



House of Representatives

General Assembly

File No. 179

January Session, 2017

Substitute House Bill No. 6880

House of Representatives, March 23, 2017

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 Section 8-30g of the general statutes is repealed and the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, 2017*):

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] Except as provided in subsections (k) and (l) of this section,
101 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 or 8-30a, as applicable, and
108 shall be made returnable to the superior court for the judicial district
109 where the real property which is the subject of the application is
110 located. Affordable housing appeals, including pretrial motions, shall

111 be heard by a judge assigned by the Chief Court Administrator to hear
112 such appeals. To the extent practicable, efforts shall be made to assign
113 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 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 or 8-30a,
176 as applicable, the applicant may appeal the commission's decision on
177 the original application and the proposed modification in the manner
178 set forth in this section. Nothing in this subsection shall be construed
179 to limit the right of an applicant to appeal the original decision of the

180 commission in the manner set forth in this section without submitting
181 a proposed modification or to limit the issues which may be raised in
182 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 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] The affordable housing appeals
191 procedure established under this section shall not be available if the
192 real property which is the subject of the application is located in a
193 municipality in which at least ten per cent of all dwelling units in the
194 municipality are (1) assisted housing, [or] (2) currently financed by
195 Connecticut Housing Finance Authority mortgages, [or] (3) subject to
196 binding recorded deeds containing covenants or restrictions which
197 require that such dwelling units be sold or rented at, or below, prices
198 which will preserve the units as housing for which persons and
199 families pay thirty per cent or less of income, where such income is less
200 than or equal to eighty per cent of the median income, or (4) mobile
201 manufactured homes located in mobile manufactured home parks or
202 legally approved accessory apartments, which homes or apartments
203 are subject to binding recorded deeds containing covenants or
204 restrictions which require that such dwelling units be sold or rented at,
205 or below, prices which will preserve the units as housing for which, for
206 a period of not less than ten years, persons and families pay thirty per
207 cent or less of income, where such income is less than or equal to
208 eighty per cent of the median income. The municipalities meeting the
209 criteria set forth in this subsection shall be listed in the report
210 submitted under section 8-37qqq. As used in this subsection,
211 "accessory apartment" means a separate living unit that (A) is attached
212 to the main living unit of a house, which house has the external

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

219 (l) (1) [Notwithstanding the provisions of subsections (a) to (j),
220 inclusive,] Except as provided in subdivision (2) of this [section]
221 subsection, the affordable housing appeals procedure established
222 under this section shall not be applicable to an affordable housing
223 application filed with a commission during a moratorium, which shall
224 be the four-year period after (A) a certification of affordable housing
225 project completion issued by the commissioner is published in the
226 Connecticut Law Journal, or (B) [after] notice of a provisional approval
227 is published pursuant to subdivision (4) of this subsection. Any
228 moratorium that is in effect on October 1, 2002, is extended by one
229 year.

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

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

241 (4) (A) The commissioner shall issue a certificate of affordable
242 housing project completion for the purposes of this subsection upon
243 finding that there has been completed within the municipality one or
244 more affordable housing developments which create housing unit-
245 equivalent points equal to the greater of two per cent of all dwelling

246 units in the municipality, as reported in the most recent United States
247 decennial census, or [seventy-five] fifty housing unit-equivalent points.

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

278 (5) For the purposes of this subsection, "elderly units" are dwelling
279 units whose occupancy is restricted by age and "family units" are

280 dwelling units whose occupancy is not restricted by age.

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

312 (7) Points shall be awarded only for dwelling units which were (A)
313 newly-constructed units in an affordable housing development, as that

314 term was defined at the time of the affordable housing application, for
315 which a certificate of occupancy was issued after July 1, 1990, [or] (B)
316 newly subjected after July 1, 1990, to deeds containing covenants or
317 restrictions which require that, for at least the duration required by
318 subsection (a) of this section for set-aside developments on the date
319 when such covenants or restrictions took effect, such dwelling units
320 shall be sold or rented at, or below, prices which will preserve the
321 units as affordable housing for persons or families whose income does
322 not exceed eighty per cent of the median income, or (C) located within
323 an approved incentive housing development, as defined in section 8-
324 13m, as amended by this act.

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

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

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

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

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

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

354 Sec. 2. Subsection (l) of section 8-30g of the general statutes, as
355 amended by section 1 of this act, is repealed and the following is
356 substituted in lieu thereof (*Effective October 1, 2022*):

357 (l) (1) Except as provided in subdivision (2) of this subsection, the
358 affordable housing appeals procedure established under this section
359 shall not be applicable to an affordable housing application filed with a
360 commission during a moratorium, which shall be the four-year period
361 after (A) a certification of affordable housing project completion issued
362 by the commissioner is published in the Connecticut Law Journal, or
363 (B) notice of a provisional approval is published pursuant to
364 subdivision (4) of this subsection. Any moratorium that is in effect on
365 October 1, 2002, is extended by one year.

366 (2) Such moratorium shall not apply to (A) affordable housing
367 applications for assisted housing in which ninety-five per cent of the
368 dwelling units are restricted to persons and families whose income is
369 less than or equal to sixty per cent of the median income, (B) other
370 affordable housing applications for assisted housing containing forty
371 or fewer dwelling units, or (C) affordable housing applications which
372 were filed with a commission pursuant to this section prior to the date
373 upon which the moratorium takes effect.

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

376 (4) (A) The commissioner shall issue a certificate of affordable
377 housing project completion for the purposes of this subsection upon

378 finding that there has been completed within the municipality one or
379 more affordable housing developments which create housing unit-
380 equivalent points equal to the greater of two per cent of all dwelling
381 units in the municipality, as reported in the most recent United States
382 decennial census, or [fifty] seventy-five housing unit-equivalent points.

383 (B) A municipality may apply for a certificate of affordable housing
384 project completion pursuant to this subsection by applying in writing
385 to the commissioner, and including documentation showing that the
386 municipality has accumulated the required number of points within
387 the applicable time period. Such documentation shall include the
388 location of each dwelling unit being counted, the number of points
389 each dwelling unit has been assigned, and the reason, pursuant to this
390 subsection, for assigning such points to such dwelling unit. Upon
391 receipt of such application, the commissioner shall promptly cause a
392 notice of the filing of the application to be published in the Connecticut
393 Law Journal, stating that public comment on such application shall be
394 accepted by the commissioner for a period of thirty days after the
395 publication of such notice. Not later than ninety days after the receipt
396 of such application, the commissioner shall either approve or reject
397 such application. Such approval or rejection shall be accompanied by a
398 written statement of the reasons for approval or rejection, pursuant to
399 the provisions of this subsection. If the application is approved, the
400 commissioner shall promptly cause a certificate of affordable housing
401 project completion to be published in the Connecticut Law Journal. If
402 the commissioner fails to either approve or reject the application
403 within such ninety-day period, such application shall be deemed
404 provisionally approved, and the municipality may cause notice of such
405 provisional approval to be published in a conspicuous manner in a
406 daily newspaper having general circulation in the municipality, in
407 which case, such moratorium shall take effect upon such publication.
408 The municipality shall send a copy of such notice to the commissioner.
409 Such provisional approval shall remain in effect unless the
410 commissioner subsequently acts upon and rejects the application, in
411 which case the moratorium shall terminate upon notice to the
412 municipality by the commissioner.

413 (5) For the purposes of this subsection, "elderly units" are dwelling
414 units whose occupancy is restricted by age and "family units" are
415 dwelling units whose occupancy is not restricted by age.

416 (6) For the purposes of this subsection, housing unit-equivalent
417 points shall be determined by the commissioner as follows: (A) No
418 points shall be awarded for a unit unless its occupancy is restricted to
419 persons and families whose income is equal to or less than eighty per
420 cent of the median income, except that unrestricted units in a set-aside
421 development shall be awarded one-fourth point each. (B) Family units
422 restricted to persons and families whose income is equal to or less than
423 eighty per cent of the median income shall be awarded one point if an
424 ownership unit and one and one-half points if a rental unit. (C) Family
425 units restricted to persons and families whose income is equal to or
426 less than sixty per cent of the median income shall be awarded one and
427 one-half points if an ownership unit and two points if a rental unit. (D)
428 Family units restricted to persons and families whose income is equal
429 to or less than forty per cent of the median income shall be awarded
430 two points if an ownership unit and two and one-half points if a rental
431 unit. (E) [Restricted family units containing at least three bedrooms
432 shall be awarded an additional one-fourth point. (F)] Elderly units
433 restricted to persons and families whose income is equal to or less than
434 eighty per cent of the median income shall be awarded one-half point.
435 [(G) If at least sixty per cent of the total restricted units submitted by a
436 municipality as part of an application for a certificate of affordable
437 housing project completion are family units, any elderly units
438 submitted within such application shall be awarded an additional one-
439 half point. (H) Restricted family units located within an approved
440 incentive housing development, as defined in section 8-13m, shall be
441 awarded an additional one-fourth point. (I)] (F) A set-aside
442 development containing family units which are rental units shall be
443 awarded additional points equal to twenty-two per cent of the total
444 points awarded to such development, provided the application for
445 such development was filed with the commission prior to July 6, 1995.

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

447 newly-constructed units in an affordable housing development, as that
448 term was defined at the time of the affordable housing application, for
449 which a certificate of occupancy was issued after July 1, 1990, or (B)
450 newly subjected after July 1, 1990, to deeds containing covenants or
451 restrictions which require that, for at least the duration required by
452 subsection (a) of this section for set-aside developments on the date
453 when such covenants or restrictions took effect, such dwelling units
454 shall be sold or rented at, or below, prices which will preserve the
455 units as affordable housing for persons or families whose income does
456 not exceed eighty per cent of the median income, [or (C) located
457 within an approved incentive housing development, as defined in
458 section 8-13m.]

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

464 (9) A newly-constructed unit shall be counted toward a moratorium
465 when it receives a certificate of occupancy. A newly-restricted unit
466 shall be counted toward a moratorium when its deed restriction takes
467 effect.

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

474 (11) The commissioner shall, within available appropriations, adopt
475 regulations in accordance with chapter 54 to carry out the purposes of
476 this subsection. Such regulations shall specify the procedure to be
477 followed by a municipality to obtain a moratorium, and shall include
478 the manner in which a municipality is to document the units to be
479 counted toward a moratorium. A municipality may apply for a

480 moratorium in accordance with the provisions of this subsection prior
481 to, as well as after, such regulations are adopted.

482 Sec. 3. Subdivision (12) of section 8-13m of the general statutes is
483 repealed and the following is substituted in lieu thereof (*Effective*
484 *October 1, 2017, and applicable to any final determination of eligibility for an*
485 *incentive housing zone or any grant that has not yet been approved under*
486 *section 8-13x of the general statutes as of October 1, 2017*):

487 (12) "Median income" means, after adjustments for household size,
488 the lesser of the state median income or the area median income as
489 determined by the United States Department of Housing and Urban
490 Development for the municipality in which an approved incentive
491 housing zone or development is located.

492 Sec. 4. Subdivision (12) of section 8-13m of the general statutes, as
493 amended by section 3 of this act, is repealed and the following is
494 substituted in lieu thereof (*Effective October 1, 2022, and applicable to any*
495 *final determination of eligibility for an incentive housing zone or any grant*
496 *that has not yet been approved under section 8-13x of the general statutes as*
497 *of October 1, 2022*):

498 (12) "Median income" means, after adjustments for household size,
499 [the lesser of the state median income or] the area median income as
500 determined by the United States Department of Housing and Urban
501 Development for the municipality in which an approved incentive
502 housing zone or development is located.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	8-30g
Sec. 2	<i>October 1, 2022</i>	8-30g(l)

Sec. 3	<i>October 1, 2017, 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, 2017</i>	8-13m(12)
Sec. 4	<i>October 1, 2022, 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, 2022</i>	8-13m(12)

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 18 \$	FY 19 \$
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, 2022. The impact listed above is therefore limited to FY 17 – FY 22.

OLR Bill Analysis**sHB 6880*****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. An IHZ is an overlay zone allowing developers to build, as a matter of right, high-density housing close to existing or planned infrastructure. By law, the Department of Housing (DOH) may make grants to municipalities that adopt, or are working to adopt, IHZ regulations (CGS § 8-13m et seq.).

The bill’s changes are effective only from October 1, 2017 through September 30, 2022. On October 1, 2022, the affected provisions revert to their status as of September 30, 2017.

By law, the procedure is a set of rules requiring zoning and planning commissions to defend their decisions denying affordable housing developments (see BACKGROUND) 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. A

developer cannot appeal under the procedure in a municipality (1) in which DOH determines at least 10% of the housing stock is affordable or (2) that obtains a four-year moratorium.

EFFECTIVE DATE: October 1, 2017, but the definition of “median income” does not apply to IHZs that DOH approves, or approves grants for, before October 1, 2017. The bill sunsets these changes on September 30, 2022.

MORATORIA

By law, a municipality is eligible for a four-year moratorium from the procedure each time it shows it has added a certain number of affordable housing units since the last decennial census. Newly built set-aside and assisted housing developments count toward the moratorium, as do units subject to certain deed restrictions. Moratoria are not applicable to certain assisted housing development proposals.

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. The bill retains the 2% standard but lowers, from 75 to 50, the minimum number of HUE points municipalities need to qualify for a moratorium.

Incentive Housing Development (IHD) Units

The bill allows income-restricted (“restricted”) units in an IHD to count toward a moratorium and applies existing law’s schedule of base points to them (see BACKGROUND). An IHD is a residential or mixed-use development located within an IHZ and in which at least 20% of the units are restricted.

By law, IHD units must be deed-restricted for at least 30 years, which is 10 years fewer than the minimum 40 year period that units other than assisted housing developments must generally be deed restricted for to qualify for HUE points under the law. (In practice, however, most assisted housing developments are also deed restricted

for at least 40 years.)

Bonus HUE Points

By law, certain rental family units in set-aside developments are eligible for bonus HUE points. The bill makes three additional categories of units eligible for bonus HUE points. Bonus points are awarded on top of the 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 do not receive a half-point bonus if they make up more than 40% of the restricted units counted toward the moratorium). Table 1 shows the bonus HUE points under current law and the bill.

Table 1: HUE Bonus Points

Unit Type	Bonus HUE Points (per unit)	
	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 07/16/1995	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, 2017.

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 the 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 it has not obtained a moratorium and 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.

Schedule of Base HUE Points

Base 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: Schedule of Base HUE Points

Unit Type		HUE Point Value (per unit)
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

Related Bills

sSB 535, favorably reported by the Housing Committee, also makes changes to the affordable housing land use appeals procedure and an IHZ statute.

COMMITTEE ACTION

Housing Committee

Joint Favorable Substitute

Yea 10 Nay 3 (03/07/2017)