



House of Representatives

General Assembly

File No. 182

January Session, 2023

Substitute House Bill No. 6633

House of Representatives, March 23, 2023

The Committee on Housing reported through REP. LUXENBERG of the 12th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING A NEEDS ASSESSMENT AND FAIR SHARE PLANS FOR MUNICIPALITIES TO INCREASE AFFORDABLE HOUSING.

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

- 1 Section 1. (NEW) (*Effective July 1, 2023*) (a) As used in this section:
- 2 (1) "Affordable housing unit" means a dwelling unit conveyed by an
3 instrument containing a covenant or restriction that requires such
4 dwelling unit to be sold or rented at or below a price intended to
5 preserve such unit as housing for a low income household;
- 6 (2) "Commission", "zoning commission" or "zoning authority" means
7 a zoning commission, planning commission, planning and zoning
8 commission, zoning board of appeals or other municipal agency
9 exercising zoning or planning authority;
- 10 (3) "Commissioner" means the Commissioner of Housing, unless
11 otherwise specified;

12 (4) "Dwelling unit" means any house or building, or portion thereof,
13 which is occupied, is designed to be occupied, or is rented, leased or
14 hired out to be occupied, as a home or residence of one or more persons;

15 (5) "Low income household" means a person or family with an annual
16 income less than or equal to eighty per cent of the state median income,
17 as determined by the United States Department of Housing and Urban
18 Development;

19 (6) "Very low income household" means a person or family with an
20 annual income less than or equal to fifty per cent of the state median
21 income, as determined by the United States Department of Housing and
22 Urban Development;

23 (7) "Extremely low income household" means a person or family with
24 an annual income less than or equal to thirty per cent of the state median
25 income, as determined by the United States Department of Housing and
26 Urban Development;

27 (8) "Interested party" means (A) a nonprofit organization that
28 represents low income households or addresses their housing needs, or
29 (B) a housing developer who seeks to construct housing contributing to
30 a municipality's fair share allocation if the intended or proposed
31 development (i) conforms with subdivision (3) or (6) of subsection (a) of
32 section 8-30g of the general statutes, revision of 1958, revised to January
33 1, 2023, or (ii) includes not less than twenty per cent of affordable
34 housing units conveyed by deeds containing affordable housing
35 covenants or restrictions applying for at least forty years, or a number
36 of nonage-restricted affordable housing units equal to not less than five
37 per cent of all units in the development are sold or rented to persons and
38 families whose income is less than or equal to thirty per cent of the lesser
39 of state or area median income and the remainder of the affordable
40 housing units conveyed by deeds containing covenants or restrictions
41 are sold or rented to persons and families whose income is less than or
42 equal to eighty per cent of the lesser of state or area median income,
43 provided at least ten per cent of the deed-restricted units in such
44 housing have two or more bedrooms;

45 (9) "Median income" is the state median income, as determined by the
46 United States Department of Housing and Urban Development;

47 (10) "Multifamily housing" means a residential building that contains
48 three or more dwelling units;

49 (11) "Municipal fair share allocation" means the portion of the
50 minimum need for affordable housing units in a planning region, as
51 determined pursuant to subsection (b) of this section, that is allocated to
52 a municipality located within such planning region;

53 (12) "Municipal fair share goal" means the number of units each
54 municipality includes in its fair share plan, inclusive of additional bonus
55 points awarded, as described in subdivision (2) of subsection (c) of this
56 section;

57 (13) "Municipal fair share plan" means a municipality's plan and
58 updated zoning regulations and planning documents designed to
59 achieve its municipal fair share goal;

60 (14) "Planning region" means a planning region of the state, as
61 defined or redefined by the Secretary of the Office of Policy and
62 Management or the secretary's designee under the provisions of section
63 16a-4a of the general statutes, except the Metropolitan and Western
64 planning regions shall be considered a single planning region;

65 (15) "Secretary" means the Secretary of the Office of Policy and
66 Management; and

67 (16) "Supportive housing" means affordable housing units available
68 to persons or families who qualify for assistance in accordance with
69 section 17a-485c of the general statutes.

70 (b) (1) Not later than July 1, 2024, the secretary, in consultation with
71 the Commissioners of Housing and Economic and Community
72 Development and, as may be determined by the secretary, experts,
73 advocates and organizations with expertise in affordable housing, fair
74 housing and planning and zoning, shall establish a methodology for

75 each municipality's fair share allocation by:

76 (A) Determining the need for affordable housing units in each
77 planning region; and

78 (B) Fairly allocating such need to the municipalities in each planning
79 region considering the duty of the state and municipalities to
80 affirmatively further fair housing pursuant to section 8-2 of the general
81 statutes and 42 USC 3608. Such methodology shall rely on data from the
82 Comprehensive Housing Affordability Strategy data set published by
83 the United States Department of Housing and Urban Development, or
84 from a similar source as may be determined by the secretary.

85 (2) The secretary shall ensure that the fair share allocation
86 methodology:

87 (A) Is designed with due consideration for the duty of the state and
88 each municipality to affirmatively further fair housing in accordance
89 with section 8-2 of the general statutes and 42 USC 3608;

90 (B) Relies on appropriate metrics of the minimum need for affordable
91 housing units in a planning region to ensure adequate housing options,
92 including the number of extremely low income households in the
93 planning region;

94 (C) Relies on appropriate factors for fairly allocating such need to
95 each municipality within each planning region, including a
96 municipality's compliance with the requirements of sections 8-2 and 8-
97 23 of the general statutes with regard to promoting housing choice and
98 economic diversity in housing, including housing for both low and
99 moderate income households, and encouraging the development of
100 housing which meets the identified housing needs and the development
101 of housing opportunities, including opportunities for multifamily
102 housing, for all residents of the municipality and the planning region in
103 which the municipality is located;

104 (D) Does not assign a fair share allocation to any municipality with a
105 federal poverty rate of twenty per cent or greater based on data reported

106 in the most recent United States decennial census or similar source; and

107 (E) Increases the municipal fair share allocation of a municipality if
108 such municipality, when compared to other municipalities in the same
109 planning region, has:

110 (i) A greater dollar value of the ratable real and personal property, as
111 reflected by its equalized net grand list, calculated in accordance with
112 the provisions of section 10-261a of the general statutes, for residential,
113 commercial, industrial, public utility and vacant land;

114 (ii) A higher median income, based on data reported in the most
115 recent United States decennial census or similar source;

116 (iii) A lower percentage of its population that is below the federal
117 poverty threshold, based on data reported in such census or similar
118 source; or

119 (iv) A lower percentage of its population that lives in multifamily
120 housing, based on data reported in such census or similar source.

121 (3) (A) Not later than July 1, 2024, and every ten years thereafter, the
122 secretary, in consultation with the Commissioners of Housing and
123 Economic and Community Development, shall, using the methodology
124 established pursuant to this subsection, determine the minimum need
125 for affordable housing units for each planning region and a municipal
126 fair share allocation for each municipality within each planning region.

127 (B) No municipal fair share allocation determined pursuant to
128 subparagraph (A) of this subdivision shall exceed twenty per cent of the
129 occupied dwelling units in such municipality.

130 (c) (1) Not later than July 1, 2024, the secretary, in consultation with
131 the Commissioners of Housing and Economic and Community
132 Development and, as may be determined by the secretary, experts,
133 advocates and organizations with expertise in affordable housing, fair
134 housing and planning and zoning, shall establish:

135 (A) A process by which each municipality shall be required to
136 develop, adopt and submit municipal fair share plans to the secretary
137 and the commissioner that set forth the new zoning regulations and
138 planning documents the municipality has adopted and other actions the
139 municipality will take to achieve its municipal fair share goal;

140 (B) The required contents and timing for submission of such plans,
141 including updated zoning regulations and planning documents;

142 (C) Requirements to ensure that each municipal fair share plan
143 provides for the creation of a sufficient supply of the different types of
144 deed-restricted affordable housing required for meeting its fair share
145 goal, including ensuring:

146 (i) Not less than fifty per cent of the units are affordable to very low
147 income households;

148 (ii) Not less than thirteen per cent of units are affordable to extremely
149 low income households;

150 (iii) Not more than fifty per cent of the units are affordable to
151 households with incomes above very low income but less than the low
152 income threshold;

153 (iv) Not less than twenty-five per cent of the units are rental units;

154 (v) Not more than twenty-five per cent of units are restricted by
155 occupant age;

156 (vi) Not less than fifty per cent of the units are unrestricted by
157 occupant age and include two or more bedrooms;

158 (vii) Not more than twenty per cent of the units are studios or one
159 bedroom; and

160 (viii) All units, regardless of sources of funding, are affirmatively
161 marketed in accordance with section 8-37ee of the general statutes and
162 associated regulations;

163 (D) Policies ensuring that no municipal fair share plan creates, in the
164 determination of the secretary, undue concentrations of households
165 below the federal poverty threshold in the applicable planning region;
166 and

167 (E) Policies ensuring that each municipal fair share plan provides for
168 the equitable distribution of affordable housing within the municipality
169 in accordance with section 46a-64c of the general statutes and 42 USC
170 3601 to 3619, inclusive.

171 (2) In defining each municipality's obligation pursuant to this section,
172 the secretary shall include the ability of each municipality to convert its
173 municipal fair share allocation into a municipal fair share goal
174 represented by points wherein:

175 (A) Each affordable housing unit constitutes one point;

176 (B) Additional bonus points may be added for certain types of
177 housing units at a ratio conforming to the threshold requirements of
178 subparagraph (C) of subdivision (1) of this subsection, provided no fair
179 share goal shall fall below eighty per cent of the municipality's initial
180 fair share allocation;

181 (C) Only one bonus point shall be awarded per unit such that the
182 bonus points are not cumulative; and

183 (D) Bonus points shall be awarded as follows:

184 (i) Qualifying housing affordable to households at or below the
185 extremely low income threshold shall receive one additional point;

186 (ii) Qualifying units with two or more bedrooms shall receive one
187 additional point; and

188 (iii) Qualifying units that constitute supportive housing, as defined
189 in section 17a-485c of the general statutes, shall receive an additional
190 point.

191 (d) Not later than July 1, 2025, and every ten years thereafter, each

192 municipality shall prepare and adopt a municipal fair share plan that
193 creates a realistic opportunity for achieving the municipality's fair share
194 goal, in accordance with the process established pursuant to subsection
195 (c) of this section.

196 Sec. 2. (NEW) (*Effective July 1, 2023*) (a) Each municipality shall meet
197 its fair share goals by issuing certificates of occupancy conforming to the
198 requirements of subparagraph (C) of subdivision (1) of subsection (c) of
199 section 1 of this act on the following schedule:

200 (1) By year three: Five per cent completion;

201 (2) By year five: Thirty per cent completion;

202 (3) By year seven: Sixty per cent completion; and

203 (4) By year ten: One hundred per cent completion.

204 (b) (1) Beginning on July 1, 2026, and annually thereafter, each
205 municipality shall submit a report to the Commissioner of Housing
206 documenting its progress toward meeting its fair share goal that
207 includes (A) the addresses of the units meeting its fair share goal, (B) the
208 income restrictions applicable to each unit, (C) relevant completed or
209 planned infrastructure expansion, and (D) the details of affirmative
210 marketing efforts, including copies of active affirmative marketing
211 plans for relevant developments; and (2) supporting documentation for
212 such reporting, which shall be made publicly available upon request,
213 excluding any redacted personally identifying information.

214 (c) Beginning on July 1, 2028, and annually thereafter, the
215 commissioner shall conduct random audits of at least ten per cent of the
216 municipal fair share plans to ensure that such plans comply with the
217 requirements of section 1 of this act.

218 (d) Not later than July 1, 2024, and periodically thereafter in the
219 discretion of the Secretary of the Office of Policy and Management, the
220 secretary, in consultation with the commissioner and, as may be
221 determined by the secretary, experts, advocates and organizations with

222 expertise in affordable housing, fair housing and planning and zoning,
223 shall publish and disseminate technical assistance materials to aid each
224 municipality in compliance with the requirements of this section and
225 shall arrange for the provision of technical assistance briefings,
226 trainings, webinars and such other guidance to each municipality as the
227 secretary deems necessary.

228 (e) If any municipality has not submitted a fair share plan to the
229 secretary in accordance with subsection (c) of section 1 of this act or has
230 not issued certificates of occupancy in accordance with subsection (a) of
231 this section, notwithstanding any other provision of the general statutes,
232 such municipality shall be subject to the following default zoning:

233 (1) In any area where water and sewer infrastructure and capacity are
234 available or where water and sewer service can be provided by
235 extending existing lines at the developer's expense, the following uses
236 are permitted as of right: multifamily housing of not more than twenty
237 units per acre if (A) at least twenty per cent of the units are nonage-
238 restricted two or more bedroom units affordable to low income
239 households and deed restricted for forty years, or (B) ten per cent of the
240 units are nonage-restricted two or more bedroom units affordable to
241 very low income households and deed restricted for twenty years.

242 (2) In all other areas, the development of multifamily housing is as of
243 right subject to limitations on the number of units, density and other
244 aspects of the development required for any particular site by the
245 applicable provisions of chapter 368a of the general statutes and
246 associated public health regulations, with the greater of one unit or ten
247 per cent of units having two or more bedrooms, being affordable to low
248 income households, and being so deed restricted for forty years.

249 (f) When any municipality fails to submit a fair share plan to the
250 secretary in accordance with subsection (c) of section 1 of this act, or
251 when a fair share plan submitted by a municipality fails to create a
252 realistic opportunity for the municipality to attain its municipal fair
253 share allocation, any interested party may bring an action in the
254 Superior Court of the judicial district in which the municipality is

255 located to seek (1) a court order that the municipality issue a fair share
 256 plan and updated zoning regulations that create a realistic opportunity
 257 for the municipality to meet its municipal fair share allocation, including
 258 through express agreements with developers for housing development
 259 projects contributing to the municipality's total fair share allocation; or
 260 (2) if a particular housing development conforming with subparagraph
 261 (B) of subdivision (8) of section (a) of section 1 of this act has been
 262 rejected by the municipality's zoning authority and an appeal is brought
 263 by the developer, a court order permitting the development unless the
 264 defendant demonstrates that the decision from which such appeal is
 265 taken and the reasons cited for such decision are supported by sufficient
 266 evidence in the record and the defendant has demonstrated that (A) (i)
 267 the decision is necessary to protect substantial public interests in health,
 268 safety or other matters which the commission may legally consider; (ii)
 269 such public interests clearly outweigh the need for affordable housing;
 270 and (iii) such public interests cannot be protected by reasonable changes
 271 to the affordable housing development, or (B) (i) the application which
 272 was the subject of the decision from which such appeal was taken would
 273 locate affordable housing in an area which is zoned for industrial use
 274 and which does not permit residential uses; and (ii) the development is
 275 not assisted housing. If the defendant does not satisfy its burden of
 276 proof under this subsection, the court may wholly or partly revise,
 277 modify, remand or reverse the decision from which the appeal was
 278 taken in a manner consistent with the evidence in the record before it
 279 and, if the plaintiff interested party prevails, the court may award
 280 additional relief in accordance with section 46a-104 of the general
 281 statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2023	New section
Sec. 2	July 1, 2023	New section

Statement of Legislative Commissioners:

Sections 1(a)(8) and 2(e) were rephrased for clarity; and in Section 1(b)(2)(C), "multifamily dwellings" was changed to "multifamily housing" for consistency with the defined term.

HSG *Joint Favorable Subst. -LCO*

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:

Agency Affected	Fund-Effect	FY 24 \$	FY 25 \$	Out Years \$
Policy & Mgmt., Off.	GF - Cost	228,800	27,700	27,700
Department of Housing	GF - Cost	None	None	175,000
State Comptroller - Fringe Benefits ¹	GF - Cost	11,530	11,820	86,760

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 24 \$	FY 25 \$	Out Years \$
Various Municipalities	STATE MANDATE ² - Cost	None	Potential	Potential Significant

Explanation

The bill results in a cost of approximately \$228,800 in FY 24 and \$27,700 in FY 25 to the Office of Policy and Management (OPM), along with associated fringe benefits costs to the Office of the State Comptroller, and a potentially significant cost to various municipalities beginning in FY 25. The bill creates new processes and requirements

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 42.82% of payroll in FY 24.

² State mandate is defined in Sec. 2-32b(2) of the Connecticut General Statutes, "state mandate" means any state initiated constitutional, statutory or executive action that requires a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

regarding affordable housing.

The bill requires OPM, in consultation with commissioners of the Department of Housing (DOH) and Department of Economic and Community Development (DECD), to do the following by July 1, 2024: (1) assess the affordable housing need in each of the state's planning regions, (2) develop a methodology for allocating each municipality's fair share of affordable housing units, and (3) provide technical assistance materials and trainings to assist municipalities in complying with the requirements of the bill, including providing assistance to municipalities to develop a fair share affordable housing plan.

The cost to OPM includes \$26,900 in FY 24 and \$27,600 in FY 25 for one part-time Planning Analyst to oversee the consultant process and monitor ongoing compliance from municipalities, \$1,870 in FY 24 and \$110 in FY 25 for training and materials, and a one-time cost of \$200,000 in FY 24 for a Planning/Research Consultant to develop the methodology, make estimates for the ten-year planning horizon, and develop guidelines and training for municipalities.

There is no fiscal impact to DOH or DECD in FY 24 and FY 25 to consult with the OPM secretary according to the bill's provisions.

Municipalities with a federal poverty rate of 20% or greater are exempt and will not incur a cost. The cost to non-exempt municipalities beginning in FY 26 will be dependent on the methodology developed by OPM. The cost will vary but could be potentially significant if developers still choose not to build after a municipality implements revised zoning regulations, as the cost to build could then fall onto the municipalities. The extent of the cost would vary across such towns, based on the number of units that would need to be available to comply with the goals in the town's plan. As a reference, the average state subsidy per new unit of affordable housing developed with DOH assistance was approximately \$100,000 per unit in 2019.

Municipalities may also incur a cost in FY 25, and every ten years thereafter, to hire consultants or additional staff necessary to develop

their required plan.

The bill also allows any interested party to bring municipalities to court if they (1) fail to submit a fair share plan to OPM, or (2) fail to create a realistic opportunity to meet their municipal fair share allocation. This may result in a cost to municipalities beginning in FY 25 for punitive damages, attorneys' fees, and court costs to the extent the municipality cannot provide the burden of proof.

The Out Years

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

DOH will incur costs for approximately two additional staff in the out years, beginning in FY 27, associated with: 1) reviewing plans, once submitted, to determine if they create a realistic opportunity for achieving the municipality's fair share goal, 2) reviewing annual progress reports that municipalities must provide to DOH starting July 1, 2026, and 3) conducting random audits of at least 10% of plans each year to ensure compliance with the law starting July 1, 2028. Costs for one planning analyst and one state program manager would total approximately \$249,935 annually (\$175,000 for salaries and \$74,935 for fringe benefits), subject to changes in costs for state employee wages and benefits.

OLR Bill Analysis**sHB 6633*****AN ACT CONCERNING A NEEDS ASSESSMENT AND FAIR SHARE PLANS FOR MUNICIPALITIES TO INCREASE AFFORDABLE HOUSING.*****SUMMARY**

This bill addresses affordable housing statewide.

The bill generally requires the Office of Policy and Management (OPM) secretary, in consultation with the commissioners of the departments of Housing (DOH) and Economic and Community Development (DECD), to:

1. assess the affordable housing need in each of the state's planning regions,
2. allocate this need to each region's municipalities ("municipal fair share allocation"), and
3. require that municipalities plan to meet the affordable housing need allocated to them.

In carrying out certain of the bill's requirements, generally including those listed above, the OPM secretary may consult with experts, advocates, and organizations with expertise in affordable housing, fair housing, and planning and zoning ("housing experts").

By July 1, 2024, the bill specifically requires the OPM secretary, in consultation with the commissioners and, at his discretion, the housing experts, to:

1. develop a methodology, including specific elements, for each municipality's fair share allocation;

2. establish a process requiring each municipality to (a) develop and adopt a municipal fair share plan and (b) submit the plan to the secretary and commissioners;
3. publish and distribute to municipalities technical assistance materials and certain compliance guidelines, including periodic updates at the secretary's discretion.

Under the bill, a municipality may (1) convert its fair share allocation into a municipal fair share goal represented in points and (2) be awarded bonus points for qualifying housing units meeting certain requirements. The bill also establishes related compliance and reporting requirements.

Lastly, the bill establishes a default zoning penalty for noncompliant municipalities and provides for judicial remedies under certain circumstances.

EFFECTIVE DATE: July 1, 2023

FAIR SHARE ALLOCATION METHODOLOGY

Starting by July 1, 2024, and every 10 years after that, the bill requires the OPM secretary, in consultation with the DOH and DECD commissioners, to determine municipal fair share allocations by using the fair share allocation methodology the bill requires him to develop. The methodology must generally rely on data from the U.S. Department of Housing and Urban Development's (HUD) Comprehensive Housing Affordability Strategy data set, or a similar source chosen by the OPM secretary.

Methodology Requirements

Under the bill, the secretary must ensure the methodology:

1. considers the duty of the state and municipalities to affirmatively further fair housing under the state Zoning Enabling Act and the federal Fair Housing Act (FHA);
2. relies on appropriate metrics of the minimum need for affordable housing units in a planning region, including the number of

- extremely low-income (ELI) households, to ensure adequate housing options;
3. relies on appropriate factors for fairly allocating this need among each municipality, including a municipality's compliance with certain statutory planning and zoning requirements;
 4. does not assign (a) a fair share allocation to municipalities in which the federal poverty rate is at least 20% based on the most recent decennial census or a similar source or (b) an allocation exceeding 20% of all occupied dwelling units for any municipality; and
 5. increases a municipality's fair share allocation if, relative to other municipalities in its planning region, it has a (a) higher equalized net grand list (i.e., an estimate of the market value of all taxable property in a municipality); (b) higher median income; (c) lower federal poverty rate; and (d) lower population share residing in multi-family housing (i.e., residential buildings with at least three dwelling units).

Data related to increasing a fair share allocation must come from the most recent U.S. decennial census or a similar source, except for the equalized net grand list data, which must be based on OPM's calculations of these figures for educational equalization grants.

Affordable Housing and Planning Regions

Under the bill, (1) an "affordable housing unit" is a unit deed-restricted to preserve affordability for a low-income household and (2) a "planning region" generally follows the boundaries of a regional council of governments (see BACKGROUND), though the bill treats the Metropolitan and Western planning regions as a single entity.

MUNICIPAL FAIR SHARE PLANS

The bill requires each municipality to prepare and adopt a municipal fair share plan by July 1, 2025, and then every ten years after that. The plans must create a realistic opportunity for a municipality to meet its

fair share goals (see below).

The municipal fair share plans and the planning process must include the following elements:

1. requirements for the content and timing for submission of these plans, including updated zoning regulations and planning documents;
2. policies ensuring that (a) no fair share plan creates undue concentrations of households living in poverty within a planning region, as determined by the OPM secretary, and (b) each plan provides for an equitable distribution of affordable housing within each municipality under the state’s Discriminatory Housing Practices Act and FHA; and
3. requirements that each plan provide for the creation of enough deed-restricted affordable housing of different types to allow the municipality to meet its fair share goal, including specifically ensuring that the requirements described in the table below are met.

Table: Deed-Restricted Affordable Housing Threshold Requirements

Affordability and Unit Requirements	Required Share of Units
Affordable to very low-income households	At least 50%
Affordable to ELI households	At least 13%
Affordable to households with incomes above very low-income threshold but below the low-income threshold	Not more than 50%
Rental units	At least 25%
Units restricted by occupant age	Not more than 25%
Units unrestricted by occupant age with two or more bedrooms	At least 50%
Studio or one-bedroom units	Not more than 20%

Under the bill, “low-,” “very low-,” and “extremely low-income households” mean those with an income at or below 80%, 50%, or 30%, respectively, of the state median income (SMI), as determined by HUD.

Current law requires entities participating in housing agency-administered programs (i.e., generally, programs administered by DOH or the Connecticut Housing Finance Authority) to affirmatively promote fair housing in certain assisted or supervised housing developments. The bill extends this requirement to all deed-restricted affordable housing units, regardless of funding source.

MUNICIPAL FAIR SHARE GOALS

Under the bill, the OPM secretary must allow a municipality to convert its fair share allocation into a municipal fair share goal represented in points. The bill specifies that each affordable housing unit is equivalent to one point (i.e., a fair share allocation of 100 affordable housing units would equate to a municipal fair share goal of 100 points). The bill allows bonus points to be added, at a ratio conforming with the deed-restricted affordable housing threshold requirements described in the table above, for certain types of affordable housing units. Specifically, a maximum of one bonus point may be awarded for a qualifying housing unit that is:

1. affordable to ELI households;
2. two or more bedrooms; or
3. supportive housing (i.e., an affordable housing unit available to individuals or families with special needs or that are homeless or at risk of homelessness).

(It appears that if a municipality issues a certificate of occupancy (see below) for an affordable housing unit that meets (1) the threshold requirements described above in the table and (2) at least one of the above criteria, then the unit would be credited as two points, rather than one point, toward the municipality’s fair share goal.)

Bonus points are capped at one per unit (i.e., they are not cumulative) and a municipality cannot receive bonus points in an amount that causes its fair share goal to fall below 80% of the municipality's initial allocation.

Required Compliance Schedule, Reporting, and Audits

Under the bill, a municipality meets its fair share goal by issuing certificates of occupancy conforming with the deed-restricted affordable housing threshold requirements under the following schedule:

1. by year three: 5% completion,
2. by year five: 30% completion,
3. by year seven: 60% completion, and
4. by year 10: 100% completion.

(The bill specifies a required completion percentage within certain time frames but does not establish when the time frames begin.)

Starting July 1, 2026, the bill requires each municipality to annually submit a report to the housing commissioner on its progress toward meeting its fair share goal. This report must include the following components:

1. addresses of completed units counting toward its fair share goal;
2. income restrictions applicable to each unit;
3. relevant completed or planned infrastructure expansion;
4. details on affirmative marketing efforts, including copies of affirmative marketing plans for relevant developments; and
5. supporting documentation, which must be made public upon request, excluding redacted personally identifying information.

Starting on July 1, 2028, the bill requires the housing commissioner to

annually conduct random audits of at least 10% of the municipal fair share plans to ensure compliance with the bill's requirements.

PENALTIES AND REMEDIES FOR NONCOMPLIANCE

Default Zoning

The bill subjects a municipality to a default zoning scheme if the municipality fails to (1) submit a fair share plan to OPM or (2) adhere to the compliance schedule. The applicable default zoning depends on an area's infrastructure.

In areas of a municipality that have water and sewer infrastructure and capacity, or where these services can be provided by extending existing lines at the developer's expense, multi-family housing up to 20 units per acre is allowed as of right if:

1. at least 20% of the units are (a) not age restricted, (b) at least two bedrooms, (c) affordable to low-income households, and (d) deed-restricted for 40 years; or
2. 10% of the units are (a) not age restricted, (b) at least two bedrooms, (c) affordable to very low-income households, and (d) deed-restricted for 20 years.

In all other areas of a municipality, as of right multi-family housing development is allowed subject to limitations on the number of units, density, or other development aspects as required under the state's public health statutes and regulations. In these developments, the greater of (1) one unit or (2) 10% of units must be at least two bedrooms, affordable to low-income households, and deed-restricted for 40 years.

Judicial Enforcement and Remedies

If a municipality fails to (1) submit a fair share plan to OPM or (2) create a realistic opportunity to meet its municipal fair share allocation, the bill allows any "interested party" (i.e., certain nonprofits and housing developers, see below) to bring an action in Superior Court in the municipality's judicial district. The interested party may seek an order:

1. requiring the municipality to issue a fair share plan and updated zoning regulations that create a realistic opportunity for it to meet its fair share allocation, including through express agreements with developers for projects contributing to a municipality's fair share allocation or
2. permitting a developer, who appeals a municipal zoning authority's denial of a previous development proposal that qualified him or her as an interested party, to build the development.

In the case of an action seeking to permit a development upon appeal, the bill places the burden of proof on the municipality (i.e., defendant) to show that:

1. (a) the denial was needed to protect substantial public interests in health, safety, or other matters a zoning commission may legally consider and (b) these public interests outweigh the need for affordable housing and cannot be protected by reasonable changes to the affordable housing development or
2. the development (a) would have been located in an area zoned for industrial use that does not allow residential uses and (b) is not assisted housing.

If a defendant (municipality) does not satisfy this burden of proof, the bill allows the court to revise, modify, remand, or reverse the decision from which the appeal was taken, in whole or in part, and in a manner consistent with the evidence in the record. If the plaintiff (interested party) prevails, the bill authorizes the court to award additional relief in the same way it does under a civil action for a discriminatory practice (i.e., legal and equitable relief such as punitive damages, attorneys' fees, and court costs).

Under the bill, an "interested party" is a (1) nonprofit organization representing low-income households or addressing their housing needs or (2) housing developer seeking to construct housing that would

contribute to a municipality’s fair share allocation and meet certain criteria. The intended or proposed housing development must qualify as “assisted housing” or a “set-aside development” under the affordable housing land use appeals procedure (CGS § 8-30g), or meet the following minimum requirements relative to the total number of units in the development:

1. at least 20% must be affordable housing units with deed-restrictions for at least 40 years or
2. at least (a) 5% must be non-age-restricted affordable housing units for households earning up to 30% of SMI or area median income (AMI), whichever is less, and (b) 15% must be deed-restricted to be sold or rented to households earning up to 80% of SMI or AMI, whichever is less.

Of the deed-restricted units, the bill requires that no less than 10% have at least two bedrooms.

BACKGROUND

Planning Regions

In practice, the boundaries of the state’s nine planning regions are the same as those of its regional councils of government, which serve as the formal governance structures of the planning regions.

COMMITTEE ACTION

Housing Committee

Joint Favorable
Yea 10 Nay 5 (03/02/2023)