

House of Representatives, March 26, 1998. The Committee on Planning and Development reported through REP. DAVIS, 50th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING A MORATORIUM FOR APPLICATIONS UNDER THE AFFORDABLE HOUSING APPEALS PROCEDURE.

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

1 Section 8-30g of the general statutes is  
2 repealed and the following is substituted in lieu  
3 thereof:

4 (a) As used in this section: (1) "Affordable  
5 housing development" means a proposed housing  
6 development (A) which is assisted housing or (B)  
7 in which not less than twenty-five per cent of the  
8 dwelling units will be conveyed by deeds  
9 containing covenants or restrictions which shall  
10 require that, FOR AT LEAST THIRTY YEARS AFTER THE  
11 INITIAL OCCUPATION OF THE PROPOSED DEVELOPMENT,  
12 such dwelling units be sold or rented at, or  
13 below, prices which will preserve the units as  
14 affordable housing, as defined in section 8-39a.  
15 [, for] SUCH COVENANTS OR RESTRICTIONS SHALL ALSO  
16 REQUIRE THAT AT LEAST TEN PER CENT OF ALL DWELLING  
17 UNITS IN THE DEVELOPMENT SHALL BE SOLD OR RENTED  
18 TO PERSONS AND FAMILIES WHOSE INCOME IS LESS THAN  
19 OR EQUAL TO SIXTY PER CENT OF THE AREA MEDIAN  
20 INCOME OR SIXTY PER CENT OF THE STATE MEDIAN  
21 INCOME, WHICHEVER IS LESS, AND THE REMAINDER OF  
22 SUCH UNITS SHALL BE SOLD OR RENTED TO persons and

23 families whose income is less than or equal to  
24 eighty per cent of the area median income or  
25 eighty per cent of the state median income,  
26 whichever is less; [, for at least thirty years  
27 after the initial occupation of the proposed  
28 development;] (2) "affordable housing application"  
29 means any application made to a commission in  
30 connection with an affordable housing development  
31 by a person who proposes to develop such  
32 affordable housing; (3) "assisted housing" means  
33 housing which is receiving, or will receive,  
34 financial assistance under any governmental  
35 program for the construction or substantial  
36 rehabilitation of low and moderate income housing,  
37 and any housing occupied by persons receiving  
38 rental assistance under chapter 138a or Section  
39 1437f of Title 42 of the United States Code; (4)  
40 "commission" means a zoning commission, planning  
41 commission, planning and zoning commission, zoning  
42 board of appeals or municipal agency exercising  
43 zoning or planning authority; and (5)  
44 "municipality" means any town, city or borough,  
45 whether consolidated or unconsolidated.

46 (b) ANY COMMISSION MAY REQUIRE BY REGULATION  
47 THAT AN AFFORDABLE HOUSING APPLICATION MADE  
48 PURSUANT TO SUBPARAGRAPH (B) OF SUBDIVISION (1) OF  
49 SUBSECTION (a) OF THIS SECTION SHALL INCLUDE THE  
50 SUBMISSION OF A DRAFT DEED CONTAINING COVENANTS OR  
51 RESTRICTIONS BY WHICH THE PROPOSED HOUSING  
52 DEVELOPMENT WILL SATISFY THE REQUIREMENTS OF  
53 SUBSECTION (a) OF THIS SECTION. IN ADDITION, ANY  
54 COMMISSION MAY REQUIRE, BY REGULATION, THAT AN  
55 AFFORDABLE HOUSING APPLICATION SEEKING A CHANGE OF  
56 ZONE OR AN AMENDMENT TO A MUNICIPALITY'S LAND USE  
57 REGULATIONS SHALL INCLUDE THE SUBMISSION OF A  
58 CONCEPTUAL PLAN ILLUSTRATING THE APPLICANT'S  
59 INTENDED NUMBER OF RESIDENTIAL UNITS AND THEIR  
60 GENERAL ARRANGEMENT ON THE PROPERTY.

61 [(b)] (c) Any person whose affordable housing  
62 application is denied or is approved with  
63 restrictions which have a substantial adverse  
64 impact on the viability of the affordable housing  
65 development or the degree of affordability of the  
66 affordable dwelling units, specified in  
67 subparagraph (B) of subdivision (1) of subsection  
68 (a) of this section, contained in the affordable  
69 housing development, may appeal such decision  
70 pursuant to the procedures of this section. Such

71 appeal shall be filed within the time period for  
72 filing appeals as set forth in sections 8-8, 8-9,  
73 8-28, 8-30, or 8-30a, as applicable, and shall be  
74 made returnable to the superior court for the  
75 judicial district where the real property which is  
76 the subject of the application is located.  
77 Affordable housing appeals shall be heard by a  
78 judge assigned by the Chief Court Administrator to  
79 hear such appeals. To the extent practicable,  
80 efforts shall be made to assign such cases to a  
81 small number of judges so that a consistent body  
82 of expertise can be developed. Appeals taken  
83 pursuant to this subsection shall be privileged  
84 cases to be heard by the court as soon after the  
85 return day as is practicable. Except as otherwise  
86 provided in this section, appeals involving an  
87 affordable housing application shall proceed in  
88 conformance with the provisions of said sections  
89 8-8, 8-9, 8-28, 8-30, or 8-30a, as applicable.

90 [(c)] (d) Upon an appeal taken under  
91 subsection [(b)] (c) of this section, the burden  
92 shall be on the commission to prove, based upon  
93 the evidence in the record compiled before such  
94 commission that (1) (A) the decision from which  
95 such appeal is taken and the reasons cited for  
96 such decision are supported by sufficient evidence  
97 in the record; (B) the decision is necessary to  
98 protect substantial public interests in health,  
99 safety, or other matters which the commission may  
100 legally consider; (C) such public interests  
101 clearly outweigh the need for affordable housing;  
102 and (D) such public interests cannot be protected  
103 by reasonable changes to the affordable housing  
104 development or (2) (A) the application which was  
105 the subject of the decision from which such appeal  
106 was taken would locate affordable housing in an  
107 area which is zoned for industrial use and which  
108 does not permit residential uses and (B) the  
109 development is not assisted housing, as defined in  
110 subsection (a) of this section. If the commission  
111 does not satisfy its burden of proof under this  
112 subsection, the court shall wholly or partly  
113 revise, modify, remand or reverse the decision  
114 from which the appeal was taken in a manner  
115 consistent with the evidence in the record before  
116 it.

117 [(d)] (e) Following a decision by a  
118 commission to reject an affordable housing

119 application or to approve an application with  
120 restrictions which have a substantial adverse  
121 impact on the viability of the affordable housing  
122 development or the degree of affordability of the  
123 affordable dwelling units, the applicant may,  
124 within the period for filing an appeal of such  
125 decision, submit to the commission a proposed  
126 modification of its proposal responding to some or  
127 all of the objections or restrictions articulated  
128 by the commission, which shall be treated as an  
129 amendment to the original proposal. The filing of  
130 such a proposed modification shall stay the period  
131 for filing an appeal from the decision of the  
132 commission on the original application. The  
133 commission may hold a public hearing and shall  
134 render a decision on the proposed modification  
135 within forty-five days of the receipt of such  
136 proposed modification. The commission shall issue  
137 notice of its decision as provided by law. Failure  
138 of the commission to render a decision within said  
139 forty-five days shall constitute a rejection of  
140 the proposed modification. Within the time period  
141 for filing an appeal on the proposed modification  
142 as set forth in sections 8-8, 8-9, 8-28, 8-30, or  
143 8-30a, as applicable, the applicant may appeal the  
144 commission's decision on the original application  
145 and the proposed modification in the manner set  
146 forth in this section. Nothing in this subsection  
147 shall be construed to limit the right of an  
148 applicant to appeal the original decision of the  
149 commission in the manner set forth in this section  
150 without submitting a proposed modification or to  
151 limit the issues which may be raised in any appeal  
152 under this section.

153 [(e)] (f) Nothing in this section shall be  
154 deemed to preclude any right of appeal under the  
155 provisions of sections 8-8, 8-9, 8-28, 8-30, or  
156 8-30a.

157 [(f)] (g) Notwithstanding the provisions of  
158 subsections (a) to [(e)] (f), inclusive, of this  
159 section, the affordable housing appeals procedure  
160 established under this section shall not be  
161 available if the real property which is the  
162 subject of the application is located in a  
163 municipality in which at least ten per cent of all  
164 dwelling units in the municipality are (1)  
165 assisted housing or (2) currently financed by  
166 Connecticut Housing Finance Authority mortgages or

167 (3) subject to deeds containing covenants or  
168 restrictions which require that such dwelling  
169 units be sold or rented at, or below, prices which  
170 will preserve the units as affordable housing, as  
171 defined in section 8-39a, for persons and families  
172 whose income is less than or equal to eighty per  
173 cent of the area median income. FOR PURPOSES OF  
174 DETERMINING SUCH PERCENTAGE, THE COMMISSIONER  
175 SHALL EXCLUDE FROM THE DENOMINATOR ANY UNITS IN AN  
176 AFFORDABLE HOUSING DEVELOPMENT DEVELOPED PURSUANT  
177 TO SUBPARAGRAPH (B) OF SUBDIVISION (1) OF  
178 SUBSECTION (a) OF THIS SECTION WHICH ARE NOT  
179 SUBJECT TO AFFORDABILITY COVENANTS OR  
180 RESTRICTIONS. The Commissioner of Economic and  
181 Community Development shall, pursuant to  
182 regulations adopted under the provisions of  
183 chapter 54, promulgate a list of municipalities  
184 which satisfy the criteria contained in this  
185 subsection and shall update such list not less  
186 than annually.

187 [(g)] (h) Notwithstanding the provisions of  
188 subsections (a) to [(e)] (f), inclusive, of this  
189 section, the affordable housing appeals procedure  
190 shall not be applicable to an affordable housing  
191 application filed with a commission during the  
192 one-year period after a certification of  
193 affordable housing project completion issued by  
194 the Commissioner of Economic and Community  
195 Development is published in the Connecticut Law  
196 Journal. [The] UPON APPLICATION BY A MUNICIPALITY,  
197 THE Commissioner of Economic and Community  
198 Development shall issue a certification of  
199 affordable housing project completion for the  
200 purposes of this subsection upon finding that (1)  
201 THERE IS COMPLETED WITHIN the municipality, [has  
202 completed an initial eligible] AFTER THE EFFECTIVE  
203 DATE OF THIS ACT, ONE OR MORE AFFORDABLE housing  
204 [development or] developments, [pursuant to  
205 section 8-336f or sections 8-386 and 8-387] AS  
206 DEFINED IN SUBSECTION (a), which create affordable  
207 dwelling units equal to at least one per cent of  
208 all dwelling units in the municipality and (2) the  
209 municipality is actively involved in [the  
210 Connecticut housing partnership program or the  
211 regional fair housing compact pilot program under  
212 said sections] PROMOTING HOUSING CHOICE AND  
213 ECONOMIC DIVERSITY IN HOUSING IN THE MUNICIPALITY  
214 IN ACCORDANCE WITH SECTION 8-2. UPON APPLICATION

215 BY A MUNICIPALITY, THE COMMISSIONER SHALL ISSUE A  
216 NEW CERTIFICATION EACH TIME THERE IS COMPLETED  
217 WITHIN THE MUNICIPALITY ONE OR MORE AFFORDABLE  
218 HOUSING DEVELOPMENTS WHICH CREATE AFFORDABLE  
219 DWELLING UNITS EQUAL TO AT LEAST AN ADDITIONAL ONE  
220 PER CENT OF ALL DWELLING UNITS IN THE  
221 MUNICIPALITY. The affordable housing appeals  
222 procedure shall be applicable to affordable  
223 housing applications filed with a commission after  
224 such one-year period, except as otherwise provided  
225 in subsection [(f)] (g) of this section.

226 HSG COMMITTEE VOTE: YEA 10 NAY 0 JFS C/R PD  
227 PD COMMITTEE VOTE: YEA 17 NAY 2 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF 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 HOUSE THEREOF FOR ANY PURPOSE."

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**FISCAL IMPACT STATEMENT - BILL NUMBER sHB 5455**

STATE IMPACT	Minimal Cost, Within Budgetary Resources, see explanation below
MUNICIPAL IMPACT	Minimal Cost, Within Budgetary Resources, see explanation below
STATE AGENCY(S)	Department of Economic and Community Development

**EXPLANATION OF ESTIMATES:**

STATE AND MUNICIPAL IMPACT: Changes made in this legislation concerning the affordable housing appeals procedure and broadening the conditions under which towns can seek state-imposed moratoria from the Department of Economic and Community Development (DECD) on affordable housing appeals, is anticipated to minimally increase administrative expenses, to both municipalities and DECD, within available resources.

\* \* \* \* \*

**OLR BILL ANALYSIS**

sHB 5455

**AN ACT CONCERNING A MORATORIUM FOR APPLICATIONS UNDER THE AFFORDABLE HOUSING APPEALS PROCEDURE**

**SUMMARY:** This bill changes several requirements governing the affordable housing appeals procedure, which allows developers to challenge local decisions rejecting affordable housing projects. The procedure differs from the conventional one in that it shifts the

burden of proof from the developer to the town and can be used only in towns with little or no affordable housing.

The bill changes the definition of "affordable housing project" by requiring developers to make a portion of the units affordable to very low-income people, while current law requires them to make a portion of the units affordable to low- and moderate-income people. It also changes the formula for identifying the towns subject to the procedure and broadens the conditions under which they can seek state-imposed moratoria on affordable housing appeals. The bill sets conditions under which developers must provide specific documents to the towns when submitting projects to them for approval.

EFFECTIVE DATE: October 1, 1998

#### **FURTHER EXPLANATION**

##### **Affordable Housing Projects**

The bill requires developers who intend to use the procedure to make a portion of the units affordable to very low-income people. The law allows a developer to use the procedure if the project is government-funded or, if privately funded, he agrees to make 25% of the units affordable to low- and moderate-income people. Under current law, these units are affordable if they cost people earning less than 80% of the median income of the area or the state, whichever is less, no more than 30% of their incomes. Covenants or deeds must keep the units affordable to this group for at least 30 years.

The bill requires developers of privately financed projects to divide the affordable units among two income groups. They must make (1) 10% of the units affordable to people earning less than 60% of the area or the state's median income, whichever is less and (2) 15% to those earning between 60% and 80% of the area or the state's median income, whichever is less.

##### **Counting Units in Affordable Housing Projects**

The bill requires the economic and community development commissioner to exclude the market rate units in an affordable housing project when he annually

tallies the towns' total units. He must still include the affordable, deed-restricted units in the tally. This change could allow the town's affordable housing supply to grow at a faster rate than its total housing supply.

The law requires the commissioner to tally towns' housing units in order to identify those towns subject to the procedure. By law, a town is subject to the procedure if less than 10% of its units are affordable. Affordable units include those developed, sold, or rented with government funds and those subject to deeds restricting their sale or rental to people earning less than 80% of the area median income. The latter includes affordable units developed under the procedure.

### **Moratoria**

The bill broadens the conditions under which towns can request a state-imposed moratorium on affordable housing appeals. Under current law, a town can obtain a one-time, one-year moratorium if it completes a housing project under the Connecticut Housing Partnership Program or the Regional Fair Housing Compact. The project's affordable units must equal at least 1% of the town's housing stock, and the town must continue to participate in these programs after completing the project. The commissioner must certify the project's completion and publish a notice to that effect in the Connecticut Law Journal.

The bill allows the town to obtain a moratorium if it completes an affordable housing project under any program or circumstance as long as it actively uses its zoning regulations to promote housing choice and economic diversity throughout the town. It also allows the town to obtain subsequent moratoria. The total number of affordable units a project creates must still equal 1% of the town's housing stock, and the commissioner must still certify its completion.

### **Plans and Documents**

The bill allows towns to adopt regulations requiring certain plans and documents in connection with affordable housing projects. Towns can require developers seeking zone changes to provide conceptual

plans showing the total number of units they intend to build and their intended layout. Towns can also require developers to submit a draft deed containing the covenants and restrictions they intend to impose on the affordable units.

**COMMITTEE ACTION**

Housing Committee

Joint Favorable Substitute Change of Reference  
Yea 10      Nay 0

Planning and Development Committee

Joint Favorable Substitute  
Yea 17      Nay 2