

Is Connecticut Living Up to Its Fair Housing Promise?

In 1991 the Connecticut passed comprehensive legislation designed to address the state's high levels of housing segregation. The bulk of the new laws were proposed in Public Act 91-362, but three other bills, [sHB 5518](#) (Public Act 91-392) regarding zoning for affordable housing in the Zoning Enabling Act CGS Sec. 8-2 and the Plan of Conservation and Development process, [sHB 5516](#) regarding ensuring regional use of rental assistance, and [sHB 5795](#) proposing a pilot rental assistance program for families participating in inter-district school programs, were also raised that year that contributed to an overall effort to "unwind" historical government policies that intentionally created segregation. Of these, the zoning proposal, was also adopted in statute.

All of these proposals came on the heels of the successful passage of the Affordable Housing Appeals Act in 1989, which gave developers additional leverage to create affordable housing in towns with less than 10% affordable stock as defined by the Act.

Public Act 91-362 created a series of obligations, several of which were minimized or removed from statute in later years and others of which have not been carried out in as robust a manner as the statutory language envisioned.

Substitute House Bill No. 5523

PUBLIC ACT NO. 91-362

AN ACT PROMOTING HOUSING CHOICE AND RACIAL AND ECONOMIC INTEGRATION

Section 1. Section 8-37bb of the general statutes is repealed and the following is substituted in lieu thereof:

(a) On or before December 31, 1991, and annually hereafter, each housing agency shall submit to the general assembly a report, for the year ending the preceding September thirtieth, which analyzes by income group, households served by its housing construction, substantial rehabilitation, purchase and rental assistance programs. EACH REPORT SUBMITTED AFTER DECEMBER 31, 1991, SHALL ANALYZE THE HOUSEHOLDS SERVED UNDER EACH PROGRAM BY RACE ...

Components of Public Act 91-362 & their Current Status

(1) Requirement to Report Race: The Public Act amended the annual reporting by the Department of Housing (DOH) and Connecticut Housing Finance Authority on households served by its programs or on waiting lists outlined in CGS 8-37bb to include *information on race*. *Occupants who did not want to report their race were permitted to withhold disclosure.*

- a. Current Status - DOH:** DOH (then, DECD for the purposes of relevant programs) removed itself from this obligation in 2011 claiming it was duplicative with other reporting requirements. With the exception of the same report under this statute produced by CHFA, we have not identified any other DOH report that publically reports in a non-personally identifiable way the race of residents of government funded housing in Connecticut.

Functionally, this likely means that DOH has long been out of compliance with the state law to affirmatively further fair housing through collecting and analyzing data on the location of housing investments and demographics of tenants (see #2 below). As a result, we don't know, for example, if discriminatory policies such as residency requirements are keeping families of color out of subsidized housing investments in predominately White neighborhoods. It also means we don't know if developers are effectively complying with obligations to affirmatively market openings, meaning families of color may never learn of housing opportunities in higher-resourced communities.

There is certainly some overlap in developments created with both CHFA and DOH funding, but there may be developments with just DOH funding that are not being reported on. In addition, we are missing data on Community Development Block Grant expenditures, Rental Assistance Program and Housing Choice Voucher Program performance because the latter two programs are run by DOH. To the extent these programs are not covered by this statute, they should be added.

Background Documents on Public Act 91-362

CGA Summary Page:

https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Public+Act&which_year=1991&bill_num=362

Public Act 91-362 Language: <https://www.cga.ct.gov/ps91/Act/pa/1991PA-00362-R00HB-05523-PA.htm>

Bill Analysis I: <https://www.cga.ct.gov/ps91/ba/1991HB-05523-R00-BA.htm>

Bill Analysis II: <https://www.cga.ct.gov/ps91/ba/1991HB-05523-R01-BA.htm>

Other notes on the requirement to report race for subsidized housing:

- i. Up until HUD released its 2015 regulation on Affirmatively Furthering Fair Housing (AFFH) it has not been completely clear whether this kind of reporting had to be submitted to HUD in the Analysis of Impediments to Fair Housing Choice process.
 - ii. The 2015 Analysis of Impediments included such information in summary form (in maps and summary chart), but the supporting data was not made publically available.
 - iii. This kind of data *should* be collected for HUD's new Assessment of Fair Housing (AFH) required under the new AFFH regulation, although data provided by HUD in support of the AFH does not include housing created with state money. For this reason, collecting this data at the state level is important and is technically required under the AFH regime.
 - iv. Even if AFFH is abandoned under a new Trump administration, putting mechanisms in place to provide data transparency and set fair housing goals will help ensure Connecticut remains the progressive state that it is.
 - v. The statute's original language should be expanded to include ethnicity – in particular Hispanic (non-black).
- b. Current Status - CHFA:** CHFA continues to provide 8-37bb reports annually, but the data is presented in a way that prevents a meaningful fair housing analysis. For example, total loan information is provided by race and, separately, by the location of where people are buying homes without any indication of race. To do a fair housing analysis we need to know if people of color are moving to predominately White areas and vice versa. Likewise, there is no connection drawn between the demographics of rental affordable developments and neighborhood demographics. The question the analysis required by the statute is supposed to answer is whether affordable housing opportunities in, say, predominately White areas are known to qualifying people of color through appropriate marketing. That question cannot be answered given the current way the data is presented.
- i. Link to most recent report:
<http://www.chfa.org/content/CHFA%20Document%20Library/FinalReport.pdf>

- ii. To the extent there is considerable overlap between the data already collected by CHFA for this effort and what would be reported by DOH, simply using the same data and improving the analysis will save money since they will likely have to report this information to HUD in the Assessment of Fair Housing in 2020.

(2) Fair Housing Analysis: The Act requires that the collected demographic information be submitted in a report and analyzed. The language is as follows:

EACH REPORT SUBMITTED UNDER THIS SECTION SHALL ALSO ANALYZE THE EFFORTS, AND THE RESULTS OF SUCH EFFORTS, OF EACH AGENCY IN PROMOTING FAIR HOUSING CHOICE AND RACIAL AND ECONOMIC INTEGRATION.

- a. **Current Status – DOH:** As discussed above, DOH (DECD) successfully lobbied to have itself removed from this obligation. Even in the Analysis of Impediments to Fair Housing Choice there is insufficient data to assess whether there has been any *progress* over time in changing the levels of segregation in subsidized housing.
- b. **Current Status – CHFA:** CHFA submits these reports but they include no analysis of the data, no articulation of specific efforts, and no assessment of results.

(3) Requirement for DOH and CHFA to Affirmatively Further Fair Housing: Public Act 91-362, in its final form as CGS Sec. 8-37cc, requires that “housing agencies” defined as DOH and CHFA under CGS 8-37aa,

(b) SHALL AFFIRMATIVELY PROMOTE FAIR HOUSING CHOICE AND RACIAL AND ECONOMIC INTEGRATION IN ALL PROGRAMS ADMINISTERED OR SUPERVISED BY SUCH HOUSING AGENCY.

- a. **Current Status:** This provision applies to both CHFA and DOH today. However, in 2006 the Connecticut Supreme Court, following constricting rulings of the Rehnquist US Supreme Court, determined that this statute contained no private right of action.¹ *There is now no way to enforce this provision except through legislative pressure or amending the statute to add back into it a private right of action.*

¹ See Asylum Hill NRZ v. King, SC 17313 (2006), <https://www.jud.ct.gov/external/supapp/Cases/AROCr/CR277/277CR25.pdf> and Sheffield, Jonathan J. Jr., "At Forty-five Years Old the Obligation to Affirmatively Further Fair Housing Gets a Face-lift, but Will it Integrate America's Cities?" (). Social Justice. Paper 52. http://ecommons.luc.edu/social_justice/52/

(4) Requirement for Housing Grant Recipients to Affirmatively

Further Fair Housing: Public Act 91-362, now in CGS Sec. 8-37ee, also requires that,

(a) Each entity participating in any program administered by a housing agency, as defined in section 8-37aa, under this title shall have an affirmative duty to promote fair housing in each housing development that is assisted or supervised under any provision of this title.

(b) Any entity applying for financial assistance under any program administered by a housing agency established by this title shall submit an affirmative fair housing marketing plan to such housing agency for its approval. Such plan shall have provisions for recruitment of an applicant pool that includes residents of municipalities of relatively high concentrations of minority populations. The housing agency shall periodically review each plan to assure that to the extent practicable such an applicant pool is created and may require that a plan be revised by the entity submitting it.

- a. **Current Status:** DOH and CHFA both require grantees to submit affirmative marketing plans. Unfortunately, to our knowledge there are no meaningful mechanisms to ensure that these plans are effective or steps are taken to punish grantees that are not diligently conducting affirmative marketing. Other notes:
 - i. We are not aware of a meaningful review process and, to our knowledge, the results of such a review are not made public. In 20012, when OCA staff last had a conversation with DOH staff about this, there was no meaningful review and staff (since retired) reported great frustration with the process.

(5) Assessing the results of Affirmative Marketing.

As finalized in 8-37t, DOH is responsible for collecting data on housing need and, as amended by Public Act 91-362, analyze,

INFORMATION ON AFFIRMATIVE FAIR HOUSING MARKETING ACTIVITIES AND PROGRAMS AND AN ANALYSIS OF OCCUPANCY RESULTS OF AFFIRMATIVE FAIR HOUSING MARKETING PLANS.

- a. **Current Status:** DOH (then DECD for the purposes of relevant programs) successfully lobbied to amend this statute, replacing it with an existing federal reporting obligation to submit a Consolidated Plan. This took away a critical “leg” to the affirmative marketing statutory structure. An analysis of the results of affirmatively marketing is no longer required on an annual basis or at any specific time.

(6) Choice in the Rental Assistance Program: Public Act 91-362 also amended CGS Sec. 8-345 to include:

(e) The commissioner shall administer the program under this section to promote housing choice for certificate holders and encourage racial and economic integration. The commissioner shall establish maximum rent levels for each municipality in a manner that promotes the use of the program in all municipalities. Any certificate issued pursuant to this section may be used for housing in any municipality in the state. The commissioner shall inform certificate holders that a certificate may be used in any municipality and, to the extent practicable, the commissioner shall assist certificate holders in finding housing in the municipality of their choice. (Emphasis added.)

a. Current Status: The Rental Assistance Program is even more segregated than the federal tenant-based Housing Choice Voucher program. Currently, 92% of RAP recipients live outside of the 60% of the land area where the schools are performing at the highest levels. To fix this we need to:

- i. Fully fund mobility counseling.
- ii. Increase rents to appropriate levels, if indicated by a market analysis.
- iii. Provide Security Deposit Guarantees for families with children moving into high performing school districts.

Currently, this statute does not address insufficiencies in the federal Housing Choice Voucher program. We could expand this statute to cover that program as well.

(7) Addressing Regional Affordable Housing Needs in Zoning: 91-392 amended the Zoning Enabling Act CGS 8-2 to include that town zoning ordinances undertake two activities that promote housing choice.

First that ordinances,

...[S]hall also encourage the development of housing opportunities, INCLUDING OPPORTUNITIES FOR MULTIFAMILY DWELLINGS... for all [citizens] RESIDENTS of the municipality AND THE PLANNING REGION IN WHICH THE MUNICIPALITY IS LOCATED. (Emphasis added.)

Second, the new Act required that municipal zoning regulations,

...SHALL ALSO PROMOTE HOUSING CHOICE AND ECONOMIC DIVERSITY IN HOUSING,

INCLUDING HOUSING FOR BOTH LOW AND MODERATE INCOME HOUSEHOLDS, AND SHALL ENCOURAGE THE DEVELOPMENT OF HOUSING WHICH WILL MEET THE HOUSING NEEDS IDENTIFIED IN THE HOUSING PLAN PREPARED PURSUANT TO SECTION 8-37t AND IN THE HOUSING COMPONENT AND THE OTHER COMPONENTS OF THE STATE PLAN OF CONSERVATION AND DEVELOPMENT PREPARED PURSUANT TO SECTION 16a-26. (Emphasis added.)

- a. **Current Status:** With 23 towns in Connecticut explicitly barring multifamily housing in their zoning ordinances and dozens of other excluding multifamily and affordable housing in more subtle ways, it is clear that these provisions are not functioning as intended. Note – the reference to 8-37t remains even though DOH (then DECD) successfully lobbied for that provision to be significantly changed.

- (8) Plan of Conservation and Development:** Public Act 91-392 amended CGS 8-23(e) to ensure that municipal Plans of Conservation and Development envision diverse housing stock. The statute now reads,

SUCH PLAN SHALL MAKE PROVISION FOR 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, AS DESIGNATED BY THE SECRETARY OF THE OFFICE OF POLICY AND MANAGEMENT UNDER SECTION 16a-4a. SUCH PLAN SHALL ALSO PROMOTE HOUSING CHOICE AND ECONOMIC DIVERSITY IN HOUSING, INCLUDING HOUSING FOR BOTH LOW AND MODERATE INCOME HOUSEHOLDS, AND ENCOURAGE THE DEVELOPMENT OF HOUSING WHICH WILL MEET THE HOUSING NEEDS IDENTIFIED IN THE HOUSING PLAN PREPARED PURSUANT TO SECTION 8-37t AND IN THE HOUSING COMPONENT AND THE OTHER COMPONENTS OF THE STATE PLAN OF CONSERVATION AND DEVELOPMENT PREPARED PURSUANT TO SECTION 16a-26. (Emphasis added.)

- a. **Current Status:** To our knowledge, there is no mechanism at the Office of Policy and Management that determines whether a municipality is effectively planning for such housing.