
563 house, which house has the external appearance of a single-family
564 residence, (B) has a full kitchen, (C) has a square footage that is not
565 more than thirty per cent of the total square footage of the house, (D)
566 has an internal doorway connecting to the main living unit of the
567 house, (E) is not billed separately from such main living unit for
568 utilities, and (F) complies with the building code and health and safety
569 regulations.

570 (l) (1) Notwithstanding the provisions of subsections (a) to (j),
571 inclusive, of this section, the affordable housing appeals procedure
572 established under this section shall not be applicable to an affordable
573 housing application filed with a commission during a moratorium,
574 which shall be the four-year period after (A) a certification of
575 affordable housing project completion issued by the commissioner is
576 published in the Connecticut Law Journal, or (B) after notice of a
577 provisional approval is published pursuant to subdivision (4) of this
578 subsection. Any moratorium that is in effect on October 1, 2002, is

579 extended by one year.

580 (2) Notwithstanding the provisions of this subsection, such
581 moratorium shall not apply to (A) affordable housing applications for
582 assisted housing in which ninety-five per cent of the dwelling units are
583 restricted to persons and families whose income is less than or equal to
584 sixty per cent of median income, (B) other affordable housing
585 applications for assisted housing containing forty or fewer dwelling
586 units, or (C) affordable housing applications which were filed with a
587 commission pursuant to this section prior to the date upon which the
588 moratorium takes effect.

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

591 (4) (A) The commissioner shall issue a certificate of affordable
592 housing project completion for the purposes of this subsection upon
593 finding that there has been completed within the municipality one or
594 more affordable housing developments which create housing unit-
595 equivalent points equal to the greater of two per cent of all dwelling
596 units in the municipality, as reported in the most recent United States
597 decennial census, or ~~[fifty]~~ seventy-five housing unit-equivalent points.

598 (B) A municipality may apply for a certificate of affordable housing
599 project completion pursuant to this subsection by applying in writing
600 to the commissioner, and including documentation showing that the
601 municipality has accumulated the required number of points within
602 the applicable time period. Such documentation shall include the
603 location of each dwelling unit being counted, the number of points
604 each dwelling unit has been assigned, and the reason, pursuant to this
605 subsection, for assigning such points to such dwelling unit. Upon
606 receipt of such application, the commissioner shall promptly cause a
607 notice of the filing of the application to be published in the Connecticut
608 Law Journal, stating that public comment on such application shall be
609 accepted by the commissioner for a period of thirty days after the
610 publication of such notice. Not later than ninety days after the receipt
611 of such application, the commissioner shall either approve or reject

612 such application. Such approval or rejection shall be accompanied by a
613 written statement of the reasons for approval or rejection, pursuant to
614 the provisions of this subsection. If the application is approved, the
615 commissioner shall promptly cause a certificate of affordable housing
616 project completion to be published in the Connecticut Law Journal. If
617 the commissioner fails to either approve or reject the application
618 within such ninety-day period, such application shall be deemed
619 provisionally approved, and the municipality may cause notice of such
620 provisional approval to be published in a conspicuous manner in a
621 daily newspaper having general circulation in the municipality, in
622 which case, such moratorium shall take effect upon such publication.
623 The municipality shall send a copy of such notice to the commissioner.
624 Such provisional approval shall remain in effect unless the
625 commissioner subsequently acts upon and rejects the application, in
626 which case the moratorium shall terminate upon notice to the
627 municipality by the commissioner.

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

631 (6) For purposes of this subsection, housing unit-equivalent points
632 shall be determined by the commissioner as follows: (A) No points
633 shall be awarded for a unit unless its occupancy is restricted to persons
634 and families whose income is equal to or less than eighty per cent of
635 median income, except that unrestricted units in a set-aside
636 development shall be awarded one-fourth point each. (B) Family units
637 restricted to persons and families whose income is equal to or less than
638 eighty per cent of median income shall be awarded one point if an
639 ownership unit and one and one-half points if a rental unit. (C) Family
640 units restricted to persons and families whose income is equal to or
641 less than sixty per cent of median income shall be awarded one and
642 one-half points if an ownership unit and two points if a rental unit. (D)
643 Family units restricted to persons and families whose income is equal
644 to or less than forty per cent of median income shall be awarded two
645 points if an ownership unit and two and one-half points if a rental

646 unit. (E) [Restricted family units containing at least three bedrooms
647 shall be awarded an additional one-fourth point. (F)] Elderly units
648 restricted to persons and families whose income is equal to or less than
649 eighty per cent of median income shall be awarded one-half point. [(G)
650 If at least sixty per cent of the total restricted units submitted by a
651 municipality as part of an application for a certificate of affordable
652 housing project completion are family units, any elderly units
653 submitted within such application shall be awarded an additional one-
654 half point. (H) Restricted family units located within an approved
655 incentive housing development, as defined in section 8-13m, as
656 amended by this act, shall be awarded an additional one-fourth point.
657 (I)] (E) A set-aside development containing family units which are
658 rental units shall be awarded additional points equal to twenty-two
659 per cent of the total points awarded to such development, provided
660 the application for such development was filed with the commission
661 prior to July 6, 1995.

662 (7) Points shall be awarded only for dwelling units which were (A)
663 newly-constructed units in an affordable housing development, as that
664 term was defined at the time of the affordable housing application, for
665 which a certificate of occupancy was issued after July 1, 1990, or (B)
666 newly subjected after July 1, 1990, to deeds containing covenants or
667 restrictions which require that, for at least the duration required by
668 subsection (a) of this section for set-aside developments on the date
669 when such covenants or restrictions took effect, such dwelling units
670 shall be sold or rented at, or below, prices which will preserve the
671 units as affordable housing for persons or families whose income does
672 not exceed eighty per cent of median income. [, or (C) located within
673 an approved incentive housing development, as defined in section 8-
674 13m, as amended by this act.]

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

680 (9) A newly-constructed unit shall be counted toward a moratorium
681 when it receives a certificate of occupancy. A newly-restricted unit
682 shall be counted toward a moratorium when its deed restriction takes
683 effect.

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

690 (11) The commissioner shall, within available appropriations, adopt
691 regulations in accordance with chapter 54 to carry out the purposes of
692 this subsection. Such regulations shall specify the procedure to be
693 followed by a municipality to obtain a moratorium, and shall include
694 the manner in which a municipality is to document the units to be
695 counted toward a moratorium. A municipality may apply for a
696 moratorium in accordance with the provisions of this subsection prior
697 to, as well as after, such regulations are adopted.

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

704 Sec. 3. Subdivision (12) of section 8-13m of the general statutes is
705 repealed and the following is substituted in lieu thereof (*Effective*
706 *October 1, 2016, and applicable to any final determination of eligibility for an*
707 *incentive housing zone or any grant that has not yet been approved under*
708 *section 8-13x of the general statutes as of October 1, 2016*):

709 (12) "Median income" means, after adjustments for household size,
710 the lessor of the state median income or the area median income as
711 determined by the United States Department of Housing and Urban

712 Development for the municipality in which an approved incentive
713 housing zone or development is located.

714 Sec. 4. Subdivision (12) of section 8-13m of the general statutes, as
715 amended by section 3 of this act, is repealed and the following is
716 substituted in lieu thereof (*Effective October 1, 2021, and applicable to any*
717 *final determination of eligibility for an incentive housing zone or any grant*
718 *that has not yet been approved under section 8-13x of the general statutes as*
719 *of October 1, 2021*):

720 (12) "Median income" means, after adjustments for household size,
721 [the lessor of the state median income or] the area median income as
722 determined by the United States Department of Housing and Urban
723 Development for the municipality in which an approved incentive
724 housing zone or development is located.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	8-30g
Sec. 2	October 1, 2021	8-30g
Sec. 3	<i>October 1, 2016, and applicable to any final determination of eligibility for an incentive housing zone or any grant that has not yet been approved under section 8-13x of the general statutes as of October 1, 2016</i>	8-13m(12)
Sec. 4	<i>October 1, 2021, and applicable to any final determination of eligibility for an incentive housing zone or any grant that has not yet been approved under section 8-13x of the general statutes as of October 1, 2021</i>	8-13m(12)

Statement of Legislative Commissioners:

In section 3, the effective date was changed for accuracy.

HSG *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.

OFA Fiscal Note**State Impact:** None**Municipal Impact:**

Municipalities	Effect	FY 17 \$	FY 18 \$
Various Municipalities	Potential Savings	Minimal	Minimal

Explanation

The bill expands the types of housing that allow a municipality to qualify for a moratorium from the affordable housing land use procedure.

The bill may impact municipalities that are currently required to defend, in court, the rejection of an affordable housing project (if a developer appeals such rejection). These municipalities may participate in fewer legal hearings as a result of the bill. To the extent this occurs, there is a potential, minimal savings associated with reduced legal and administrative expenses.

The Out Years

The bill sunsets the changes to the affordable housing moratorium on September 30, 2021. The impact listed above is therefore limited to FY 17 - FY 22.

OLR Bill Analysis**sHB 5363*****AN ACT CONCERNING THE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE.*****SUMMARY:**

This bill makes it easier for municipalities to qualify for a four-year exemption (i.e., moratorium) from the affordable housing land use appeals procedure (“procedure”) by (1) lowering the minimum number of housing unit-equivalent (HUE) points needed for a moratorium, (2) establishing “bonus points” for certain unit types, and (3) expanding the unit types that count toward the moratorium.

Additionally, the bill changes the definition of “median income” applicable to the incentive housing zone (IHZ) statutes, conforming it to the affordable housing land use appeals procedure statutes. These changes are effective only from October 1, 2016 through September 30, 2021. On October 1, 2021, the affected provisions revert to their status as of September 30, 2016.

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, arbitrarily, or abused its discretion by rejecting his or her 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.

IHZs are overlay zones in which developers can build, as a matter of right, high-density housing.

EFFECTIVE DATE: October 1, 2016, but the definition of “median income” does not apply to IHZs that DOH approves, or approves grants for, before October 1, 2016. The bill sunsets these changes on September 30, 2021.

MORATORIA

Lower HUE Points Requirement

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 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.

Incentive Housing Development (IHD) Units

The bill allows all income-restricted (“restricted”) units in an IHD to count toward a moratorium. By law, these units must be deed-restricted for at least 30 years, 10 years short of the minimum period required to qualify toward a moratorium. 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 restricted for at least 30 years.

Bonus Points

The bill makes three categories of units eligible for bonus HUE points, as shown in Table 1. Bonus points are awarded in addition to base HUE points a unit receives. The bill establishes a quarter-point bonus for restricted family units (1) with at least three bedrooms or (2) in an IHD. 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

Unit Type	Bonus Points	
	Current Law	Bill
Owned or rented restricted family units in an IHD	No bonus	0.25 bonus
Owned or rented restricted family units with at least 3 bedrooms	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 07/06/1995	Bonus equal to 22% of the total points awarded to such development	No change

IHZ: DEFINITION OF MEDIAN INCOME

The 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 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, 2016.

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. Moratoria are not applicable to certain assisted housing development proposals.

HUE points are weighted based on unit affordability, population served, and ownership type. 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 HUE 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.

COMMITTEE ACTION

Housing Committee

Joint Favorable Substitute

Yea 11 Nay 0 (03/08/2016)