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## OLR Bill Analysis

**sHB 6531 (File 685, as amended by House "A" and Senate "A")\***

***AN ACT CONCERNING THE RIGHT TO COUNSEL IN EVICTION PROCEEDINGS, THE VALIDITY OF INLAND WETLANDS PERMITS IN RELATION TO CERTAIN OTHER LAND USE APPROVALS, AND EXTENDING THE TIME OF EXPIRATION OF CERTAIN LAND USE PERMITS.***

### **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 statewide "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 fund the provision of legal representation under the program by designated organizations (i.e., nonprofit legal services organizations). 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 October 1, 2021, to inform individuals of their rights under the program and (2) make the notice available publicly and on its website by that date.

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, and subdivision plans) (§ 2). The bill also gives developers more time to complete certain ongoing projects without seeking reapproval from local land use boards, commissions, or agencies. It applies only to approvals and permits that were (1) granted on or after July 1, 2011, but before the bill's passage and (2) unexpired on March 10, 2020 (§§ 501-507).

\*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; and (10) makes other minor changes.

\*Senate Amendment "A" (1) eliminates the provisions added by House Amendment "A" about extended land use approval deadlines for projects approved before July 1, 2011, and adds the provisions about projects approved on or after that date and (2) makes the following changes to the right to counsel program: (a) extends, from July 1, 2021, to October 1, 2021, the date by which the judicial branch must make the plain-language notice available publicly and on its website and when landlords and other entities must start distributing it; (b) requires the judicial branch to hire additional housing mediators to facilitate summary process actions if the branch receives funding under the bill for that purpose; and (c) makes other minor changes.

EFFECTIVE DATE: July 1, 2021, except the concurrent wetlands permit provision (§ 2) is applicable to permits issued on or after July 1, 2021, and the extended land use approval provisions are effective upon passage (§§ 501-507).

## **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: Temporary Assistance for Needy Families, Supplemental Nutrition Assistance Program benefits, Medicaid, Supplemental Security Income, refugee resettlement benefits, state rental assistance, or federal Housing Choice Voucher Program assistance.

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

The administering entity, within available funding, must fund the provision of legal representation under the program by designated organizations. Under the bill "legal representation" means (1) representation in a covered matter provided by a designated organization to a covered individual and (2) 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 by July 31, 2021. 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 fund program administration, the provision of legal representation, and tenant outreach and education.

Under the bill, the judicial branch must appoint additional housing mediators to facilitate the resolution of summary process actions, if the branch receives state or federal funds under the bill for that purpose. Under existing law, Superior Court judges or a committee they authorize may appoint housing mediators as they deem necessary, within available appropriations (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 (1) include a phone number for information and applying for assistance and (2) by October 1, 2021, be on the judicial branch's website and publicly available.

Starting October 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 (§ 2)**

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.

### **SPECIAL PERMIT OR EXCEPTION PROJECT COMPLETION DEADLINES (§§ 505-507)**

The bill establishes a minimum validity period for special permit or exception approvals (1) granted on or after July 1, 2011, but before the bill's passage; (2) that were unexpired on March 10, 2020; and (3) that specified a deadline by which all work in connection with the approval must be completed. Under the bill, these approvals are valid for a minimum of 19 years after the approval is granted. Existing statutes do not impose any minimum validity periods for these approvals (see BACKGROUND).

The bill specifies that (1) the applicable land use board, commission, or agency may extend these approvals beyond 19 years and (2) this minimum 19-year validity period applies to special permits or exceptions approved by a municipality exercising land use powers under the statutes or a special act.

### **OTHER PROJECT COMPLETION DEADLINES**

#### ***Municipalities Exercising Authority Under the Statutes (§§ 501-504)***

When a planning or zoning commission, combined planning and zoning commission, or an inland wetlands agency operating under the

statutes approves a project, it must set an expiration date that falls within the timeframes the law specifies. Consequently, a developer must complete the project before that date or resubmit it to the local commission or agency for approval. Generally, under current law, the maximum timeframe (including any extensions granted) is 10 years from the date of approval. The bill extends these timeframes for approvals (1) granted on or after July 1, 2011, but before the bill's passage, and (2) that were unexpired on March 10, 2020. Under the bill, except for large residential subdivisions, the initial deadline must be at least 14 years after approval, and the extended deadline cannot be more than 19 years after approval. Large residential subdivision approvals are valid for 19 years.

Table 1, below, shows the current and extended deadlines that apply to subdivision, wetlands, and site plans approvals granted by municipalities operating under the statutes.

**Table 1: Statutory Deadlines and Extensions Under Current Law and the Bill**

<b><i>Land Use Approval (CGS §)</i></b>	<b><i>Current Law</i></b>	<b><i>Bill</i></b>
<b>Residential site plans for projects with 400 or more units</b> (§ 8-3(j))	Deadline: 10 years after approval	No change
	No extensions	
<b>Business site plans for projects with at least 400,000 square feet</b> (§ 8-3(j))	Deadline: 5-10 years after approval (set locally)	No change
	Extension: up to 10 years from approval	
<b>Other site plans</b> (§ 8-3(i))	Deadline: 5 years after approval	At least 14 years after approval
	Extension: up to 10 years from approval	Up to 19 years from approval
<b>Subdivisions plans for 400 or more dwelling units</b> (§ 8-26g)	Deadline: 10 years after approval	19 years after approval
	No extensions	No change

<b>Other subdivisions</b> (§ 8-26c(a)&(b))	Deadline: 5 years after approval	At least 14 years after approval
	Extension: up to 10 years from approval	Up to 19 years from approval
<b>Wetlands permits associated with another approval (e.g., site plans and subdivisions)</b> (§ 22a-42a(d)(2))	Deadline: 10 years after approval or the date the associated land use approval expires (whichever is earlier)	At least 14 years from approval
	Extension: up to 10 years from approval	Up to 19 years from approval
<b>Other wetlands</b> (§ 22a-42a(d)(2))	Deadline: 2-5 years after approval (set locally)	At least 14 years after approval
	Extension: up to 10 years from approval	Up to 19 years from approval

### ***Municipalities Exercising Authority Under a Special Act (§ 507)***

The bill sets a minimum approval duration of 14 years for site plan and subdivision approvals and other permits (except special permits or exceptions, see above) granted by a zoning commission, planning commission, combined planning and zoning commission, zoning board of appeals, or inland wetlands agency exercising land use powers under a special act. The bill applies only to approvals (1) granted on or after July 1, 2011, but before the bill's passage, and (2) that were unexpired on March 10, 2020.

The bill specifies that local boards or agencies may approve extensions, but caps the total duration of an approval, including extensions, at 19 years (except special permits or exceptions, see above). The 14- and 19-year timeframes are calculated based on the initial approval date and apply regardless of conflicting special acts or approval conditions.

## **BACKGROUND**

### ***Related Executive Order***

Under EO 7JJ, the expiration date of various land use approvals is tolled during the declared emergencies (§ 3, issued on May 6, 2020, and subsequently extended through June 30, 2021). The tolling

provision applies only if the approval-holder was not in violation of the approval's conditions on March 10, 2020, and did not violate them during the declared emergencies. (A waiver of this requirement is available.)

### **Related Bills**

SB 970 (File 685), as amended by Senate Amendment "A," contains identical provisions that give developers more time to complete an ongoing project that was approved on or after July 1, 2011, but before the bill's passage.

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

### **Special Permits and Exceptions and Related Caselaw**

"Special permit" and "special exception" are synonymous. The designated local land use agency may grant special permits or exceptions pursuant to the Zoning Enabling Act (CGS § 8-2) or a special act, as applicable. Special permits and exceptions allow one to use a property in a manner explicitly permitted by the zoning regulations but subject to conditions not applicable to other uses in the same district. The rationale for special permits and exceptions is that while certain land uses may be generally compatible with the uses permitted as of right in a particular zoning district, their nature is such that their precise location and mode of operation must be individually regulated.

In February 2021, the Connecticut Appellate Court issued a decision applicable to municipalities that exercise zoning powers under the statutes. It held that the law authorizes these municipalities to impose temporal conditions on special permits or exceptions, such as a condition requiring development to be completed by a specific date (*International Investors v. Fairfield Planning & Zoning Commission*, 202 Conn. App. 582, *cert. granted*, 336 Conn. 928 (March 30, 2021)).

### **COMMITTEE ACTION**

Housing Committee

Joint Favorable Substitute

Yea 10 Nay 5 (03/11/2021)