



House of Representatives

General Assembly

File No. 543

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Substitute House Bill No. 6611

House of Representatives, April 21, 2021

The Committee on Planning and Development reported through REP. MCCARTHY VAHEY, C. of the 133rd 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 OTHER POLICIES REGARDING AFFORDABLE HOUSING AND DEVELOPMENT.

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

1 Section 1. (NEW) (*Effective October 1, 2021*) (a) As used in this section:

2 (1) "Affordable housing unit" means a dwelling unit conveyed by a
3 deed containing a covenant or restriction which shall require that such
4 dwelling unit shall be sold or rented at, or below, a price which will
5 preserve the unit as housing for a person or family whose income is less
6 than or equal to eighty per cent of the lesser of the state median income
7 or area median income, as determined by the United States Department
8 of Housing and Urban Development, for the municipality in which such
9 dwelling unit is located;

10 (2) "Age-restricted unit" means a dwelling unit the occupancy of
11 which is limited to not more than one resident under the age of fifty-
12 five;

13 (3) "Aggrieved party" means (A) a developer seeking to construct
14 dwelling units that would count toward the achievement of a

15 municipality's municipal fair share goal, (B) a nonprofit organization
16 advocating (i) for a municipality's compliance with its fair share
17 requirements under this section, or (ii) on behalf of lower and moderate
18 income households in a planning region or combined planning region,
19 as applicable, (C) an individual who would qualify for a fair share unit,
20 or (D) a municipality in the same planning region or combined planning
21 region, as applicable, that (i) is not required to create a fair share plan,
22 or (ii) has received a judgment of compliance pursuant to subsection (e)
23 of this section and is meeting relevant benchmarks;

24 (4) "Combined planning region" means the two planning regions of
25 the state, as defined or redefined by the Secretary of the Office of Policy
26 and Management or the secretary's designee under the provisions of
27 section 16a-4a of the general statutes, in which the Connecticut
28 Metropolitan Council of Governments and the Western Connecticut
29 Council of Governments are established, respectively;

30 (5) "Extremely low income household" means a person or family
31 whose income is less than or equal to thirty per cent of the lesser of the
32 state median income or area median income, as determined by the
33 United States Department of Housing and Urban Development;

34 (6) "Fair share unit" means a dwelling unit required pursuant to this
35 section;

36 (7) "Low income household" means a person or family whose income
37 is less than or equal to eighty per cent of the lesser of the state median
38 income or area median income, as determined by the United States
39 Department of Housing and Urban Development;

40 (8) "Mobile housing voucher" means (A) a voucher issued under the
41 federal Housing Choice Voucher Program pursuant to 42 USC 1437f(o),
42 as amended from time to time, (B) a certificate issued under the program
43 of rental assistance for low-income families living in privately-owned
44 rental housing pursuant to section 8-345 of the general statutes, or (C)
45 any similar government-supported voucher program;

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

48 (10) "Municipal fair share base" means the portion of the regional
49 need base of a planning region or combined planning region, as
50 applicable, that is allocated to a municipality located within such
51 planning region or combined planning region;

52 (11) "Municipal fair share goal" means the number of fair share units
53 that are allocated to a municipality;

54 (12) "Municipal fair share plan" means a municipality's plan to
55 achieve its municipal fair share goal, including (A) two-year, three-year,
56 five-year and ten-year development benchmarks, and (B) zoning
57 regulations amended, and a plan of conservation and development
58 updated, to achieve such municipal fair share goal;

59 (13) "Planning region" means a planning region of the state, as
60 defined or redefined by the Secretary of the Office of Policy and
61 Management or the secretary's designee under the provisions of section
62 16a-4a of the general statutes, but excludes the two such regions that
63 constitute a combined planning region;

64 (14) "Regional need base" means an allocation to a planning region or
65 combined planning region, as applicable, based on an assessment of the
66 state-wide need for affordable housing, of the number of fair share units
67 in such planning region or combined planning region;

68 (15) "Supportive housing" means affordable housing units available
69 to persons or families that qualify for assistance in accordance with
70 section 17a-485c of the general statutes; and

71 (16) "Very low income household" means a person or family whose
72 income is less than or equal to fifty per cent of the lesser of the state
73 median income or area median income, as determined by the United
74 States Department of Housing and Urban Development.

75 (b) (1) Not later than October 1, 2022, the Secretary of the Office of

76 Policy and Management, in consultation with the Commissioner of
77 Housing, shall complete an assessment of the state-wide need for
78 affordable housing and determine the regional need base for each
79 planning region or combined planning region, as applicable. Such
80 determination shall be based on (A) figures from the Comprehensive
81 Housing Affordability Strategy data set published by the United States
82 Department of Housing and Urban Development, or from a similar
83 source, and (B) the number of persons or families in the state who pay
84 greater than fifty per cent of their annual income for housing, which
85 income is less than or equal to thirty per cent of the area median income,
86 as determined by said department.

87 (2) (A) Not later than October 1, 2022, the Secretary of the Office of
88 Policy and Management, in consultation with the Commissioner of
89 Housing, shall determine, for each planning region or combined
90 planning region, as applicable, the municipal fair share base for each
91 municipality within such planning region or combined planning region.
92 Except as otherwise provided in subparagraph (B) of this subdivision,
93 such determination shall be based on (i) such municipality's ratable real
94 and personal property as reflected by its equalized net grand list,
95 computed in accordance with the provisions of section 10-261a of the
96 general statutes, for residential, apartment, commercial, industrial,
97 public utility and vacant land, (ii) median income differences among all
98 municipalities in such planning region or combined planning region,
99 based on data reported in the most recent United States decennial
100 census or a similar source, (iii) the percentage of such municipality's
101 population that is below the federal poverty threshold, based on data
102 reported in such census or similar source, and (iv) the percentage of such
103 municipality's population that lives in multifamily housing, based on
104 data reported in such census or similar source.

105 (B) (i) In making any such determination, said secretary shall increase
106 the municipal fair share base of a municipality if such municipality, in
107 comparison to other municipalities in the same planning region or
108 combined planning region, as applicable, has more ratable real and
109 personal property, a higher median income, a lower percentage of its

110 population that is below the federal poverty threshold or a lower
111 percentage of its population that lives in multifamily housing.

112 (ii) If more than twenty per cent of a municipality's population is
113 below the federal poverty threshold, said secretary shall not allocate any
114 portion of the regional need base of a planning region or combined
115 planning region, as applicable, to such municipality.

116 (iii) For a period of not longer than ten years after a municipality
117 submits its municipal fair share plan to said secretary, in accordance
118 with the provisions of subsection (d) of this section, the municipal fair
119 share base of such municipality shall not exceed twenty per cent of the
120 occupied dwelling units in such municipality.

121 (c) (1) The municipal fair share goal of a municipality shall be derived
122 from the municipal fair share base determined in accordance with the
123 provisions of subsection (b) of this section.

124 (2) (A) Using the figure derived under subdivision (1) of this
125 subsection, each municipality shall calculate its municipal fair share
126 goal in accordance with the following parameters:

127 (i) At most forty per cent of fair share units may be resident-owned
128 affordable housing units;

129 (ii) At least twenty per cent of fair share units shall be conveyed by
130 deeds containing covenants or restrictions which shall require that such
131 units be sold or rented at, or below, prices which will preserve the units
132 as housing for extremely low income households;

133 (iii) At least sixty-five per cent of fair share units shall be conveyed
134 by deeds containing covenants or restrictions which shall require that
135 such units be sold or rented at, or below, prices which will preserve the
136 units as housing for very low income households;

137 (iv) At most fifteen per cent of rental fair share units may be age-
138 restricted units;

139 (v) At least forty per cent of rental fair share units described in
140 subparagraphs (A)(ii) to (A)(iv), inclusive, of this subdivision shall
141 contain two or more bedrooms;

142 (vi) At least twenty-five per cent of rental fair share units described
143 in subparagraphs (A)(ii) to (A)(iv), inclusive, of this subdivision shall
144 contain three or more bedrooms;

145 (vii) At most ten per cent of fair share units described in
146 subparagraphs (A)(i) to (A)(iv), inclusive, of this subdivision may be
147 dwelling units that combine the functionality of multiple rooms into one
148 room, such as studio or efficiency units; and

149 (viii) A substantial portion, as jointly determined by the Secretary of
150 the Office of Policy and Management and the Commissioner of
151 Housing, of fair share units shall be located outside of census tracts in
152 which the percentage of the population that is below the federal poverty
153 threshold is higher than the percentage of such population in such
154 municipality.

155 (B) For each development of fair share units described in
156 subparagraph (A) of this subdivision, such municipality shall (i) require
157 that the developer constructing such fair share units, or the property
158 management company for such units, submit to the municipality and
159 the Commissioner of Housing an affirmative marketing plan that
160 complies with the provisions of subsection (b) of section 8-37ee of the
161 general statutes and any related regulations, and (ii) set forth the process
162 by which such municipality shall verify that such affirmative marketing
163 plan is carried out.

164 (3) In addition to fair share units counted in accordance with the
165 provisions of subdivision (2) of this subsection, fair share units may also
166 be counted in accordance with the following standards:

167 (A) In the case of a dwelling unit in permanent supportive housing
168 that is not an age-restricted unit, each bedroom shall be equivalent to
169 one fair share unit;

170 (B) In the case of a rental dwelling unit that (i) is conveyed by a deed
171 containing covenants or restrictions which shall require that such unit
172 be sold or rented at, or below, a price which will preserve the unit as
173 housing for extremely low income households, (ii) is not an age-
174 restricted unit, and (iii) contains two or more bedrooms, each bedroom
175 shall be equivalent to one fair share unit; and

176 (C) In the case of a rental dwelling unit that (i) is conveyed by a deed
177 containing covenants or restrictions which shall require that such unit
178 be sold or rented at, or below, a price which will preserve the unit as
179 housing for very low income households, (ii) is not an age-restricted
180 unit, and (iii) contains two or more bedrooms, each bedroom shall be
181 equivalent to three-fourths of a fair share unit.

182 (4) No tenant-based government housing vouchers may be used by a
183 municipality to achieve its municipal fair share goal.

184 (5) The municipal fair share goal of each municipality shall be
185 recalculated every ten years in accordance with the provisions of
186 subsection (b) of this section.

187 (d) (1) (A) Not later than October 1, 2023, each municipality in a
188 planning region or combined planning region, as applicable, to which
189 the Secretary of the Office of Policy and Management has allocated any
190 portion of the regional need base of such planning region or combined
191 planning region shall submit to said secretary and the Commissioner of
192 Housing the municipal fair share plan for such municipality. Any such
193 submitted municipal fair share plan shall be considered complete only
194 if it includes a copy of both the municipality's zoning regulations
195 amended, and such municipality's plan of conservation and
196 development updated, in accordance with the provisions of title 8 of the
197 general statutes, to reflect changes necessary for such municipal fair
198 share plan to create a realistic opportunity, as described in this
199 subdivision, to achieve the municipal fair share goal of such
200 municipality.

201 (B) The municipal fair share plan of a municipality shall not be

202 considered to create a realistic opportunity for the achievement of the
203 municipal fair share goal of such municipality unless:

204 (i) In the case of any development of housing affordable to persons
205 and families of low and moderate income, such municipal fair share
206 plan (I) requires that such development be proposed on a site that is
207 capable of being developed in accordance with such municipality's
208 regulations, is not subject to any deed restriction, historic district
209 regulation or inland wetlands regulation and is not already occupied,
210 absent an agreement to move the existing use that is already occupying
211 such site, and (II) proposes a percentage of fair share units that is
212 economically feasible, in accordance with guidance issued jointly by the
213 Secretary of the Office of Policy and Management and the
214 Commissioner of Housing;

215 (ii) In the case of any other development, such municipal fair share
216 plan provides for funding by such municipality if other housing
217 subsidies are not available; and

218 (iii) Such municipal fair share plan includes two-year, three-year,
219 five-year and ten-year development benchmarks that, at least eighteen
220 months before any such benchmark is to be met, (I) designate specific
221 parcels within the municipality for affordable housing development, (II)
222 specify the income level of the population being targeted for any such
223 development, and (III) identify the developer of each such parcel.

224 (2) (A) Each developer of fair share units, or the property
225 management company for such units, shall submit to the municipality
226 and the Commissioner of Housing an affirmative marketing plan, as
227 required by such municipality under subparagraph (B) of subdivision
228 (2) of subsection (c) of this section. Not later than one month after receipt
229 of such submission, said commissioner shall conspicuously post on the
230 Internet web site of the Department of Housing such affirmative
231 marketing plan.

232 (B) Each developer of fair share units, or the property management
233 company for such units, shall certify to the municipality and the

234 Commissioner of Housing, every two years, the income of the residents
235 of such fair share units. Each municipality shall review such
236 certifications to monitor progress toward the achievement of the
237 municipal fair share goal of such municipality.

238 (C) The Commissioner of Housing shall, at least once every five years,
239 conduct a random audit of each municipality's fair share units to
240 determine whether the procedures set forth in the affirmative marketing
241 plan for each development in such municipality are effective and
242 whether the certifications of income are accurate. Said commissioner
243 shall publish the findings of each such audit on the Internet web site of
244 the Department of Housing.

245 (D) In the case of (i) a developer of fair share units, the property
246 management company for such units or a municipality failing to comply
247 with the provisions of this subdivision, or (ii) a showing that the
248 certifications described in subparagraph (B) of this subdivision are
249 inaccurate, the municipal fair share plan of such municipality shall be
250 deemed out of compliance with the provisions of this section and such
251 municipality shall not be entitled to the protections under subsection (e)
252 of this section.

253 (e) (1) (A) A municipality that has timely submitted its complete
254 municipal fair share plan to the Secretary of the Office of Policy and
255 Management in accordance with the provisions of subparagraph (A) of
256 subdivision (1) of subsection (d) of this section may bring an action in
257 the superior court for the judicial district of Hartford, on the land use
258 litigation docket, for a finding that the municipal fair share plan of such
259 municipality creates a realistic opportunity for the achievement of the
260 municipal fair share goal of such municipality in ten or fewer years and
261 a judgment determining that such municipality is in compliance with
262 the provisions of this section, in accordance with the provisions of
263 subdivision (3) of this subsection. An aggrieved party may file a motion
264 to intervene in any such action and oppose such a determination if such
265 aggrieved party believes that the municipal fair share plan of such
266 municipality does not create such a realistic opportunity.

267 (B) If the court makes a finding that the municipal fair share plan of
268 such municipality creates a realistic opportunity for the achievement of
269 the municipal fair share goal of such municipality and enters a judgment
270 determining that such municipality is in compliance with the provisions
271 of this section, such municipality shall not be subject to the provisions
272 of subdivision (2) of this subsection and subsection (f) of this section for
273 ten years or for the duration of such municipal fair share plan, except as
274 provided in subparagraph (C) of this subdivision. Any such judgment
275 by the court shall require that such municipality submit reports, at least
276 annually, to both the court for entry on the docket of the matter and the
277 Secretary of the Office of Policy and Management. Each such report shall
278 set forth all material facts concerning such municipality's progress
279 toward fulfilling the requirements of its municipal fair share plan
280 according to the benchmarks described in subparagraph (B)(iii) of
281 subdivision (1) of subsection (d) of this section. The municipality shall
282 publish each such report on its Internet web site and, upon receipt of
283 such submission, said secretary shall also publish such report on the
284 Internet web site of the Office of Policy and Management.

285 (C) Notwithstanding the court's entry of a judgment of compliance
286 pursuant to subparagraph (B) of this subdivision, such court shall
287 continue to exercise jurisdiction over the matter (i) to receive and
288 consider reports submitted by the municipality under said
289 subparagraph, (ii) to hear any motion brought by an aggrieved party
290 that such municipality has failed to fulfill the requirements of its
291 municipal fair share plan according to the benchmarks described in
292 subparagraph (B)(iii) of subdivision (1) of subsection (d) of this section
293 or otherwise materially failed to comply with such municipal fair share
294 plan, to adjudicate any such motion and to order such relief as such
295 court deems appropriate to ensure prompt compliance with the
296 provisions of this section and remedy any such failure, and (iii) to grant
297 an extension of not more than ten years to a municipality, in accordance
298 with the provisions of subparagraph (A) of subdivision (4) of this
299 subsection, for the purpose of fulfilling such requirements, when such
300 court finds the interests of justice so require.

301 (2) (A) In the case of a municipality that has timely submitted its
302 complete municipal fair share plan to the Secretary of the Office of
303 Policy and Management in accordance with the provisions of
304 subparagraph (A) of subdivision (1) of subsection (d) of this section and
305 for which a judgment of compliance has not been entered pursuant to
306 subparagraph (B) of subdivision (1) of this subsection, or has not been
307 sought by such municipality, any aggrieved party may bring an action
308 in the superior court for the judicial district of Hartford, on the land use
309 litigation docket, for a finding that the municipal fair share plan of such
310 municipality does not create a realistic opportunity for the achievement
311 of the municipal fair share goal of such municipality in ten or fewer
312 years and a judgment determining that such municipality is not in
313 compliance with the provisions of this section.

314 (B) (i) If such court finds that such municipal fair share plan does not
315 create such a realistic opportunity, such court shall enter a judgment of
316 noncompliance with the provisions of this section and order such relief
317 as provided in subparagraph (C) of subdivision (4) of this subsection.

318 (ii) If such court finds that such municipal fair share plan creates such
319 a realistic opportunity, such court shall enter a judgment of compliance
320 with the provisions of this section and shall continue to exercise
321 jurisdiction over the matter pursuant to subparagraph (C) of
322 subdivision (1) of this section.

323 (3) In determining that a municipality is in compliance with the
324 provisions of this section, the court shall consider the following factors
325 indicating whether the municipal fair share plan of such municipality
326 creates a realistic opportunity for the achievement of its municipal fair
327 share goal during the ten-year period following the submission of such
328 municipal fair share plan to the Secretary of the Office of Policy and
329 Management, or such alternative time period as the court may authorize
330 pursuant to this section:

331 (A) Substantial evidence of the realistic potential for the development
332 of the number of fair share units in such municipality necessary to
333 achieve its municipal fair share goal;

334 (B) Bona fide amendments to zoning regulations, including, but not
335 limited to, the adoption of inclusionary zoning provisions, as described
336 in section 8-2i of the general statutes, and other changes to policies and
337 procedures that create a realistic opportunity for the development of fair
338 share units required under the municipal fair share base;

339 (C) A preponderance of evidence that such regulations, policies and
340 procedures demonstrate realistic potential for the development of
341 affordable housing;

342 (D) Memoranda of understanding or other similar agreements
343 between such municipality and any developer seeking to construct
344 affordable housing within such municipality, which memoranda or
345 agreements identify (i) specific parcels to be developed, and (ii) detailed
346 affordability components and number of bedrooms to be counted as fair
347 share units;

348 (E) Memoranda of understanding or other similar agreements
349 between such municipality and any developer seeking to construct
350 affordable housing within such municipality, which memoranda or
351 agreements concern the transfer of municipally-owned property;

352 (F) Applications submitted by developers seeking to construct
353 affordable housing in such municipality for the federal Low Income
354 Housing Tax Credit program under 26 USC 42, as amended from time
355 to time, or other state or federal affordable housing funding sources, as
356 well as evidence of such municipality's support, including any zoning
357 approval, for any such application;

358 (G) Efforts by the municipality to secure funding to expand sewer
359 and other infrastructure related to the development of affordable
360 housing, including, but not limited to, grant applications and bonding
361 measures;

362 (H) A finding by the Commissioner of Housing through a random
363 audit conducted pursuant to subparagraph (C) of subdivision (2) of
364 subsection (d) of this section that developers seeking to construct

365 affordable housing in such municipality are operating under current
366 and effective affirmative marketing plans;

367 (I) Evidence of such municipality's commitment of municipally-
368 owned property and other municipal resources to support the
369 achievement of the municipal fair share goal of such municipality; and

370 (J) Any provision of the municipal fair share plan of such
371 municipality, or any other evidence, that such court may deem relevant
372 in making the determination under this subdivision.

373 (4) (A) (i) In any action brought under this subsection for a
374 determination of a municipality's compliance with this section, the court
375 may grant an extension of not more than ten years beyond the duration
376 of the municipal fair share plan of such municipality if such
377 municipality demonstrates that creating a realistic opportunity to
378 achieve its municipal fair share goal would be infeasible without
379 substantial additional infrastructure, not including for public
380 transportation, that would be required to avoid risks to public health or
381 address physical infeasibility, as determined by such court. The
382 municipality shall demonstrate the infeasibility of creating such a
383 realistic opportunity with specific evidence of any such risk to public
384 health or physical infeasibility.

385 (ii) In any action brought under this subsection for a determination
386 of a municipality's compliance with this section, the court may grant a
387 reduction in the municipal fair share goal of such municipality if such
388 municipality establishes by clear and convincing evidence,
389 substantiated by expert scientific proof, that (I) such reduction is
390 necessary due to limitations resulting from the topography of the
391 municipality or in order to protect extraordinary natural resources, such
392 as any rare or unique natural phenomena, and (II) an extension beyond
393 the duration of the municipal fair share plan of such municipality would
394 not be sufficient to address such limitations or risk to such natural
395 resources.

396 (B) In any action brought under this subsection for a determination

397 of a municipality's compliance with this section, such municipality shall
398 bear the burden of establishing that its municipal fair share plan satisfies
399 the standard set forth in subparagraph (B) of subdivision (1) of
400 subsection (d) of this section.

401 (C) In any action brought under this subsection for a determination
402 of a municipality's compliance with this section, or on motion filed
403 under subparagraph (A) of subdivision (1) of subsection (e) of this
404 section, if the court finds that the municipal fair share plan of a
405 municipality fails to satisfy the standard set forth in subparagraph (B)
406 of subdivision (1) of subsection (d) of this section, (i) such court may
407 order payment of the aggrieved party's attorneys' costs and fees and
408 such other relief as such court deems appropriate to ensure prompt
409 compliance with this section and remedy any such failure, (ii) in the case
410 of an aggrieved party described under subparagraph (A) of subdivision
411 (3) of subsection (a) of this section, such court may issue an order
412 requiring that such municipality's planning commission, zoning
413 commission or combined planning and zoning commission, as
414 applicable, grant approval to allow a development to proceed, unless
415 such municipality demonstrates to the court, and such court finds, that
416 such development would present a significant risk to public health or
417 safety and could not be reasonably modified to avoid such risk, and (iii)
418 such court shall continue to exercise jurisdiction over the matter to
419 enforce any judgment or order of such court and receive and consider
420 any reports that such court may require such municipality to submit.

421 (f) (1) In the case of a municipality that fails to submit a municipal fair
422 share plan to the Secretary of the Office of Policy and Management, in
423 accordance with the provisions of subsection (d) of this section, such
424 municipality shall not be eligible to receive a certificate of affordable
425 housing completion under subdivision (4) of subsection (l) of section 8-
426 30g of the general statutes until not less than two years after the
427 submission of such municipal fair share plan.

428 (2) (A) Any aggrieved party may bring an action in the superior court
429 for the judicial district of Hartford, on the land use litigation docket, for

430 a judgment determining that a municipality is not in compliance with
431 the provisions of this section and an order of such relief as such court
432 deems appropriate to ensure prompt compliance with the provisions of
433 this section, including, but not limited to, temporary injunctive relief,
434 timely creation and submission of a municipal fair share plan that
435 complies with the provisions of this section and the appointment of one
436 or more independent qualified individuals with expertise in land use to
437 create a municipal fair share plan for such municipality. If such
438 aggrieved party is successful in any such action, such aggrieved party
439 shall be awarded any attorneys' costs and fees, including, but not
440 limited to, the costs of appellate review, remands or other judicial
441 proceedings as well as any monetary losses attributable to such
442 municipality's failure to create a municipal fair share plan, such as any
443 lost opportunity to develop fair share units for sale.

444 (B) An aggrieved party described under subparagraph (A) of
445 subdivision (3) of subsection (a) of this section may file an application
446 with the superior court for the judicial district of Hartford, on the land
447 use litigation docket, for an approval to allow a development to proceed.
448 If, on such application, the court finds that (i) such development is not
449 age restricted, (ii) at least fifteen per cent of the dwelling units in such
450 development are affordable to very low income households, (iii) at least
451 forty per cent of such affordable dwelling units have two or more
452 bedrooms, and (iv) at least twenty-five per cent of such affordable
453 dwelling units have three or more bedrooms, such court may order that
454 such municipality's zoning commission, planning commission or
455 combined planning and zoning commission, as applicable, grant
456 approval to allow such development to proceed, unless such
457 municipality demonstrates that such development would present a
458 significant risk to public health or safety and could not be reasonably
459 modified to avoid such risk.

460 (g) (1) Except as provided in subdivision (2) of this section, whenever
461 the Secretary of the Office of Policy and Management or the
462 Commissioner of Housing, or both, fail to perform any duty required of
463 said secretary or commissioner, as applicable, under the provisions of

464 this section, any aggrieved party described under subparagraphs (A) to
465 (C), inclusive, of subdivision (3) of subsection (a) of this section may
466 bring an action in the superior court for the judicial district of Hartford,
467 on the land use litigation docket, for an order (A) that said secretary or
468 commissioner, as applicable, comply with the provisions of this section,
469 and (B) of such relief as such court deems necessary or appropriate to
470 ensure prompt compliance with the provisions of this section, including,
471 but not limited to, permanent or temporary injunctive relief and
472 attorneys' costs and fees.

473 (2) In the case of any action brought pursuant to subdivision (1) of
474 this subsection in which multiple aggrieved parties described under
475 subparagraph (B) of subdivision (3) of subsection (a) of this section file
476 motions to intervene in such action, the court may limit the number of
477 intervenors in such action if such court makes a finding on the record
478 that such intervenor or intervenors adequately represent the public
479 interest and the interests of lower and moderate income households in
480 a planning region or combined planning region, as applicable, in
481 accordance with the provisions of sections 9-7 to 9-10, inclusive, of the
482 Connecticut Practice Book.

483 (h) (1) In the case of a municipality for which the municipal fair share
484 base has been reduced, other than in accordance with the provisions of
485 subparagraph (B)(iii) of subdivision (2) of subsection (b) of this section,
486 the number of fair share units represented by such reduction shall be
487 allocated to each other municipality in the same planning region or
488 combined planning region, as applicable, in proportion to the regional
489 need base excluding the municipality for which the municipal fair share
490 base has been reduced.

491 (2) (A) Any need for fair share units identified through the
492 assessment completed by the Secretary of the Office of Policy and
493 Management, in consultation with the Commissioner of Housing,
494 pursuant to subdivision (1) of subsection (b) of this section that is unmet
495 after the allocation of such units to municipalities shall be met by the
496 state through (i) the issuance of new mobile housing vouchers to

497 address half of such unmet need, and (ii) the offering of subsidies for
498 the construction of new affordable housing in which thirty per cent of
499 the dwelling units are affordable to very low income households.

500 (B) (i) Only dwelling units affordable to very low income households
501 may count toward the state's new construction obligation under
502 subparagraph (A) of this subdivision. Dwelling units constructed under
503 said subparagraph shall not be age-restricted units and may be resident-
504 owned affordable housing units.

505 (ii) For any new construction under subparagraph (A) of this
506 subdivision, a developer seeking to construct affordable housing in a
507 municipality may file an application with the superior court for the
508 judicial district of Hartford, on the land use litigation docket, for an
509 approval to allow a development to proceed. If, on such application,
510 such court finds such development furthers the purposes of this section,
511 such court may issue an order requiring that such municipality's zoning
512 commission, planning commission or combined planning and zoning
513 commission, as applicable, grant approval to allow such development
514 to proceed.

515 (C) No such construction subsidy described in subparagraph (A) of
516 this subdivision may be used (i) within a municipality in which twenty
517 per cent or more of such municipality's population is below the federal
518 poverty threshold, or (ii) within a census tract in which the percentage
519 of the population that is below the federal poverty threshold is higher
520 than the percentage of such population in the state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2021	New section

Statement of Legislative Commissioners:

In Subsecs. (a)(3)(A), (a)(12) and (c)(2)(A), "fair share goal" was changed to "municipal fair share goal" for consistency; in Subsec. (c)(2)(A)(ii) and (iii), "such unit" was changed to "such units" for accuracy; in Subsec. (c)(3), "permanent supportive dwelling unit" was changed to "dwelling unit in permanent supportive housing" in Subpara. (A) for consistency,

and Subparas. (A) to (C) were reworded for clarity and consistency; in Subsec. (d)(2)(B), "residents of such fair units" was changed to "residents of such fair share units" for consistency; in Subsec. (e)(1), "web site of such office" was changed to "web site of the Office of Policy and Management" in Subpara. (B) for clarity, and "said subdivision" was changed to "said subparagraph" in Subpara. (C) for accuracy; in Subsec. (e)(2)(A), "subdivision (1) of this section" was changed to "subdivision (1) of this subsection" for accuracy; in Subsec. (e)(3)(H), "subsection (c)" was changed to "subsection (d)" for accuracy; in Subsec. (g), "subdivision (2) of subsection (a)" was changed to "subdivision (3) of subsection (a)" throughout for accuracy; and in Subsec. (h)(2)(B)(i), "age restricted" was changed to "age-restricted units" for consistency.

PD *Joint Favorable Subst.*

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 22 \$	FY 23 \$	The Out Years
Treasurer, Debt Serv.	GF - Cost	See Below	See Below	See Below
Policy & Mgmt., Off.; Department of Housing	GF - Cost	Up to 200,000	Up to 150,000	Up to 412,000 annually
Department of Housing	GF - Potential Cost	None	None	Significant
State Comptroller - Fringe Benefits ¹	GF - Cost	None	Up to 80,000	Up to 170,000 annually

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 22 \$	FY 23 \$
Various Municipalities	STATE MANDATE ² - Potential Cost	See Below	See Below

Explanation

The bill results in 1) state administrative costs, 2) costs to state affordable housing programs, and 3) potential municipal administrative

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 41.3% of payroll in FY 22 and FY 23.

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.

costs. These costs are described below.

The bill requires the Office of Policy and Management (OPM) and Department of Housing (DOH) to assess the statewide unmet need for affordable housing, and to distribute that unmet need among planning regions, and municipalities within those regions. The bill establishes a process (administered by DOH and OPM) by which municipalities must meet their allocated unmet need. If after this allocation process, there is still unmet need, the bill requires DOH to meet that unmet need via housing vouchers and construction subsidies.

State and Municipal Administrative Costs

It is anticipated that OPM and DOH will cumulatively need up to five new positions to administer the bill's provisions. As an illustration, there is an annualized cost of up to \$582,000 (\$412,000 for salaries and \$170,000 for fringe) associated with three housing specialists, one planning specialist and a community development director. It is anticipated that this annualized cost would first be incurred in FY 24, but that costs of up to \$230,000 could be incurred in FY 23, depending on the start date of the new employees.

It is not clear which positions would be established within each agency. The bill designates some responsibilities to both agencies while designating other responsibilities specifically to one. For example, the bill requires both agencies to determine the allocation of each municipality's fair share base, but only requires DOH to perform random audits of municipal fair share units.

The bill is additionally anticipated to result in up to \$200,000 in consultant costs to assist OPM and DOH in establishing the bill's provisions.

The bill requires municipalities to develop plans for achieving the local unmet need. If a small municipality does not currently have the resources to develop and administer such a plan, it may incur staffing or consulting costs to achieve this requirement.

The bill may result in the expanded use of the General Obligation (GO) bond-funded Flexible Housing program to subsidize the development of affordable housing. As of April 20, 2021, unallocated bond balance available to the program is approximately \$163 million. The bill does not change GO bond authorizations relevant to the program. Future General Fund debt service costs may be incurred sooner under the bill to the degree that it causes authorized GO bond funds to be expended more rapidly than they otherwise would have been.

The bill allows aggrieved parties to bring an action in Superior Court over alleged violations which has no fiscal impact. The court system disposes of over 400,000 cases annually and the number of cases is not anticipated to be great enough to need additional resources.

State Programmatic Cost

It is unknown how much housing need will fall to the state, but state costs could be significant. Additionally, it is unclear when the state would be responsible for providing the vouchers and subsidies. Tenant-based housing vouchers for families under the state's Rental Assistance Program cost approximately \$11,000 per year per household. The average subsidy per unit of affordable housing that DOH provided in FY 20 was \$60,672.³

As an illustration: 130,955 households in Connecticut are both extremely low income and pay more than 50 percent of their annual income for housing.⁴ If the state was responsible for providing housing for 5% of the above cited households, it would incur a cost of \$36 million per year just for mobile housing vouchers.

The Out Years

State administrative costs would continue into the future subject to

³ Table 3 in the Department of Housing's FY 20 Annual Report

⁴ Comprehensive Housing Affordability Strategy Data for Connecticut, 2013-2017. The bill allows DOH and OPM to use this data to determine unmet housing need.

changes in wages or fringe benefits for state employees.

State programmatic costs will either start or continue in the future subject to the amount of unallocated fair share housing units, the actual costs to subsidize that housing, and the terms of any bonds issued.

OLR Bill Analysis

sHB 6611

AN ACT CONCERNING A NEEDS ASSESSMENT AND OTHER POLICIES REGARDING AFFORDABLE HOUSING AND DEVELOPMENT.

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SUMMARY

§ 1(b) — NEEDS ASSESSMENT AND DISTRIBUTION OF RESPONSIBILITY

Requires a statewide affordable housing needs assessment; requires the unmet housing need to be distributed among planning regions (establishing the regional need base) and then further distributed among municipalities, considering equalized ratables, resident incomes, and multifamily housing stock (establishing the municipal fair share base)

§ 1(h) — STATE RESPONSIBILITY FOR UNALLOCATED REGIONAL BASE

Makes the state responsible for meeting housing needs that cannot be met locally; specifies the state must meet this obligation with tenant-based vouchers or new construction subsidies

§ 1(c) — MUNICIPAL FAIR SHARE GOAL

Requires municipalities, using their fair share base, to determine what types of units they must provide development opportunities for; establishes requirements that prioritize rental units, non-age-restricted units, and units serving the lowest income households

§ 1(d) — MUNICIPAL FAIR SHARE PLAN

Requires municipalities to develop a plan, including updating local zoning regulations, to provide a realistic opportunity for achieving their fair share goal; plan must include two-year, three-year, five-year, and 10-year housing development benchmarks

§ 1(a) — “AGGRIEVED PARTIES” DEFINED

Defines individuals and entities that can seek judicial review of a municipality’s compliance with the bill’s requirements and court-ordered approval of a proposed development; specifies who has standing to intervene in an action about municipal compliance

§ 1(e) — JUDICIALLY-GRANTED SAFE HARBOR for municipalities

Municipalities that comply with the planning requirement can ask the court to grant them immunity from certain court actions (i.e., safe harbor); allows aggrieved parties to intervene in these proceedings; requires municipalities with safe harbor status to report at least annually to the court on their continued progress

§ 1(e) — FACTORS for court review of COMPLIANCE

Specifies numerous factors a court must consider when determining whether a municipality complies with the bill's fair share planning requirement (and is therefore eligible for the safe harbor)

§ 1(e) — ACTIONS CONCERNING MUNICIPALITIES WITH A PLAN that lack SAFE HARBOR STATUS

Allows aggrieved parties to enforce the bill's provisions against a municipality that submitted a fair share plan but does not have safe harbor status

§ 1(f) — ACTIONS BROUGHT BY AGGRIEVED PARTY AGAINST MUNICIPALITY WITHOUT A PLAN

Lists relief a court can grant an aggrieved party; requires the court to award a successful aggrieved party costs and monetary losses attributable to the failure to create a fair share plan

§ 1(f) — NO MORATORIUM FOR MUNICIPALITIES THAT DO NOT SUBMIT PLANS

Prohibits DOH from certifying a municipality's qualification for a moratorium under CGS § 8-30g if it has not submitted a fair share plan

§ 1(e) & (h) — EXTENSION OF TIME AND GOAL REDUCTION

Grants the court authority to extend the amount of time a municipality has to achieve its goal if infrastructure is insufficient; authorizes the court to reduce the goal under limited circumstances related to topography and natural resources or phenomena; if a reduction occurs, redistributes units throughout the planning region

§ 1(g) — RECOURSE IF STATE FAILS TO PERFORM DUTIES

Allows certain aggrieved parties to bring an action asking the court to compel the OPM secretary or DOH commissioner to comply with the bill's provisions

§ 1(c) & (d) — AFFIRMATIVE MARKETING PLAN AND INCOME CERTIFICATIONS

Requires the entity managing a property to implement affirmative fair housing marketing plans; requires income certification submissions; requires DOH to audit submissions; makes municipalities jointly responsible for ensuring compliance

BACKGROUND

Provides information on affirmative fair housing marketing plans and inclusionary zoning

SUMMARY

The bill requires the Office of Policy and Management (OPM) secretary, in consultation with the Department of Housing (DOH) commissioner, by October 1, 2022, to assess the statewide need for affordable housing; distribute the unmet need among planning regions; and then further distribute it among municipalities in each region. The bill specifies the factors under which these distributions must be made. If the statewide need cannot be fully met by changes at the local level, the state is responsible for providing housing vouchers or construction

subsidies to ensure that the needed units are made available.

The bill requires each municipality to determine the number and type of units that need to be built to meet its assigned goal, using parameters the bill sets. The bill requires municipalities to prioritize rental units, non-age-restricted units, and units serving the lowest income households. Municipalities must develop a 10-year plan for meeting the goal. In limited circumstances, the goal may be reduced, or the deadline extended, if meeting them is infeasible. Newly developed units must be affirmatively marketed to ensure a diverse population of residents.

The bill gives the Superior Court's Hartford judicial district land use litigation docket responsibility for adjudicating claims brought by private parties (e.g., nonprofits and developers) concerning state and municipal compliance. Municipalities that provide a realistic opportunity for developers to build units that would help them meet their goal are subject to more limited court oversight. If the court determines a municipality is not in compliance, it can, among other things, order the local zoning authority to approve a development or appoint an expert to form a plan on a municipality's behalf.

EFFECTIVE DATE: October 1, 2021

§ 1(b) — NEEDS ASSESSMENT AND DISTRIBUTION OF RESPONSIBILITY

Requires a statewide affordable housing needs assessment; requires the unmet housing need to be distributed among planning regions (establishing the regional need base) and then further distributed among municipalities, considering equalized ratables, resident incomes, and multifamily housing stock (establishing the municipal fair share base)

The bill requires the OPM secretary, in consultation with the DOH commissioner, by October 1, 2022, to assess the statewide need for affordable housing and then allocate responsibility for meeting that need to each planning region (for these purposes, the regions represented by the Metropolitan Council of Governments (COG) and Western COG are grouped together as one region). This is the "regional need base" determination under the bill, which is the distribution of responsibility for "fair share units" by region.

Regional Need Base

The bill requires the OPM secretary and DOH commissioner, by October 1, 2022, to allocate the statewide need for fair share units by region. The regional need base is based on:

1. the Comprehensive Housing Affordability Strategy data set published by the U.S. Department of Housing and Urban Development (HUD), or a similar source; and
2. the number of people or families in the state with an income of 30% or less of the area median income (AMI) who spend more than 50% of their annual income on housing, as determined by DOH.

Municipal Fair Share Base

Also, by October 1, 2022, the OPM secretary and DOH commissioner must allocate a portion of each regional need base to each municipality in the region (i.e., establish the municipal fair share base). No allocation can be made to a municipality in which more than 20% of the population is below the federal poverty threshold.

The allocation must be made considering:

1. the municipality's ratable real and personal property (residential, apartment, commercial, industrial, public utility, and vacant land), as reflected by its equalized net grand list, as determined for purposes of calculating educational equalization grants; and
2. based on decennial U.S. Census data or a similar source, (A) median income differences among municipalities in the region and (B) the percentage of each municipality's population that is below the federal poverty threshold or that lives in "multifamily housing" (i.e., a building with at least three units).

A municipality's fair share base must be increased if, in comparison to other municipalities in the region, it has more ratable real and personal property; a higher median income; a lower percentage of its

population below the federal poverty threshold; or a lower percentage of its population living in multifamily housing.

The bill specifies that, for up to 10 years after a municipality submits its fair share plan (see below), its fair share base cannot exceed 20% of the occupied dwelling units in the municipality (i.e., a municipality does not need to increase its occupied housing stock by more than 20% in a 10-year period).

§ 1(h) — STATE RESPONSIBILITY FOR UNALLOCATED REGIONAL BASE

Makes the state responsible for meeting housing needs that cannot be met locally; specifies the state must meet this obligation with tenant-based vouchers or new construction subsidies

If there are still unallocated units (i.e., an unmet need) after the OPM secretary and DOH commissioner allocate a portion of each region's regional need base to each municipality in the region, then the state must meet the need by:

1. issuing new mobile (tenant-based) housing vouchers to address half of the unmet need and
2. offering subsidies for the construction of new affordable housing in which 30% of the dwelling units are affordable to very low-income households and are not age-restricted.

The bill specifies that only dwelling units affordable to very low-income households count toward the state's new construction obligation. But the bill also specifies that the units may be resident-owned "affordable housing units."

Under the bill, an "affordable housing unit" is a dwelling unit conveyed by a deed containing a covenant or restriction ("restrictive deed") that requires that the unit be sold or rented at or below a price that will preserve the unit as housing for a person or family whose income is no more than 80% of the lesser of the state median income (SMI) or AMI, as determined by HUD.

Under the bill, “very low income” households are those whose income is no more than 50% of the lesser of the SMI or AMI, as determined by HUD.

The bill further prohibits the state from meeting its obligation by providing subsidies for new construction in:

1. a municipality in which at least 20% of the population is below the federal poverty threshold or
2. a census tract in which the percentage of the population that is below the federal poverty threshold is higher than the percentage of such population in the state.

The bill does not specify whether, aside from the above restrictions, the units must be built in the region with unmet need if the state is meeting an unmet need through new construction subsidies.

The bill allows developers building new units using these state construction subsidies to seek a court order providing for local planning or zoning approval, as applicable. (The bill does not provide for similar relief from other local oversight such as inland wetlands review.) Developers must apply to the Superior Court’s Hartford judicial district land use litigation docket (“land use litigation docket”). The court does not need to find the proposed development to be in compliance with local regulations; it must only determine whether the project furthers the bill’s purposes.

§ 1(c) — MUNICIPAL FAIR SHARE GOAL

Requires municipalities, using their fair share base, to determine what types of units they must provide development opportunities for; establishes requirements that prioritize rental units, non-age-restricted units, and units serving the lowest income households

After the state establishes the municipal fair share base for each municipality, as applicable, each municipality must calculate its “fair share goal.” The goal must be formulated under the bill’s parameters, which require municipalities to prioritize rental units, non-age-restricted units, and units serving the lowest income households. Certain unit types count as more than one unit, allowing a municipality

to plan for fewer total dwelling units while meeting their fair share base quota.

The bill requires the municipal fair share goal to be recalculated every 10 years according to the procedure the OPM secretary and DOH commissioner use to calculate the regional and municipal fair share bases. (It is unclear what this provision requires and who must do the recalculation.)

Caps on Unit Types

The fair share goal must be set so that no more than (1) 40% of fair share units are resident-owned affordable housing units (i.e., at least 60% of the affordable housing units must be rentals) and (2) 15% of rental units are “age restricted units” (i.e., units in which no more than one resident under age 55 may live).

Minimum Unit Type Requirements

The fair share goal must provide for at least:

1. 20% of the fair share units to be conveyed by restrictive deeds preserving the units for “extremely low-income” households (i.e., a person or family whose income is no more than 30% of the lesser of the SMI or AMI, as determined by HUD) and
2. 65% of the fair share units to be conveyed by restrictive deeds preserving the units for “very low-income” households (i.e., income is no more than 50% of the lesser of the SMI or AMI).

Additionally, the bill requires certain percentages of age-restricted rental units and rental units for extremely and very low-income households to meet certain standards. Specifically, (1) at least 40% of the units must contain at least two bedrooms; (2) at least 25% of the units must contain at least three bedrooms; and (3) no more than 10% of the units can be studio or efficiency units.

Bonus Points for Bedrooms in Certain Unit Types

The bill specifies that the number of units required by the municipal

fair share base quota can be met with fewer units if the unit types built meet certain specifications. These “bonus” points are awarded to each bedroom in a qualifying unit.

Each bedroom in a rental unit that is conveyed by a restrictive deed preserving the unit for very low-income households qualifies for three-fourths of a bonus point if the unit is not age restricted and has at least two bedrooms.

Each bedroom in the following unit types qualifies as one additional fair share unit (i.e., one bonus point): (1) each bedroom in a rental unit that was conveyed by a restrictive deed preserving the unit for extremely low-income households, if the unit is not age restricted and has at least two bedrooms, and (2) each bedroom in non-age-restricted permanent supportive housing.

Under the bill, “supportive housing” is affordable housing for people or families who qualify for assistance under a law requiring state agencies to establish affordable, permanent, supportive housing initiatives (CGS § 17a-485c).

Unit Location

Under the bill, a substantial portion of fair share units, as determined by the OPM secretary and the DOH commissioner, must be located in census tracts where the percentage of the population below the federal poverty threshold is no higher than the overall percentage in the municipality.

§ 1(d) — MUNICIPAL FAIR SHARE PLAN

Requires municipalities to develop a plan, including updating local zoning regulations, to provide a realistic opportunity for achieving their fair share goal; plan must include two-year, three-year, five-year, and 10-year housing development benchmarks

The bill requires each municipality that has been allocated part of the regional need base to submit, by October 1, 2023, a municipal fair share plan to the OPM secretary and DOH commissioner.

Under the bill, a “municipal fair share plan” is the municipality’s plan to achieve its municipal fair share goal. To be considered complete, it

must include the following:

1. two-year, three-year, five-year, and 10-year development benchmarks and
2. amended zoning regulations and an updated local plan of conservation and development (amended to create a “realistic opportunity” (see below) for achieving the municipality’s fair share goal).

Components for Creating Realistic Opportunity for Achievement

A municipal fair share plan cannot be considered to create a “realistic opportunity” for the achievement of the municipal fair share goal unless it:

1. in the case of an affordable housing development for low- and moderate-income people or families (the bill does not define these terms), requires that the development be proposed on a site that is (A) capable of being developed in accordance with such municipality’s regulations; (B) not subject to any deed restriction, historic district regulation, or inland wetlands regulation; and (C) not already occupied (absent an agreement to move the existing use occupying the site);
2. in the case of an affordable housing development for low- and moderate-income people or families, proposes a percentage of fair share units that is economically feasible, in accordance with guidance issued jointly by the OPM secretary and DOH commissioner;
3. in the case of any other development, provides for municipal funding if other housing subsidies are not available (the bill specifies that municipalities cannot use tenant-based housing vouchers to meet their goal); and
4. includes two-year, three-year, five-year, and 10-year development benchmarks that, at least 18 months before any

such benchmark is to be met, (A) designate specific parcels within the municipality for affordable housing development; (B) specify the income level of the population being targeted for any such development; and (C) identify the developer of each of these parcels.

The bill specifies additional factors that the court must consider if it is determining whether a municipality's fair share is in compliance with the bill's provisions (see § 1(e) below, "FACTORS FOR COURT REVIEW OF COMPLIANCE").

§ 1(a) — "AGGRIEVED PARTIES" DEFINED

Defines individuals and entities that can seek judicial review of a municipality's compliance with the bill's requirements and court-ordered approval of a proposed development; specifies who has standing to intervene in an action about municipal compliance

Under the bill, an "aggrieved party" is:

1. a developer seeking to construct dwelling units that would count toward a municipality's municipal fair share goal,
2. a nonprofit organization advocating (A) for a municipality's compliance with its fair share requirements or (B) on behalf of lower- and moderate-income households in a planning region,
3. an individual who would qualify for a fair share unit, or
4. a municipality in the same planning region that (A) is not required to create a fair share plan or (B) has safe harbor status and is meeting relevant benchmarks.

§ 1(e) — JUDICIALLY-GRANTED SAFE HARBOR FOR MUNICIPALITIES

Municipalities that comply with the planning requirement can ask the court to grant them immunity from certain court actions (i.e., safe harbor); allows aggrieved parties to intervene in these proceedings; requires municipalities with safe harbor status to report at least annually to the court on their continued progress

If a municipality submits its fair share plan on time and with the required components, and the plan creates a realistic opportunity for the achievement of the municipal fair share goal within 10 years (see § 1(d))

above, “*Components for Creating Realistic Opportunity for Achievement*”), the Superior Court may find that the municipality’s compliance qualifies it for the bill’s safe harbor provisions (see description of required considerations, below). For this protection, a municipality must bring an action in Superior Court, seeking a compliance determination on the land use litigation docket.

The safe harbor generally prevents aggrieved parties from bringing an action asking the court to find that the municipality is failing to create a realistic opportunity for the needed housing to be built. Under the bill, the safe harbor is generally effective for up to 10 years or the duration of the fair share plan (presumably the shorter of the two).

Interventions by an Aggrieved Party

An aggrieved party may intervene in the action to oppose the court’s compliance determination if the intervenor believes that the municipal fair share plan does not create a realistic opportunity for the achievement of the municipal fair share goal within 10 years.

Reporting Requirement and Continued Jurisdiction

If a court grants the safe harbor, it must require the municipality to submit reports, at least annually, to the court and the OPM secretary. Each report must contain all material facts about the municipality’s progress toward fulfilling its fair share plan, including the benchmarks the plan set. Both the municipality and OPM secretary must publish the reports on their respective websites.

The bill specifies that the court continues to exercise jurisdiction over the matter, even after the safe harbor is granted, and therefore it can:

1. receive and consider reports submitted by the municipality;
2. hear any motion brought by an aggrieved party claiming the municipality has (A) failed to fulfill the requirements of its municipal fair share plan according to the benchmarks set or (B) otherwise materially failed to comply with the plan;

3. adjudicate this motion and order relief it deems appropriate to ensure prompt compliance and remedy any failure; and
4. grant an extension for achieving the plan of up to 10 years, as described below, if it finds the interests of justice require.

§ 1(e) — FACTORS FOR COURT REVIEW OF COMPLIANCE

Specifies numerous factors a court must consider when determining whether a municipality complies with the bill's fair share planning requirement (and is therefore eligible for the safe harbor)

Under the bill, if a court is considering whether a municipality is complying with the bill's requirements for creating a realistic opportunity for achieving its fair share goal, it must consider these factors:

1. substantial evidence of the realistic potential for developing the necessary number of fair share units;
2. bona fide amendments to zoning regulations, including the adoption of inclusionary zoning provisions (see BACKGROUND) and other changes to policies and procedures that create a realistic opportunity for the development of required fair share units;
3. a preponderance of evidence that these regulations, policies, and procedures demonstrate realistic potential for the development of affordable housing;
4. memoranda of understanding or other similar agreements between a municipality and any developer seeking to construct affordable housing within such municipality, which (A) identify specific parcels to be developed and detailed affordability components and the number of bedrooms to be counted as fair share units and (B) concern the transfer of municipally-owned property;
5. developers' applications for the federal Low-Income Housing Tax Credit program or other state or federal affordable housing

- funding sources, as well as evidence of the municipality's support of the application (including any zoning approval);
6. efforts by the municipality to secure funding to expand sewer and other infrastructure related to affordable housing development, including grant applications and bonding measures;
 7. a finding by the DOH commissioner, through a random audit, that developers seeking to construct affordable housing in the municipality are operating under current and effective affirmative marketing plans;
 8. evidence that the municipality committed municipally-owned property and other municipal resources to support achieving the municipal fair share goal; and
 9. any provision of the municipal fair share plan or any other evidence that the court deems relevant.

Municipal Burden of Proof

In an action to determine a municipality's compliance with the bill's provisions, a municipality bears the burden of establishing that its fair share plan contains the required components (e.g., it includes developable sites; the municipality has provided funding if necessary; and the required percentage of fair share units is economically feasible, as described above; see "*Components for Creating Realistic Opportunity for Achievement*").

§ 1(e) — ACTIONS CONCERNING MUNICIPALITIES WITH A PLAN THAT LACK SAFE HARBOR STATUS

Allows aggrieved parties to enforce the bill's provisions against a municipality that submitted a fair share plan but does not have safe harbor status

If a municipality has complied with the planning requirement, including submitting it to the OPM secretary, but has not sought safe harbor status or it has not yet been granted, then an aggrieved party can bring an action in Superior Court on the land use litigation docket for a determination that the plan does not create a realistic opportunity for

achieving the municipality's fair share goal in 10 or fewer years and therefore is not in compliance.

If the municipality is deemed in compliance, it is granted the same safe harbor as other municipalities found in compliance and is subject to the same continued judicial oversight (including the reporting requirement).

If the municipality is found to be out of compliance, the court can (1) order payment of the aggrieved party's attorney's costs and fees and (2) provide other relief as deemed appropriate to ensure prompt compliance and remedy any failure. If the aggrieved party is a prospective developer, the court may issue an order requiring that the municipality's planning commission, zoning commission, or combined planning and zoning commission, as applicable, grant the approval necessary to allow the development to proceed. The court cannot order this approval if the municipality demonstrates that the development would present a significant risk to public health or safety and could not be reasonably modified to avoid this risk. (Different requirements apply to actions brought by developers about a municipality that did not submit a plan (see § 1(f) below, "*Prospective Developer Seeking Project Approval*").

Regardless of the judgement or remedy, the bill specifies that the court continues to exercise jurisdiction over the matter to (1) enforce the judgment or order and (2) receive and consider any reports that it requires the municipality to submit.

§ 1(f) — ACTIONS BROUGHT BY AGGRIEVED PARTY AGAINST MUNICIPALITY WITHOUT A PLAN

Lists relief a court can grant an aggrieved party; requires the court to award a successful aggrieved party costs and monetary losses attributable to the failure to create a fair share plan

It appears that the following provisions may apply regardless of whether the subject municipality submitted a fair share plan, though the specifically mentioned remedies appear to refer to municipalities that did not submit a plan.

Private Enforcement Action

The bill specifies that an aggrieved party can bring an action in Superior Court on the land use litigation docket for a judgement determining that a municipality is not in compliance with the bill's provisions. The court can order any relief it deems appropriate to ensure prompt compliance, including:

1. temporary injunctive relief;
2. ordering the timely creation and submission of a compliant municipal fair share plan; and
3. appointing one or more independent qualified individuals with expertise in land use to create a municipal fair share plan for the municipality.

If the aggrieved party is successful in an action brought, the court must award the party (1) attorney's costs and fees, including the costs of appellate review, remands, or other judicial proceedings and (2) any monetary losses attributable to the municipality's failure to create a municipal fair share plan such as the lost opportunity to develop fair share units for sale.

Prospective Developer Seeking Project Approval

The bill gives developers seeking to construct units that would count toward the achievement of a municipality's municipal fair share goal the right to file an action in Superior Court on the land use litigation docket, seeking approval to allow his or her proposed development to proceed.

The court may issue an order requiring that the municipality's planning commission, zoning commission, or combined planning and zoning commission, as applicable, grant the approval necessary to allow the proposed development to proceed if the court finds that:

1. the development is not age restricted,
2. at least 15% of the dwelling units in the development are

affordable to very low-income households,

3. at least 40% of the affordable dwelling units have two or more bedrooms, and
4. at least 25% of the affordable dwelling units have three or more bedrooms.

But the court cannot order such approval if the municipality demonstrates that the development would present a significant risk to public health or safety and could not be reasonably modified to avoid such risk.

§ 1(f) — NO MORATORIUM FOR MUNICIPALITIES THAT DO NOT SUBMIT PLANS

Prohibits DOH from certifying a municipality's qualification for a moratorium under CGS § 8-30g if it has not submitted a fair share plan

The bill provides that if a municipality does not submit a plan, it is ineligible to receive a moratorium from the Affordable Housing Land Use Appeals Procedure (i.e., CGS § 8-30g) for at least two years after the plan is submitted.

The procedure requires municipal land use agencies to defend their decisions to reject affordable housing development applications or approve them with costly conditions (i.e., the procedure places the burden of proof on municipalities). The law requires developments to be approved unless specific criteria are met (non-compliance with zoning regulations is not a permitted reason). A municipality is eligible for a temporary suspension of procedure (i.e., moratorium) each time it shows it has added a certain number of affordable housing units over the applicable time period.

§ 1(e) & (h) — EXTENSION OF TIME AND GOAL REDUCTION

Grants the court authority to extend the amount of time a municipality has to achieve its goal if infrastructure is insufficient; authorizes the court to reduce the goal under limited circumstances related to topography and natural resources or phenomena; if a reduction occurs, redistributes units throughout the planning region

Extension of Up to 10 Years

In any action concerning a municipality's compliance with the bill's requirement to create a realistic opportunity to achieve its fair share goal, the bill allows a court to grant an extension of up to 10 years beyond the duration of the fair share plan. It can only do so if the municipality demonstrates that creating a realistic opportunity to achieve its municipal fair share goal would be infeasible without substantial additional infrastructure (excluding for public transportation) that is required to avoid risks to public health or address physical infeasibility, as determined by such court. The bill requires the municipality to demonstrate the infeasibility of creating such a realistic opportunity with specific evidence of any such risk to public health or physical infeasibility.

Reduction in Goal (i.e., Required Units) and Redistribution

In any action concerning a municipality's compliance with the bill's requirement to create a realistic opportunity to achieve its goal, the bill allows the court to reduce a municipality's fair share goal if the municipality establishes by clear and convincing evidence, substantiated by expert scientific proof, that (1) such reduction is necessary (a) due to topographical limitations or (b) in order to protect extraordinary natural resources, such as rare or unique natural phenomena, and (2) an extension of time (see above) would be insufficient to address such limitations or risk to natural resources.

If the municipal fair share base is reduced by the court, the number of fair share units represented by such reduction must be allocated to each of the other municipalities in the same planning region in proportion to the regional need base, excluding the municipality for which the municipal fair share base has been reduced. (The bill does not specify whether impacted municipalities must update their plans to reflect the new fair share base.)

§ 1(g) — RECOURSE IF STATE FAILS TO PERFORM DUTIES

Allows certain aggrieved parties to bring an action asking the court to compel the OPM secretary or DOH commissioner to comply with the bill's provisions

If the OPM secretary or DOH commissioner fail to perform any

required duty, any aggrieved party other than a municipality may bring an action on the Superior Court's land use litigation docket for an order (1) requiring the secretary or commissioner to comply with the bill's provisions and (2) granting other relief the court deems necessary or appropriate to ensure prompt compliance, including permanent or temporary injunctive relief and attorney's costs and fees.

If multiple nonprofit advocacy organizations file motions to intervene, the court may certify them as a class (i.e., make it a class action suit).

§ 1(c) & (d) — AFFIRMATIVE MARKETING PLAN AND INCOME CERTIFICATIONS

Requires the entity managing a property to implement affirmative fair housing marketing plans; requires income certification submissions; requires DOH to audit submissions; makes municipalities jointly responsible for ensuring compliance

Marketing Plan

For any development containing fair share units, the municipality must require that the developer constructing these fair share units, or the property management company for such these units, submit to the municipality and the DOH commissioner an affirmative marketing plan. This plan must comply with the affirmative fair housing marketing plan requirements applicable to developers receiving financial assistance under many state housing programs (see BACKGROUND). Additionally, the municipality must specify the process by which it will verify that the affirmative marketing plan is carried out.

Each fair share unit developer, or property management company for the units, must submit a copy of the plan to the municipality and DOH commissioner. The commissioner must conspicuously post the plan on the DOH website within a month of receiving it.

Compliance

Under the bill, the developer or management company must biennially certify the income of fair share unit residents (presumably only new residents, to ensure they comply with income restrictions

when they move into a unit). Municipalities must review the certifications to monitor progress toward achieving their fair share goal.

The DOH commissioner, at least once every five years, must conduct a random audit of each municipality's fair share units to determine whether the affirmative marketing plan procedures were effective and the income certifications are accurate. The audit findings must be posted on DOH's website.

If a developer, property management company, or municipality fails to comply with the bill's marketing plan or income certification requirements, or the incomes certified are inaccurate, the municipality is deemed out of compliance and is not entitled to the safe harbor the bill affords when plans create a realistic opportunity for achieving the municipal fair share goal.

BACKGROUND

Provides information on affirmative fair housing marketing plans and inclusionary zoning

Affirmative Fair Housing Marketing Plans (CGS § 8-37ee)

State law requires developers participating in certain state programs to affirmatively market their units to ensure a diverse population of residents (see also Conn. Agencies Regs. §§ 8-37ee-1 to 8-37ee-314).

Specifically, the law requires them to develop plans outlining how they will market their housing units to an applicant pool that includes residents of municipalities with relatively high populations of those that would be "least likely to apply" (i.e., groups in the housing market area that are least likely to apply for the housing because of its location and other factors, without special outreach efforts). At least 20% of the units must be targeted to the groups identified as least likely to apply.

Plans must include information on (1) how occupants will be selected and (2) the evaluation process used to determine if the marketing is successful. Developers must report to DOH on an ongoing basis, both before and after initial occupancy, providing, among other things, racial and economic data from both residents and those on the waiting list, as

applicable.

Inclusionary Zoning (CGS § 8-2i)

Inclusionary zoning generally requires developers to make a percentage of units in new developments available to low- and moderate-income households. In return, developers receive non-monetary compensation in the form of density bonuses, zoning variances, or expedited permits that reduce construction costs. Inclusionary zoning regulations may also require a developer to contribute to a housing trust fund.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 17 Nay 9 (03/31/2021)