
OLR Bill Analysis

sHB 6633

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

SUMMARY

This bill addresses affordable housing statewide.

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

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

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

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

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

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

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

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

EFFECTIVE DATE: July 1, 2023

FAIR SHARE ALLOCATION METHODOLOGY

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

Methodology Requirements

Under the bill, the secretary must ensure the methodology:

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

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

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

Affordable Housing and Planning Regions

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

MUNICIPAL FAIR SHARE PLANS

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

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

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

Table: Deed-Restricted Affordable Housing Threshold Requirements

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

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

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

MUNICIPAL FAIR SHARE GOALS

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

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

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

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

Required Compliance Schedule, Reporting, and Audits

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

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

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

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

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

Starting on July 1, 2028, the bill requires the housing commissioner to annually conduct random audits of at least 10% of the municipal fair share plans to ensure compliance with the bill’s requirements.

PENALTIES AND REMEDIES FOR NONCOMPLIANCE

Default Zoning

The bill subjects a municipality to a default zoning scheme if the

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

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

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

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

Judicial Enforcement and Remedies

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

1. requiring the municipality to issue a fair share plan and updated zoning regulations that create a realistic opportunity for it to meet its fair share allocation, including through express agreements with developers for projects contributing to a municipality's fair share allocation or

2. permitting a developer, who appeals a municipal zoning authority's denial of a previous development proposal that qualified him or her as an interested party, to build the development.

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

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

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

Under the bill, an "interested party" is a (1) nonprofit organization representing low-income households or addressing their housing needs or (2) housing developer seeking to construct housing that would contribute to a municipality's fair share allocation and meet certain criteria. The intended or proposed housing development must qualify as "assisted housing" or a "set-aside development" under the affordable housing land use appeals procedure (CGS § 8-30g), or meet the following minimum requirements relative to the total number of units in the development:

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

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

BACKGROUND

Planning Regions

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

COMMITTEE ACTION

Housing Committee

Joint Favorable

Yea 10 Nay 5 (03/02/2023)