



# House of Representatives

General Assembly

**File No. 347**

February Session, 2018

House Bill No. 5045

*House of Representatives, April 10, 2018*

The Committee on Planning and Development reported through REP. LEMAR of the 96th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT ESTABLISHING ACCOUNTABILITY FOR FAIR AND AFFORDABLE HOUSING THROUGH ZONING REGULATIONS.***

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

1 Section 1. Section 8-2 of the 2018 supplement to the general statutes  
2 is repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2018*):

4 (a) (1) The zoning commission of each city, town or borough is  
5 authorized to regulate, within the limits of such municipality: [L] (A)  
6 [the] The height, number of stories and size of buildings and other  
7 structures; (B) the percentage of the area of the lot that may be  
8 occupied; (C) the size of yards, courts and other open spaces; (D) the  
9 density of population and the location and use of buildings, structures  
10 and land for trade, industry, residence or other purposes, including  
11 water-dependent uses, as defined in section 22a-93; [L] and (E) the  
12 height, size and location of advertising signs and billboards. [Such  
13 bulk regulations may allow for cluster development, as defined in  
14 section 8-18.]

15 (2) Such zoning commission may divide the municipality into

16 districts of such number, shape and area as may be best suited to carry  
17 out the purposes of this chapter; and, within such districts, it may  
18 regulate the erection, construction, reconstruction, alteration or use of  
19 buildings or structures and the use of land. All [such] zoning  
20 regulations shall be uniform for each class or kind of buildings,  
21 structures or use of land throughout each district, but the regulations  
22 in one district may differ from those in another district. [, and]

23 (3) Zoning regulations may provide that certain classes or kinds of  
24 buildings, structures or uses of land are permitted only after obtaining  
25 a special permit or special exception from a zoning commission,  
26 planning commission, combined planning and zoning commission or  
27 zoning board of appeals, whichever commission or board the  
28 regulations may, notwithstanding any special act to the contrary,  
29 designate, subject to standards set forth in the regulations and to  
30 conditions necessary to protect the public health, safety, convenience  
31 and property values. [Such]

32 (b) Zoning regulations adopted pursuant to subsection (a) of this  
33 section shall: [be]

34 (1) Be made in accordance with a comprehensive plan and in  
35 [adopting such regulations the commission shall consider]  
36 consideration of the plan of conservation and development [prepared]  
37 adopted under section 8-23; [. Such regulations shall be]

38 (2) Be designed to (A) lessen congestion in the streets; [to] (B) secure  
39 safety from fire, panic, flood and other dangers; [to] (C) promote  
40 health and the general welfare; [to] (D) provide adequate light and air;  
41 [to] (E) prevent the overcrowding of land; [to] (F) avoid undue  
42 concentration of population; [and to] (G) facilitate the adequate  
43 provision for transportation, water, sewerage, schools, parks and other  
44 public requirements; [. Such regulations shall be] and (H) affirmatively  
45 further fair housing;

46 (3) Be made with reasonable consideration as to [the character of the  
47 district and its peculiar] a district's suitability for particular uses and

48 with a view to conserving the value of buildings and encouraging the  
49 most appropriate use of land throughout [such] a municipality; [. Such  
50 regulations may, to the extent consistent with soil types, terrain,  
51 infrastructure capacity and the plan of conservation and development  
52 for the community, provide for cluster development, as defined in  
53 section 8-18, in residential zones. Such regulations shall also  
54 encourage]

55 (4) Provide for the development of housing opportunities, including  
56 opportunities for multifamily dwellings, consistent with soil types,  
57 terrain and infrastructure capacity, for all residents of the municipality  
58 and the planning region in which the municipality is located, as  
59 designated by the Secretary of the Office of Policy and Management  
60 under section 16a-4a; [. Such regulations shall also promote]

61 (5) Promote housing choice and economic diversity in housing,  
62 including housing for both low and moderate income households; [,  
63 and shall encourage]

64 (6) Provide for the development of housing which will meet the  
65 housing needs identified in the state's consolidated plan for housing  
66 and community development prepared pursuant to section 8-37t and  
67 in the housing component and the other components of the state plan  
68 of conservation and development prepared pursuant to section 16a-26;  
69 [. Zoning regulations shall be]

70 (7) Be made with reasonable consideration for their impact on  
71 agriculture, as defined in subsection (q) of section 1-1; [.]

72 (8) Provide that proper provision be made for soil erosion and  
73 sediment control pursuant to section 22a-329;

74 (9) Be made with reasonable consideration for the protection of  
75 existing and potential public surface and ground drinking water  
76 supplies; and

77 (10) In any municipality that is contiguous to Long Island Sound,  
78 (A) be made with reasonable consideration for the restoration and

79 protection of the ecosystem and habitat of Long Island Sound; (B) be  
80 designed to reduce hypoxia, pathogens, toxic contaminants and  
81 floatable debris in Long Island Sound; and (C) provide that the  
82 commission consider the environmental impact on Long Island Sound  
83 of any proposal for development.

84 (c) Zoning regulations adopted pursuant to subsection (a) of this  
85 section may: [be]

86 (1) To the extent consistent with soil types, terrain, and  
87 infrastructure capacity for the community, provide for cluster  
88 development, as defined in section 8-18;

89 (2) Be made with reasonable consideration for the protection of  
90 historic factors; [and shall be made with reasonable consideration for  
91 the protection of existing and potential public surface and ground  
92 drinking water supplies. On and after July 1, 1985, the regulations shall  
93 provide that proper provision be made for soil erosion and sediment  
94 control pursuant to section 22a-329. Such regulations may also  
95 encourage]

96 (3) Encourage energy-efficient patterns of development, the use of  
97 solar and other renewable forms of energy, and energy conservation; [. The regulations may also provide]

99 (4) Provide for incentives for developers who use passive solar  
100 energy techniques, as defined in subsection (b) of section 8-25, in  
101 planning a residential subdivision development; [. The incentives may  
102 include, but not be] including, but not limited to, cluster development,  
103 higher density development and performance standards for roads,  
104 sidewalks and underground facilities in the subdivision; [. Such  
105 regulations may provide]

106 (5) Provide for a municipal system for the creation of development  
107 rights and the permanent transfer of such development rights, which  
108 may include a system for the variance of density limits in connection  
109 with any such transfer; [. Such regulations may also provide]

110 (6) Provide for notice requirements in addition to those required by  
111 this chapter; [. Such regulations may provide]

112 (7) Provide for conditions on operations to collect spring water or  
113 well water, as defined in section 21a-150, including the time, place and  
114 manner of such operations; [. No such regulations shall prohibit] and

115 (8) In any municipality where a traprock ridge, as defined in section  
116 8-1aa, or an amphibolite ridge, as defined in section 8-1aa, is located,  
117 (A) provide for development restrictions in ridgeline setback areas, as  
118 defined in section 8-1aa; and (B) restrict quarrying and clear cutting,  
119 except that the following operations and uses shall be permitted in  
120 ridgeline setback areas, as of right: (i) Emergency work necessary to  
121 protect life and property; (ii) any nonconforming uses that were in  
122 existence and that were approved on or before the effective date of  
123 regulations adopted pursuant to this section; and (iii) selective  
124 timbering, grazing of domesticated animals and passive recreation.

125 (d) Zoning regulations adopted pursuant to subsection (a) of this  
126 section shall not:

127 (1) Prohibit the operation of any family child care home or group  
128 child care home in a residential zone; [. No such regulations shall  
129 prohibit]

130 (2) (A) Prohibit the use of receptacles for the storage of items  
131 designated for recycling in accordance with section 22a-241b or require  
132 that such receptacles comply with provisions for bulk or lot area, or  
133 similar provisions, except provisions for side yards, rear yards and  
134 front yards; [. No such regulations shall] or (B) unreasonably restrict  
135 access to or the size of such receptacles for businesses, given the nature  
136 of the business and the volume of items designated for recycling in  
137 accordance with section 22a-241b, that such business produces in its  
138 normal course of business, provided nothing in this section shall be  
139 construed to prohibit such regulations from requiring the screening or  
140 buffering of such receptacles for aesthetic reasons; [. Such regulations  
141 shall not impose]

142       (3) Impose conditions and requirements on manufactured homes,<sub>z</sub>  
143 including mobile manufactured homes, having as their narrowest  
144 dimension twenty-two feet or more and built in accordance with  
145 federal manufactured home construction and safety standards,<sub>z</sub> or on  
146 lots containing such manufactured homes,<sub>z</sub> [which] including mobile  
147 manufactured home parks, if those conditions and requirements are  
148 substantially different from conditions and requirements imposed on  
149 (A) single-family dwellings;<sub>z</sub> [and] (B) lots containing single-family  
150 dwellings;<sub>z</sub> [. Such regulations shall not impose conditions and  
151 requirements on developments to be occupied by manufactured homes  
152 having as their narrowest dimension twenty-two feet or more and  
153 built in accordance with federal manufactured home construction and  
154 safety standards which are substantially different from conditions and  
155 requirements imposed on] or (C) multifamily dwellings, lots  
156 containing multifamily dwellings, cluster developments or planned  
157 unit developments;<sub>z</sub> [. Such regulations shall not prohibit]

158       (4) (A) Prohibit the continuance of any nonconforming use, building  
159 or structure existing at the time of the adoption of such regulations;<sub>z</sub> [.  
160 Such regulations shall not] (B) provide for the termination of any  
161 nonconforming use solely as a result of nonuse for a specified period  
162 of time without regard to the intent of the property owner to maintain  
163 that use;<sub>z</sub> [. Such regulations shall not] or (C) terminate or deem  
164 abandoned a nonconforming use, building or structure unless the  
165 property owner of such use, building or structure voluntarily  
166 discontinues such use, building or structure and such discontinuance  
167 is accompanied by an intent to not reestablish such use, building or  
168 structure. The demolition or deconstruction of a nonconforming use,  
169 building or structure shall not by itself be evidence of such property  
170 owner's intent to not reestablish such use, building or structure;<sub>z</sub> [.  
171 Unless such town opts out, in accordance with the provisions of  
172 subsection (j) of section 8-1bb, such regulations shall not prohibit] and

173       (5) Prohibit the installation of temporary health care structures for  
174 use by mentally or physically impaired persons [in accordance with  
175 the provisions of section 8-1bb if such structures comply with the

176 provisions of said section] pursuant to section 8-1bb, unless the  
177 municipality opts out pursuant to subsection (j) of section 8-1bb, as  
178 amended by this act.

179 (e) Any city, town or borough which adopts the provisions of this  
180 chapter may, by vote of its legislative body, exempt municipal  
181 property from the regulations prescribed by the zoning commission of  
182 such city, town or borough, [;] but unless it is so voted, municipal  
183 property shall be subject to such regulations.

184 [(b) In any municipality that is contiguous to Long Island Sound the  
185 regulations adopted under this section shall be made with reasonable  
186 consideration for restoration and protection of the ecosystem and  
187 habitat of Long Island Sound and shall be designed to reduce hypoxia,  
188 pathogens, toxic contaminants and floatable debris in Long Island  
189 Sound. Such regulations shall provide that the commission consider  
190 the environmental impact on Long Island Sound of any proposal for  
191 development.

192 (c) In any municipality where a traprock ridge, as defined in section  
193 8-1aa, or an amphibolite ridge, as defined in section 8-1aa, is located  
194 the regulations may provide for development restrictions in ridgeline  
195 setback areas, as defined in said section. The regulations may restrict  
196 quarrying and clear cutting, except that the following operations and  
197 uses shall be permitted in ridgeline setback areas, as of right: (1)  
198 Emergency work necessary to protect life and property; (2) any  
199 nonconforming uses that were in existence and that were approved on  
200 or before the effective date of regulations adopted under this section;  
201 and (3) selective timbering, grazing of domesticated animals and  
202 passive recreation.]

203 (f) (1) On or before July 1, 2019, and at least once every five years  
204 thereafter, each municipality that adopts the provisions of this chapter  
205 pursuant to section 8-1 shall demonstrate, in a form and manner  
206 prescribed by the Commissioner of Housing, compliance with  
207 subdivisions (4) to (6), inclusive, of subsection (b) of this section. The  
208 commissioner shall notify the Secretary of the Office of Policy and

209 Management of the failure of any municipality to demonstrate  
 210 compliance.

211 (2) A municipality that fails to demonstrate such compliance shall  
 212 be ineligible for discretionary state funding until the commissioner  
 213 notifies the secretary that the municipality has satisfied the  
 214 requirements, unless such ineligibility is expressly waived by the  
 215 secretary.

216 Sec. 2. Subsection (j) of section 8-1bb of the 2018 supplement to the  
 217 general statutes is repealed and the following is substituted in lieu  
 218 thereof (*Effective July 1, 2018*):

219 (j) A municipality, by vote of its legislative body or, in a  
 220 municipality where the legislative body is a town meeting, by vote of  
 221 the board of selectmen, may opt out of the provisions of this section  
 222 and the provision of subdivision (5) of subsection [(a)] (d) of section 8-  
 223 2, as amended by this act, regarding authorization for the installation  
 224 of temporary health care structures, provided the zoning commission  
 225 or combined planning and zoning commission of the municipality: (1)  
 226 First holds a public hearing in accordance with the provisions of  
 227 section 8-7d on such proposed opt-out, (2) affirmatively decides to opt  
 228 out of the provisions of said sections within the period of time  
 229 permitted under section 8-7d, (3) states upon its records the reasons for  
 230 such decision, and (4) publishes notice of such decision in a newspaper  
 231 having a substantial circulation in the municipality not later than  
 232 fifteen days after such decision has been rendered.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2018	8-2
Sec. 2	July 1, 2018	8-1bb(j)

**PD**            *Joint Favorable*



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

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 19 \$</b>	<b>FY 20 \$</b>
Various Municipalities	Revenue Loss	Potential Significant	Potential Significant

**Explanation**

The bill requires municipalities to demonstrate, or risk losing discretionary state funding, that their regulations comply with the bill's requirements concerning housing and zoning regulations.

There is a potentially significant revenue loss to municipalities that do not demonstrate that their regulations meet the bill's provisions. The revenue loss will vary based on the specific grant programs impacted. In FY 18, an estimated \$4.4 billion in municipal aid was provided.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to municipal aid funding levels.

**OLR Bill Analysis****HB 5045*****AN ACT ESTABLISHING ACCOUNTABILITY FOR FAIR AND AFFORDABLE HOUSING THROUGH ZONING REGULATIONS.*****SUMMARY**

This bill reorganizes the municipal zoning powers statute (CGS § 8-2) and, for municipalities exercising zoning powers under this statute, it:

1. requires them to demonstrate, or risk losing discretionary state funding, that their regulations comply with the bill's requirements concerning the (a) provision of varied housing development opportunities and (b) promotion of housing choice and economic diversity in housing;
2. requires the regulations to provide for, rather than encourage, a variety of housing development opportunities to meet local and regional needs;
3. requires the regulations to be designed to affirmatively further fair housing (which the bill does not define, see BACKGROUND);
4. eliminates a requirement that the regulations be made with reasonable consideration as to the "character" of a district; and
5. prohibits the regulations from imposing on mobile manufactured homes and associated lots conditions that are substantially different from those imposed on other residential developments.

The bill also makes minor, technical, and conforming changes.

EFFECTIVE DATE: July 1, 2018

### **MUNICIPAL COMPLIANCE**

Beginning July 1, 2019, the bill requires municipalities that exercise zoning powers pursuant to the statutes to demonstrate to the housing commissioner at least once every five years, in a form and manner she prescribes, that their regulations:

1. provide for a variety of housing development opportunities that meet state and local needs, as the bill requires (see “Housing Development Opportunities,” below); and
2. promote housing choice and economic diversity in housing, including housing for low- and moderate-income households.

The commissioner must notify the Office of Policy and Management secretary if a municipality does not demonstrate compliance. Such municipalities are deemed ineligible for discretionary state funding until (1) the housing commissioner notifies the secretary that they are in compliance or (2) the secretary expressly waives their ineligibility.

### **HOUSING DEVELOPMENT OPPORTUNITIES**

The bill requires zoning regulations to provide for, rather than encourage, the development of:

1. housing opportunities for all residents of the municipality and local planning region, including opportunities for multifamily dwellings, consistent with soil types, terrain, and infrastructure capacity, and
2. housing that meets the needs identified in the state’s Consolidated Plan for Housing and Community Development and Plan of Conservation and Development.

### **MANUFACTURED HOMES**

The bill prohibits zoning regulations from imposing on manufactured homes, including mobile homes, built to federal standards and with a narrowest dimension of 22 feet or more, and

associated lots and parks, conditions that are substantially different from those imposed on:

1. single family dwellings and associated lots;
2. multifamily dwellings; or
3. lots with multifamily dwellings, cluster developments, or planned unit developments.

Under current law, (1) manufactured homes and lots cannot be treated substantially differently from single family dwellings and lots with single family dwellings and (2) manufactured home developments cannot be treated substantially differently from multifamily dwellings or lots with multifamily dwellings, cluster developments, or planned unit developments. Under the bill, manufactured home developments are no longer specifically addressed.

## **BACKGROUND**

### ***Related Federal Law***

The federal Fair Housing Act (FHA) directs federal agencies, including the Department of Housing and Urban Development (HUD), to administer their programs to “affirmatively further” the FHA’s goals of promoting fair housing and equal opportunity (42 U.S.C. 3608).

In 2015, HUD released a final rule on affirmatively furthering fair housing applicable to HUD grantees. When it takes full effect in 2020, it will require grantees to (1) analyze local fair housing needs and set goals for meeting them and (2) report to HUD on such assessments.

## **COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable

Yea 12 Nay 10 (03/26/2018)