



House of Representatives

File No. 811

General Assembly

January Session, 2017

(Reprint of File No. 179)

Substitute House Bill No. 6880
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 31, 2017

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 Section 8-30g of the general statutes is repealed and the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 from passage*):

3 (a) As used in this section and section 2 of this act:

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 the 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 the 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, or (5) mobile manufactured
209 homes located in resident-owned mobile manufactured home parks.
210 The municipalities meeting the criteria set forth in this subsection shall
211 be listed in the report submitted under section 8-37qqq. As used in this
212 subsection, "accessory apartment" means a separate living unit that (A)

213 is attached to the main living unit of a house, which house has the
214 external appearance of a single-family residence, (B) has a full kitchen,
215 (C) has a square footage that is not more than thirty per cent of the
216 total square footage of the house, (D) has an internal doorway
217 connecting to the main living unit of the house, (E) is not billed
218 separately from such main living unit for utilities, and (F) complies
219 with the building code and health and safety regulations, and
220 "resident-owned mobile manufactured home park" means a mobile
221 manufactured home park consisting of mobile manufactured homes
222 located on land that is deed restricted, and, at the time of issuance of a
223 loan for the purchase of such land, such loan required seventy-five per
224 cent of the units to be leased to persons with incomes equal to or less
225 than eighty per cent of the median income, and either (i) forty per cent
226 of said seventy-five per cent to be leased to persons with incomes
227 equal to or less than sixty per cent of the median income, or (ii) twenty
228 per cent of said seventy-five per cent to be leased to persons with
229 incomes equal to or less than fifty per cent of the median income.

230 (l) (1) [Notwithstanding the provisions of subsections (a) to (j),
231 inclusive,] Except as provided in subdivision (2) of this [section]
232 subsection, the affordable housing appeals procedure established
233 under this section shall not be applicable to an affordable housing
234 application filed with a commission during a moratorium, which shall
235 [be the four-year period] commence after (A) a certification of
236 affordable housing project completion issued by the commissioner is
237 published in the Connecticut Law Journal, or (B) [after] notice of a
238 provisional approval is published pursuant to subdivision (4) of this
239 subsection. Any such moratorium shall be for a period of four years,
240 except that for any municipality that has (i) twenty thousand or more
241 dwelling units, as reported in the most recent United States decennial
242 census, and (ii) previously qualified for a moratorium in accordance
243 with this section, any subsequent moratorium shall be for a period of
244 five years. Any moratorium that is in effect on October 1, 2002, is
245 extended by one year.

246 (2) [Notwithstanding the provisions of this subsection, such] Such

247 moratorium shall not apply to (A) affordable housing applications for
248 assisted housing in which ninety-five per cent of the dwelling units are
249 restricted to persons and families whose income is less than or equal to
250 sixty per cent of the median income, (B) other affordable housing
251 applications for assisted housing containing forty or fewer dwelling
252 units, or (C) affordable housing applications which were filed with a
253 commission pursuant to this section prior to the date upon which the
254 moratorium takes effect.

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

257 (4) (A) The commissioner shall issue a certificate of affordable
258 housing project completion for the purposes of this subsection upon
259 finding that there has been completed within the municipality one or
260 more affordable housing developments which create housing unit-
261 equivalent points equal to (i) the greater of two per cent of all dwelling
262 units in the municipality, as reported in the most recent United States
263 decennial census, or [seventy-five] fifty housing unit-equivalent points,
264 or (ii) for any municipality that has (I) adopted an affordable housing
265 plan in accordance with section 2 of this act, (II) twenty thousand or
266 more dwelling units, as reported in the most recent United States
267 decennial census, and (III) previously qualified for a moratorium in
268 accordance with this section, one and one-half per cent of all dwelling
269 units in the municipality, as reported in the most recent United States
270 decennial census.

271 (B) A municipality may apply for a certificate of affordable housing
272 project completion pursuant to this subsection by applying in writing
273 to the commissioner, and including documentation showing that the
274 municipality has accumulated the required number of points within
275 the applicable time period. Such documentation shall include the
276 location of each dwelling unit being counted, the number of points
277 each dwelling unit has been assigned, and the reason, pursuant to this
278 subsection, for assigning such points to such dwelling unit. Upon
279 receipt of such application, the commissioner shall promptly cause a

280 notice of the filing of the application to be published in the Connecticut
281 Law Journal, stating that public comment on such application shall be
282 accepted by the commissioner for a period of thirty days after the
283 publication of such notice. Not later than ninety days after the receipt
284 of such application, the commissioner shall either approve or reject
285 such application. Such approval or rejection shall be accompanied by a
286 written statement of the reasons for approval or rejection, pursuant to
287 the provisions of this subsection. If the application is approved, the
288 commissioner shall promptly cause a certificate of affordable housing
289 project completion to be published in the Connecticut Law Journal. If
290 the commissioner fails to either approve or reject the application
291 within such ninety-day period, such application shall be deemed
292 provisionally approved, and the municipality may cause notice of such
293 provisional approval to be published in a conspicuous manner in a
294 daily newspaper having general circulation in the municipality, in
295 which case, such moratorium shall take effect upon such publication.
296 The municipality shall send a copy of such notice to the commissioner.
297 Such provisional approval shall remain in effect unless the
298 commissioner subsequently acts upon and rejects the application, in
299 which case the moratorium shall terminate upon notice to the
300 municipality by the commissioner.

301 (5) For the purposes of this subsection, "elderly units" are dwelling
302 units whose occupancy is restricted by age, [and] "family units" are
303 dwelling units whose occupancy is not restricted by age, and "resident-
304 owned mobile manufactured home park" has the same meaning as
305 provided in subsection (k) of this section.

306 (6) For the purposes of this subsection, housing unit-equivalent
307 points shall be determined by the commissioner as follows: (A) No
308 points shall be awarded for a unit unless its occupancy is restricted to
309 persons and families whose income is equal to or less than eighty per
310 cent of the median income, except that unrestricted units in a set-aside
311 development shall be awarded one-fourth point each. (B) Family units
312 restricted to persons and families whose income is equal to or less than
313 eighty per cent of the median income shall be awarded one point if an

314 ownership unit and one and one-half points if a rental unit. (C) Family
315 units restricted to persons and families whose income is equal to or
316 less than sixty per cent of the median income shall be awarded one and
317 one-half points if an ownership unit and two points if a rental unit. (D)
318 Family units restricted to persons and families whose income is equal
319 to or less than forty per cent of the median income shall be awarded
320 two points if an ownership unit and two and one-half points if a rental
321 unit. (E) Restricted family units containing at least three bedrooms
322 shall be awarded an additional one-fourth point. (F) Elderly units
323 restricted to persons and families whose income is equal to or less than
324 eighty per cent of the median income shall be awarded one-half point.
325 ~~[(F)]~~ (G) If at least sixty per cent of the total restricted units submitted
326 by a municipality as part of an application for a certificate of affordable
327 housing project completion are family units, any elderly units
328 submitted within such application shall be awarded an additional one-
329 half point. (H) Restricted family units located within an approved
330 incentive housing development, as defined in section 8-13m, as
331 amended by this act, shall be awarded an additional one-fourth point.
332 (I) A set-aside development containing family units which are rental
333 units shall be awarded additional points equal to twenty-two per cent
334 of the total points awarded to such development, provided the
335 application for such development was filed with the commission prior
336 to July 6, 1995. (J) A mobile manufactured home in a resident-owned
337 mobile manufactured home park shall be awarded points as follows:
338 One and one-half points when occupied by persons and families with
339 an income equal to or less than eighty per cent of the median income;
340 two points when occupied by persons and families with an income
341 equal to or less than sixty per cent of the median income; and one-
342 fourth point for the remaining units.

343 (7) Points shall be awarded only for dwelling units which [were] (A)
344 were newly-constructed units in an affordable housing development,
345 as that term was defined at the time of the affordable housing
346 application, for which a certificate of occupancy was issued after July
347 1, 1990, [or] (B) were newly subjected after July 1, 1990, to deeds

348 containing covenants or restrictions which require that, for at least the
349 duration required by subsection (a) of this section for set-aside
350 developments on the date when such covenants or restrictions took
351 effect, such dwelling units shall be sold or rented at, or below, prices
352 which will preserve the units as affordable housing for persons or
353 families whose income does not exceed eighty per cent of the median
354 income, (C) are located within an approved incentive housing
355 development, as defined in section 8-13m, as amended by this act, or
356 (D) are located in a resident-owned mobile manufactured home park.

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

362 (9) A newly-constructed unit shall be counted toward a moratorium
363 when it receives a certificate of occupancy. A newly-restricted unit
364 shall be counted toward a moratorium when its deed restriction takes
365 effect.

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

372 (11) The commissioner shall, within available appropriations, adopt
373 regulations in accordance with chapter 54 to carry out the purposes of
374 this subsection. Such regulations shall specify the procedure to be
375 followed by a municipality to obtain a moratorium, and shall include
376 the manner in which a municipality is to document the units to be
377 counted toward a moratorium. A municipality may apply for a
378 moratorium in accordance with the provisions of this subsection prior
379 to, as well as after, such regulations are adopted.

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

386 Sec. 2. (NEW) (*Effective from passage*) (a) At least once every five
387 years, each municipality shall prepare or amend and adopt an
388 affordable housing plan for the municipality. Such plan shall specify
389 how the municipality intends to increase the number of affordable
390 housing developments in the municipality.

391 (b) The municipality may hold public informational meetings or
392 organize other activities to inform residents about the process of
393 preparing the plan. If the municipality holds a public hearing, at least
394 thirty-five days prior to the public hearing on the adoption, the
395 municipality shall file in the office of the town clerk of such
396 municipality a copy of such draft plan or any amendments to the plan,
397 and if applicable, post such draft plan on the Internet web site of the
398 municipality. After adoption of the plan, the municipality shall file the
399 final plan in the office of the town clerk of such municipality and, if
400 applicable, post the plan on the Internet web site of the municipality.

401 (c) Following adoption, the municipality shall regularly review and
402 maintain such plan. The municipality may adopt such geographical,
403 functional or other amendments to the plan or parts of the plan, in
404 accordance with the provisions of this section, as it deems necessary. If
405 the municipality fails to amend such plan every five years, the chief
406 elected official of the municipality shall submit a letter to the
407 Commissioner of Housing that explains why such plan was not
408 amended.

409 Sec. 3. Subdivision (12) of section 8-13m of the general statutes is
410 repealed and the following is substituted in lieu thereof (*Effective from*
411 *passage, and applicable to any final determination of eligibility for an*

412 *incentive housing zone or any grant that has not yet been approved under*
413 *section 8-13x of the general statutes as of the effective date of this section):*

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

419 Sec. 4. Subsection (l) of section 8-30g of the general statutes, as
420 amended by section 1 of this act, is repealed and the following is
421 substituted in lieu thereof (*Effective October 1, 2022*):

422 (l) (1) Except as provided in subdivision (2) of this subsection, the
423 affordable housing appeals procedure established under this section
424 shall not be applicable to an affordable housing application filed with a
425 commission during a moratorium, which shall commence after (A) a
426 certification of affordable housing project completion issued by the
427 commissioner is published in the Connecticut Law Journal, or (B)
428 notice of a provisional approval is published pursuant to subdivision
429 (4) of this subsection. Any such moratorium shall be for a period of
430 four years, except that for any municipality that has (i) twenty
431 thousand or more dwelling units, as reported in the most recent
432 United States decennial census, and (ii) previously qualified for a
433 moratorium in accordance with this section, any subsequent
434 moratorium shall be for a period of five years. Any moratorium that is
435 in effect on October 1, 2002, is extended by one year.

436 (2) Such moratorium shall not apply to (A) affordable housing
437 applications for assisted housing in which ninety-five per cent of the
438 dwelling units are restricted to persons and families whose income is
439 less than or equal to sixty per cent of the median income, (B) other
440 affordable housing applications for assisted housing containing forty
441 or fewer dwelling units, or (C) affordable housing applications which
442 were filed with a commission pursuant to this section prior to the date
443 upon which the moratorium takes effect.

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

446 (4) (A) The commissioner shall issue a certificate of affordable
447 housing project completion for the purposes of this subsection upon
448 finding that there has been completed within the municipality one or
449 more affordable housing developments which create housing unit-
450 equivalent points equal to (i) the greater of two per cent of all dwelling
451 units in the municipality, as reported in the most recent United States
452 decennial census, or [fifty] seventy-five housing unit-equivalent points,
453 or (ii) for any municipality that has (I) adopted an affordable housing
454 plan in accordance with section 2 of this act, (II) twenty thousand or
455 more dwelling units, as reported in the most recent United States
456 decennial census, and (III) previously qualified for a moratorium in
457 accordance with this section, one and one-half per cent of all dwelling
458 units in the municipality, as reported in the most recent United States
459 decennial census.

460 (B) A municipality may apply for a certificate of affordable housing
461 project completion pursuant to this subsection by applying in writing
462 to the commissioner, and including documentation showing that the
463 municipality has accumulated the required number of points within
464 the applicable time period. Such documentation shall include the
465 location of each dwelling unit being counted, the number of points
466 each dwelling unit has been assigned, and the reason, pursuant to this
467 subsection, for assigning such points to such dwelling unit. Upon
468 receipt of such application, the commissioner shall promptly cause a
469 notice of the filing of the application to be published in the Connecticut
470 Law Journal, stating that public comment on such application shall be
471 accepted by the commissioner for a period of thirty days after the
472 publication of such notice. Not later than ninety days after the receipt
473 of such application, the commissioner shall either approve or reject
474 such application. Such approval or rejection shall be accompanied by a
475 written statement of the reasons for approval or rejection, pursuant to
476 the provisions of this subsection. If the application is approved, the
477 commissioner shall promptly cause a certificate of affordable housing

478 project completion to be published in the Connecticut Law Journal. If
479 the commissioner fails to either approve or reject the application
480 within such ninety-day period, such application shall be deemed
481 provisionally approved, and the municipality may cause notice of such
482 provisional approval to be published in a conspicuous manner in a
483 daily newspaper having general circulation in the municipality, in
484 which case, such moratorium shall take effect upon such publication.
485 The municipality shall send a copy of such notice to the commissioner.
486 Such provisional approval shall remain in effect unless the
487 commissioner subsequently acts upon and rejects the application, in
488 which case the moratorium shall terminate upon notice to the
489 municipality by the commissioner.

490 (5) For the purposes of this subsection, "elderly units" are dwelling
491 units whose occupancy is restricted by age, "family units" are dwelling
492 units whose occupancy is not restricted by age, and "resident-owned
493 mobile manufactured home park" has the same meaning as provided
494 in subsection (k) of this section.

495 (6) For the purposes of this subsection, housing unit-equivalent
496 points shall be determined by the commissioner as follows: (A) No
497 points shall be awarded for a unit unless its occupancy is restricted to
498 persons and families whose income is equal to or less than eighty per
499 cent of the median income, except that unrestricted units in a set-aside
500 development shall be awarded one-fourth point each. (B) Family units
501 restricted to persons and families whose income is equal to or less than
502 eighty per cent of the median income shall be awarded one point if an
503 ownership unit and one and one-half points if a rental unit. (C) Family
504 units restricted to persons and families whose income is equal to or
505 less than sixty per cent of the median income shall be awarded one and
506 one-half points if an ownership unit and two points if a rental unit. (D)
507 Family units restricted to persons and families whose income is equal
508 to or less than forty per cent of the median income shall be awarded
509 two points if an ownership unit and two and one-half points if a rental
510 unit. (E) [Restricted family units containing at least three bedrooms
511 shall be awarded an additional one-fourth point. (F)] Elderly units

512 restricted to persons and families whose income is equal to or less than
513 eighty per cent of the median income shall be awarded one-half point.
514 [(G) If at least sixty per cent of the total restricted units submitted by a
515 municipality as part of an application for a certificate of affordable
516 housing project completion are family units, any elderly units
517 submitted within such application shall be awarded an additional one-
518 half point. (H) Restricted family units located within an approved
519 incentive housing development, as defined in section 8-13m, as
520 amended by this act, shall be awarded an additional one-fourth point.
521 (I)] (E) A set-aside development containing family units which are
522 rental units shall be awarded additional points equal to twenty-two
523 per cent of the total points awarded to such development, provided
524 the application for such development was filed with the commission
525 prior to July 6, 1995. [(J)] (G) A mobile manufactured home in a
526 resident-owned mobile manufactured home park shall be awarded
527 points as follows: One and one-half points when occupied by persons
528 and families with an income equal to or less than eighty per cent of the
529 median income; two points when occupied by persons and families
530 with an income equal to or less than sixty per cent of the median
531 income; and one-fourth point for the remaining units.

532 (7) Points shall be awarded only for dwelling units which (A) were
533 newly-constructed units in an affordable housing development, as that
534 term was defined at the time of the affordable housing application, for
535 which a certificate of occupancy was issued after July 1, 1990, (B) were
536 newly subjected after July 1, 1990, to deeds containing covenants or
537 restrictions which require that, for at least the duration required by
538 subsection (a) of this section for set-aside developments on the date
539 when such covenants or restrictions took effect, such dwelling units
540 shall be sold or rented at, or below, prices which will preserve the
541 units as affordable housing for persons or families whose income does
542 not exceed eighty per cent of the median income, [(C) are located
543 within an approved incentive housing development, as defined in
544 section 8-13m,] or [(D)] (C) are located in a resident-owned mobile
545 manufactured home park.

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

551 (9) A newly-constructed unit shall be counted toward a moratorium
 552 when it receives a certificate of occupancy. A newly-restricted unit
 553 shall be counted toward a moratorium when its deed restriction takes
 554 effect.

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

561 (11) The commissioner shall, within available appropriations, adopt
 562 regulations in accordance with chapter 54 to carry out the purposes of
 563 this subsection. Such regulations shall specify the procedure to be
 564 followed by a municipality to obtain a moratorium, and shall include
 565 the manner in which a municipality is to document the units to be
 566 counted toward a moratorium. A municipality may apply for a
 567 moratorium in accordance with the provisions of this subsection prior
 568 to, as well as after, such regulations are adopted.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	8-30g
Sec. 2	<i>from passage</i>	New section

Sec. 3	<i>from passage, 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 the effective date of this section</i>	8-13m(12)
Sec. 4	<i>October 1, 2022</i>	8-30g(1)

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.

House "A" strikes the underlying bill and results in the above identified fiscal impact.

The Out Years

The ongoing above identified fiscal impact will continue into the future subject to inflation.

OLR Bill Analysis**sHB 6880 (as amended by House "A")******AN ACT CONCERNING THE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE.*****SUMMARY**

This bill makes several changes to the affordable housing land use appeals procedure ("procedure") (see BACKGROUND). The bill makes it easier for municipalities to qualify for a moratorium from the procedure by:

1. expanding the unit types that count toward the moratorium;
2. establishing "bonus" housing unit-equivalent (HUE) points for certain unit types;
3. lowering the minimum number of HUE points smaller municipalities need for a moratorium; and
4. lowering the minimum number of HUE points municipalities with at least 20,000 dwelling units need for a moratorium, if the municipality previously qualified for a moratorium and adopts an affordable housing plan.

The bill also:

1. requires municipalities to adopt an affordable housing plan every five years;
2. makes an additional type of mobile manufactured homes count toward the 10% exemption threshold (see BACKGROUND);
3. extends, from four years to five, the length of second and

- subsequent moratoria for municipalities with at least 20,000 dwelling units;
4. 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; and
 5. makes technical and conforming changes.

*House Amendment “A” adds the provisions (1) establishing a municipal affordable housing planning requirement; (2) concerning resident-owned mobile manufactured home parks; (3) lowering the moratorium eligibility threshold for municipalities with at least 20,000 dwelling units; and (4) increasing the length of second and subsequent moratoria for municipalities with at least 20,000 dwelling units.

EFFECTIVE DATE: Upon passage, but the definition of “median income” does not apply to IHZs that the Department of Housing (DOH) approves, or approves grants for, before passage. The bill sunsets on September 30, 2022 the moratorium-related provisions concerning IHZ units, bonus points, and the lowered threshold for smaller municipalities.

MUNICIPAL PLANNING REQUIREMENT

The bill requires each municipality, at least once every five years, to prepare or amend and adopt an affordable housing plan. The plan must specify how the municipality will increase the number of affordable housing developments in its jurisdiction. The bill does not specify which municipal body must adopt the plan.

In preparing their plans, municipalities may hold informational meetings or organize other activities to keep residents informed. If a municipality holds a public hearing on a plan's adoption, at least 35 days before the hearing, it must (1) file a copy of the draft plan and any amendments thereto in the town clerk's office and (2) post the draft on the municipality's website, if one exists. Similarly, after a municipality adopts its plan, it must file it in the town clerk's office and post the

plan on its website, if one exists.

Municipalities must regularly review and maintain their plans, making geographical, functional, or other amendments as needed. If a municipality does not update its plan at least once every five years, its chief elected official must submit a letter to the DOH commissioner explaining why. The bill does not establish any penalties for failure to comply with its affordable housing plan requirements.

RESIDENT-OWNED MOBILE MANUFACTURED HOME PARKS

The bill defines “resident-owned mobile manufactured home parks” and (1) requires DOH to count homes in them as part of a municipality's affordable housing stock (i.e., toward the 10% exemption threshold) and (2) makes such homes eligible for HUE points toward a moratorium.

Under the bill, “resident-owned mobile manufactured home parks” are parks with homes located on land that at the time a loan for the purchase of the land is issued, is subject to deed restrictions requiring 75% of the units (presumably, parcels of land) to be leased to households earning 80% or less of the median income and of these income-restricted units, either:

1. 40% to be leased to households earning 60% or less of the median income or
2. 20% to be leased to households earning 50% or less of the median income.

The bill specifies how many points homes in these parks are eligible for (see Table 1 below). It does not specify how long the required deed restrictions must last.

By law, unchanged by the bill, mobile manufactured homes with deed restrictions restricting the sale or rental of such homes to low- or moderate-income people (1) are counted by DOH toward a municipality's affordable housing stock if deed restricted for at least 10

years and (2) qualify for HUE points toward a moratorium if deed restricted in accordance with the law (generally, a 40 year restriction).

MORATORIA

By law, a municipality is eligible for a 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.

Five Year Moratoria

Under current law, a moratorium lasts for four years. The bill lengthens the duration of a moratorium for municipalities with at least 20,000 dwelling units, as of the last decennial census, and that previously obtained a moratorium under CGS § 8-30g. Under the bill, in these municipalities, second and subsequent moratoria last five, rather than four, years.

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 decennial census, or (2) 75 HUE points.

The bill lowers the 2% standard to 1.5% for municipalities that have adopted an affordable housing plan and have at least 20,000 dwelling units, if the municipality is applying for its second or subsequent moratorium under CGS § 8-30g.

Effective upon passage and through September 30, 2022, the bill lowers, from 75 to 50, the minimum number of HUE points municipalities need to qualify for a moratorium. (In practice, this affects smaller municipalities.)

Calculating HUE Points Toward a Moratorium

Homes in Resident-Owned Mobile Manufactured Home Parks.

The bill establishes a schedule of base points specifically for homes in resident-owned mobile manufactured home parks, based on the occupants' income, as shown in Table 1. (Under the bill, it is unclear whether the points are allocated based on occupancy on the day the municipality applies for a moratorium, or at another point in time.)

Table 1: Points for Homes in Resident-Owned Mobile Home Parks

Unit Type	Base HUE Point Value (per unit)
Owned or rented homes occupied by households earning 80% or less of the median income	1.5
Owned or rented homes occupied by households earning 60% or less of the median income	2.0
Owned or rented homes not otherwise eligible for points	0.25

*Median income means the lesser of the state median income or the area median income, after adjustments for family size.

Under existing law unchanged by the bill, mobile manufactured homes that meet the statutory requirements are eligible for base HUE points, which vary depending on home affordability, population served, and ownership type (see BACKGROUND).

Incentive Housing Development (IHD) Units. Effective upon passage and through September 30, 2022, the bill allows income-restricted ("restricted") units in an IHD to count toward a moratorium and applies existing law's base points schedule to them (see BACKGROUND). An IHD is a residential or mixed-use development located within an IHZ 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. Bonus points are awarded on top of the base HUE points a unit receives.

Effective upon passage and through September 30, 2022, the bill makes three additional categories of units eligible for bonus HUE points. 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 2 shows the bonus HUE points under current law and the bill.

Table 2: Bonus HUE Points

Unit Type	Bonus HUE Point Value (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 the bill’s passage.

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, DOH may make grants to municipalities that adopt, or are working to adopt, IHZ regulations (CGS § 8-13m et seq.).

BACKGROUND

Affordable Housing Developments

Under CGS § 8-30g, “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.

The Affordable Housing Land Use Appeals Procedure

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 DOH determines at least 10% of the housing stock is affordable or (2) that obtains a moratorium.

The following dwellings count toward the 10% exemption threshold:

1. assisted housing,

2. housing currently financed by Connecticut Housing Finance Authority mortgages,
3. housing subject to deeds or conditions restricting the sale or rental to low- or moderate-income people, and
4. housing that 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 3 shows the types of units that count toward a moratorium and their HUE point value, as established in CGS § 8-30g.

Table 3: 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 household earning no more than 80% of the median income		0.50
Owned family unit restricted to household 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 household earning no more than:	80% of median income	1.50
	60% of median income	2.00
	40% of median income	2.50

*Median income means the lesser of the state median income or the area median income, after adjustments for family size.

Related Bill

sSB 535 (File 199), reported favorably 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)