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## **OLR Bill Analysis**

### **sHB 6531 (as amended by House "A")\***

#### ***AN ACT CONCERNING THE RIGHT TO COUNSEL IN EVICTION PROCEEDINGS.***

#### **SUMMARY**

This bill makes unrelated changes regarding (1) certain individuals' right to counsel in eviction proceedings and (2) local land use approvals.

The bill establishes a state-wide "right to counsel program" to provide free legal representation to income-eligible tenants, lessees, or occupants of any residential building or land (i.e., "covered individuals") in a covered matter initiated on or after July 1, 2021. Under the bill, a "covered matter" is an eviction proceeding or administrative proceeding necessary to preserve a state or federal housing subsidy or prevent a proposed lease termination.

It requires the Judicial Branch to use available federal funds to either contract with, or enter a memorandum of agreement with, an entity to administer the program (i.e., "administering entity"). It also establishes an 11-member working group to advise on matters and policies affecting the right to counsel program.

The bill requires the administering entity, within available funding, to contract with designated organizations (i.e., not-for-profit legal services organizations) to provide legal representation under the program. Additionally, it requires the administering entity to (1) determine, in consultation with the working group and designated organizations, how to phase in the program based on certain relevant factors and (2) starting by January 1, 2023, annually report to the Housing Committee and Judicial Department on the number of individuals represented under the program, the extent of the representation, case outcomes, and tenant engagement and education.

It also requires the Judicial Branch to (1) in consultation with the administering entity, working group, and designated organizations, approve a one-page plain-language notice for landlords and certain others, starting July 1, 2021, to inform individuals of their rights under the program and (2) make the notice available publicly and on its website.

The bill also specifies that it does not establish any right enforceable by a covered individual against a designated organization or the administering entity.

Regarding local land use approvals, the bill generally delays the effective date of municipal inland wetlands permits to coincide with the effective period of related local land use approvals (e.g., special permits, zoning variances, site plans, subdivision plans) (§ 501). The bill also extends the initial and extended deadlines for completing projects approved before July 1, 2011, that require certain subdivision, wetlands, or site plan approval. However, these extensions do not appear to have any legal effect, as they conflict with the provisions' effective date. The effective date specifies that the extensions apply only to permits issued on or after July 1, 2021 (§§ 502-505).

\*House Amendment "A" (1) changes the effective date of the right to counsel program to July 1, 2021, and specifies that the program applies to covered matters initiated on or after that date; (2) requires the judicial branch to procure the program's administering entity, instead of requiring that a private organization be the entity; (3) replaces the 15-member advisory council in the underlying bill with an 11-member working group to advise on the program; (4) eliminates a provision that makes people eligible for the program if they are unable to timely secure legal representation due to certain factors; (5) requires the judicial branch, instead of the administering entity, to develop the plain language notice; (6) eliminates the requirement for designated organizations to incorporate certain paralegals, legal interns, or law students to provide services; (7) eliminates the administering entity's express authorization to use the funds it receives to pay the cost of attorney training; (8) allows the judicial branch to use the state and

federal funds it receives under the bill to appoint additional housing mediators; (9) adds the provisions concerning local land use approvals (§§ 501-505); and (10) makes other minor changes.

EFFECTIVE DATE: July 1, 2021, and the land use approval provisions are applicable to permits issued on or after July 1, 2021.

## **RIGHT TO COUNSEL PROGRAM**

### ***Program Eligibility***

Under the bill, the right to counsel program is available to income-eligible residential tenants, lessees, or occupants who are parties in an eviction or certain administrative proceedings as described above. The bill specifies that it applies to any residential land or building, apartment, or dwelling unit, including trailers or mobile manufactured homes and associated lots.

Under the bill, an individual is “income-eligible” if he or she:

1. has household income at or below 80% of the state median income adjusted for family size, as determined by the U.S. Department of Housing and Urban Development (HUD), at the time of the request for representation; or
2. receives one of the following types of public assistance: (a) Temporary Assistance for Needy Families, (b) Supplemental Nutrition Assistance Program benefits, (c) Medicaid, (d) Supplemental Security Income, (e) refugee resettlement benefits, (f) state rental assistance, or (g) federal Housing Choice Voucher Program assistance.

### ***Designated Organization's Minimum Standards***

The administering entity, within available funding, must contract with designated organizations to provide legal representation under the program. Under the bill “legal representation” in the program means representation in a covered matter provided by a designated organization to a covered individual, and all legal advice, advocacy, and assistance associated with the representation, subject to and in accordance with the Rules of Professional Conduct.

A designated organization is a nonprofit legal services organization that must:

1. have substantial expertise in (a) housing and landlord tenant law and (b) furnishing free legal assistance to eligible individuals;
2. have a demonstrated history of serving the low-income community;
3. identify the geographic area in which the organization provides legal representation;
4. have a plan to reach and provide legal representation to income-eligible individuals with limited English proficiency; and
5. provide appropriate supervision and training.

A designated organization may subcontract with a nonprofit or community organization to provide legal representation and tenant outreach and education under the program.

***Working Group***

The bill establishes an 11-member working group to advise on matters and policies affecting the right to counsel program, to effectuate the right to counsel.

***Members and Appointments.*** The working group consists of the following members:

1. two each appointed by the Senate President and the House Speaker;
2. one each appointed by the Senate and House majority and minority leaders;
3. the Housing commissioner, or her designee;
4. a representative of the administering entity; and

5. a Judicial Branch representative.

All initial appointments must be made within 30 days after the bill's effective date. Members serve a four-year term and may be reappointed or continue to serve until a successor is appointed. Appointing authorities fill vacancies.

**Meetings and Staff.** The Housing commissioner, or her designee, must serve as the working group's chairperson and schedule the first meeting, which must be held within 60 days after the bill's effective date. The chairperson must convene the working group on a regular basis, but not less than three times per year.

The Department of Housing must provide administrative support to the working group.

**Relevant Factors to Phase in the Program**

The bill requires the administering entity, in consultation with the working group and designated organizations, to determine how to phase in the program based on all relevant factors, including the:

1. prioritization of certain groups of individuals by income, zip codes, census tracts, or other priority criteria they develop;
2. availability of program funding;
3. number of available trained legal services attorneys; and
4. scope of the need for legal representation.

**Funding**

The bill allows the administering entity to receive funds or services from the government, corporations, associations, or individuals to pay the cost of: (1) administering the program and (2) providing legal representation and tenant outreach and education.

The bill also allows the judicial branch to receive state or federal funds to appoint additional housing mediators to resolve summary process actions. Under existing law, within available appropriations,

Superior Court judges or a committee they authorize, may appoint housing mediators as they deem necessary (CGS § 47a-69).

### **PLAIN-LANGUAGE NOTICE OF TENANTS' RIGHTS**

The bill requires the judicial branch, in consultation with the administering entity, working group, and designated organizations, to approve a one-page plain-language notice to inform tenants of their rights under the program. The notice must be on the judicial branch's website, publicly available, and include a phone number for information and applying for assistance.

Starting July 1, 2021, the bill requires an owner, lessor, or landlord; their agent or legal representative; a housing authority; or a housing subsidy program administrator, as applicable, to attach a copy of the plain-language notice to a (1) notice to quit delivered to a covered individual pursuant to an eviction proceeding, (2) summons and complaint for a summary process eviction action, (3) lease termination notice for a public or subsidized housing unit, and (4) notice to terminate a state or federal housing subsidy.

Under the bill, the court must include similar plain language information in any notice scheduling a mediation or hearing that is sent to a self-represented party in an eviction proceeding.

### **EFFECTIVE DATE OF INLAND WETLANDS PERMITS (§ 501)**

The bill delays the effective date of municipal inland wetlands permits to coincide with the effective period of related local land use approvals. Under the bill, if the inland wetlands permit is just one of the local land use approvals required to develop a property, the wetlands permit does not take effect until the other local approvals are effective.

Inland wetlands permits are generally valid for the same length of time as the other land use approvals issued for the development, up to a maximum of 10 years.

### **LAND USE APPROVAL EXTENSIONS (§§ 502-505)**

The bill extends the initial and extended deadlines for completing

projects approved before July 1, 2011, that require certain subdivision, wetlands, or site plan approvals. These provisions concern land use approvals issued before July 1, 2011, that were unexpired on May 9, 2011. However, the provisions take effect on July 1, 2021, and apply only to permits (presumably approvals) issued on or after that date. Consequently, these provisions appear to have no legal effect.

Executive Order (EO) 7JJ, § 3, issued on May 6, 2020, and subsequently extended, generally tolls the expiration dates for various land use approvals that were valid on March 10, 2020 (including site plan, wetlands, and subdivision approvals), thus pausing these approvals so they will not expire during the declared emergencies.

### ***Project Completion Deadlines***

The bill extends, from 14 to 19 years, the duration of subdivision approvals for projects with at least 400 dwelling units, if the initial approval was granted before July 1, 2011, and was not expired on May 9, 2011 (§ 504).

The bill also extends by five years the minimum initial approval period for the following approvals granted before July 1, 2011, that were unexpired on May 9, 2011:

1. site plan approvals (except for projects containing at least 400 dwelling units or having an area of 400,000 square feet or more) (§ 502);
2. subdivision approvals for projects with fewer than 400 dwelling units (§ 503); and
3. wetlands permits (§ 505).

Under the bill, these initial approvals must be valid for at least 14 years, rather than at least 9 years, as under current law. The bill correspondingly extends the extended deadlines for these approvals from 14 to 19 years.

### **BACKGROUND**

**Related Bills**

SB 970 (File 321), favorably reported by the Planning and Development Committee, gives developers more time to complete an ongoing project that was approved on or after July 1, 2011, but before the bill's passage by extending the initial and extended deadlines for completing projects that require certain subdivision, wetlands, or site plan approval.

sSB 6541 (File 304), favorably reported by the Planning and Development Committee, is identical to the provision concerning the effective date of inland wetlands permits (§ 501).

**COMMITTEE ACTION**

Housing Committee

Joint Favorable Substitute

Yea 10 Nay 5 (03/11/2021)