



OFFICE OF THE FIRST SELECTMAN

Michael R. Criss
First Selectman, Town of Harwinton

HOUSING COMMITTEE

February 28th, 2023

Good afternoon, my name is Michael R. Criss, I am the First Selectman for the Town of Harwinton and I am submitting testimony regarding H.B. 6633 “An Act Concerning a Needs Assessment and Fair Share Plans for Municipalities to Increase Affordable Housing”.

H.B. 6633 “An Act Concerning a Needs Assessment and Fair Share Plans for Municipalities to Increase Affordable Housing”.

Thank you for the opportunity to comment and submit testimony on proposed bill “An Act Concerning a Needs Assessment and Fair Share Plans for Municipalities to Increase Affordable Housing”. The Town of Harwinton is opposed to H.B. 6633.

The Town of Harwinton *opposes* HB-6633 – An Act Concerning a Needs Assessment and Fair Share Plans for Municipalities to Increase Affordable Housing, which will impose an overreaching, costly burden on municipalities and undermine existing efforts to address affordable housing.

Municipalities are already required to prepare an Affordable Housing Plan and update the plan every five years under Sec. 8-30j, CGS. As part of this effort, municipalities must perform a housing needs assessment and consider the role of local and regional housing market conditions on affordable housing development.

To help communities develop meaningful plans, the state Department of Housing (DOH) released an Affordable Housing Guidebook in December 2020, which includes information on how to evaluate local land use and zoning laws to identify barriers to affordable housing development, engage communities in planning efforts, and implement a communications strategy to support the development and implementation of the plan. DOH also made technical assistance grants available to municipalities to support the development of the plans.

Municipalities and regional Councils of Government are devoting significant time and resources in performing affordable housing needs assessments and developing and updating plans, which will provide municipalities with a strong foundation for supporting more affordable housing to meet the needs of their communities, which is not a one size fits all approach.

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Further, the Commission's Affordable Housing Plan Working Group which has recently finalized its recommendations relative to affordable housing plans, which considered and rejected inclusion of a "fair share housing" mandate.

HB-6633 undermines existing affordable housing planning efforts by:

- Imposing a top-down process for determining local housing needs which fails to fully consider barriers to housing development, including insufficient water and sewer capacity, and environmentally sensitive lands, such as watershed lands and wetlands.
- Subjecting municipalities to legal action from developers, housing advocates and others to determine if the municipality is in compliance with the bill's "fair share" housing goals, which may be unattainable due to land use conditions.
- Subjecting municipalities to court orders from developers using state construction subsidies to mandate local planning or zoning approval.
- Layers the Fair Share Housing mandate on top of other affordable housing laws, including the Affordable Housing Appeals Act, 8-30g, and the Affordable Housing Plan requirement, 8-30j, creating a burdensome and confusing overlap of laws that will pose significant compliance questions.
- Circumvents the Blue Ribbon Committee's findings which admitted a one size fits all approach does not work and rural areas must protect natural resources in order to have sustainable urban centers.

Instead of imposing another complex, costly mandate on municipalities, Harwinton, COST and the NWHCOG urges lawmakers to examine the efficacy of New Jersey's Fair Share Housing law and determine whether it has been at all successful in advancing affordable housing and the extent to which it has imposed unworkable requirements and compliance burdens on municipalities.

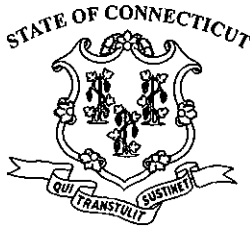
Harwinton urges lawmakers to OPPOSE HB-6633.

Thank you for allowing me to submit testimony in opposition of H.B. 6633 on behalf of the Town of Harwinton. If you have any further questions, please feel free to contact me at any time.

Michael R. Criss
First Selectman, Town of Harwinton
Vice Chair, Northwest Hills Council of Governments
Legislative Chair, Northwest Hills Council of Governments

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General Assembly

January Session, 2023

Raised Bill No. 6633

LCO No. 4013

04013** _____ **HSG

Referred to Committee on HOUSING

Introduced by:
(HSG)

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

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

Section 1. (NEW) (Effective July 1, 2023) (a) As used in this section:

(1) "Affordable housing unit" means a dwelling unit conveyed by an instrument containing a covenant or restriction that requires such dwelling unit to be sold or rented at or below a price intended to preserve such unit as housing for a low income household;

(2) "Commission", "zoning commission" or "zoning authority" means a zoning commission, planning commission, planning and zoning commission, zoning board of appeals or other municipal agency exercising zoning or planning authority;

(3) "Commissioner" means the Commissioner of Housing, unless otherwise specified;

(4) "Dwelling unit" means any house or building, or portion thereof,

which is occupied, is designed to be occupied, or is rented, leased or hired out to be occupied, as a home or residence of one or more persons;

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

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

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

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

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

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

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

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

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

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

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

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

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

each municipality's fair share allocation by:

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

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

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

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

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

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

(D) Does not assign a fair share allocation to any municipality with a

federal poverty rate of twenty per cent or greater based on data reported in the most recent United States decennial census or similar source; and

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

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

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

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

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

(3) (A) Not later than July 1, 2024, and every ten years thereafter, the secretary, in consultation with the commissioners, shall, using the methodology established pursuant to this subsection, determine the minimum need for affordable housing units for each planning region and a municipal fair share allocation for each municipality within each planning region.

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

(c) (1) Not later than July 1, 2024, the secretary, in consultation with the commissioners and, as may be determined by the secretary, experts, advocates and organizations with expertise in affordable housing, fair housing and planning and zoning, shall establish:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Each affordable housing unit constitutes one point;

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

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

(D) Bonus points shall be awarded as follows:

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

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

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

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

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

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

- (1) By year three: Five per cent completion;
- (2) By year five: Thirty per cent completion;
- (3) By year seven: Sixty per cent completion; and
- (4) By year ten: One hundred per cent completion.

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

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

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

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

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

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

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

(f) When any municipality fails to submit a fair share plan to the secretary in accordance with subsection (c) of section 1 of this act, or when a fair share plan submitted by a municipality fails to create a realistic opportunity for the municipality to attain its municipal fair share allocation, any interested party may bring an action in the

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

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

Statement of Purpose:

To (1) require an assessment of the state-wide need for affordable housing and an allocation of such need to planning regions and municipalities, (2) require the creation of fair share plans for each municipality, and (3) establish penalties for municipalities that fail to submit fair share plans.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]