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:

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

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

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

(3) "Aggrieved party" means (A) a developer seeking to construct dwelling units that would count toward the achievement of a municipality's fair share goal, (B) a nonprofit organization advocating (i) for a municipality's compliance with its fair share requirements under this section, or (ii) on behalf of lower and moderate income households in a planning region or combined planning region, as applicable, (C) an individual who would qualify for a fair share unit, or (D) a municipality
in the same planning region or combined planning region, as applicable, that (i) is not required to create a fair share plan, or (ii) has received a judgment of compliance pursuant to subsection (e) of this section and is meeting relevant benchmarks;

(4) "Combined planning region" means the two planning regions 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, in which the Connecticut Metropolitan Council of Governments and the Western Connecticut Council of Governments are established, respectively;

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

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

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

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

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

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

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

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

(12) "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, but excludes the two such regions that constitute a combined planning region;

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

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

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

(b) (1) Not later than October 1, 2022, the Secretary of the Office of Policy and Management, in consultation with the Commissioner of Housing, shall complete an assessment of the state-wide need for affordable housing and determine the regional need base for each planning region or combined planning region, as applicable. Such
determination shall be based on (A) figures from the Comprehensive Housing Affordability Strategy data set published by the United States Department of Housing and Urban Development, or from a similar source, and (B) the number of persons or families in the state who pay greater than fifty per cent of their annual income for housing, which income is less than or equal to thirty per cent of the area median income, as determined by said department.

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

(B) (i) In making any such determination, said secretary shall increase the municipal fair share base of a municipality if such municipality, in comparison to other municipalities in the same planning region or combined planning region, as applicable, has more ratable real and personal property, a higher median income, a lower percentage of its population that is below the federal poverty threshold or a lower percentage of its population that lives in multifamily housing.
(ii) If more than twenty per cent of a municipality's population is below the federal poverty threshold, said secretary shall not allocate any portion of the regional need base of a planning region or combined planning region, as applicable, to such municipality.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Each bedroom in a permanent supportive dwelling unit that is not age restricted shall be equivalent to one fair share unit;

(B) Each bedroom in a rental dwelling unit that (i) is conveyed by a deed containing covenants or restrictions which shall require that such
unit be sold or rented at, or below, a price which will preserve the unit
as housing for extremely low income households, (ii) is not age
restricted, and (iii) contains two or more bedrooms, shall be equivalent
to one fair share unit; and

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

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

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

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

(B) The municipal fair share plan of a municipality shall not be
considered to create a realistic opportunity for the achievement of the
municipal fair share goal of such municipality unless:

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

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

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

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

(B) Each developer of fair share units, or the property management company for such units, shall certify to the municipality and the
Commissioner of Housing, every two years, the income of the residents of such fair units. Each municipality shall review such certifications to monitor progress toward the achievement of the municipal fair share goal of such municipality.

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

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

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

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

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

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

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

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

(3) In determining that a municipality is in compliance with the
provisions of this section, the court shall consider the following factors
indicating whether the municipal fair share plan of such municipality
creates a realistic opportunity for the achievement of its municipal fair
share goal during the ten-year period following the submission of such
municipal fair share plan to the Secretary of the Office of Policy and
Management, or such alternative time period as the court may authorize
pursuant to this section:
(A) Substantial evidence of the realistic potential for the development of the number of fair share units in such municipality necessary to achieve its municipal fair share goal;

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

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

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

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

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

(G) Efforts by the municipality to secure funding to expand sewer and other infrastructure related to the development of affordable housing, including, but not limited to, grant applications and bonding
Proposed Substitute Bill No. 6611

measures;

(H) A finding by the Commissioner of Housing through a random audit conducted pursuant to subparagraph (C) of subdivision (2) of subsection (c) of this section that developers seeking to construct affordable housing in such municipality are operating under current and effective affirmative marketing plans;

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

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

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

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

(B) In any action brought under this subsection for a determination
of a municipality's compliance with this section, such municipality shall
bear the burden of establishing that its municipal fair share plan satisfies
the standard set forth in subparagraph (B) of subdivision (1) of
subsection (d) of this section.

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

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

(2) (A) Any aggrieved party may bring an action in the superior court for the judicial district of Hartford, on the land use litigation docket, for a judgment determining that a municipality is not in compliance with the provisions of this section and an order of such relief as such court deems appropriate to ensure prompt compliance with the provisions of this section, including, but not limited to, temporary injunctive relief, timely creation and submission of a municipal fair share plan that complies with the provisions of this section and the appointment of one or more independent qualified individuals with expertise in land use to create a municipal fair share plan for such municipality. If such aggrieved party is successful in any such action, such aggrieved party shall be awarded any attorneys' costs and fees, including, but not limited to, the costs of appellate review, remands or other judicial proceedings as well as any monetary losses attributable to such municipality's failure to create a municipal fair share plan, such as any lost opportunity to develop fair share units for sale.

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

(g) (1) Except as provided in subdivision (2) of this section, whenever the Secretary of the Office of Policy and Management or the Commissioner of Housing, or both, fail to perform any duty required of said secretary or commissioner, as applicable, under the provisions of this section, any aggrieved party described under subparagraphs (A) to (C), inclusive, of subdivision (2) of subsection (a) of this section may bring an action in the superior court for the judicial district of Hartford, on the land use litigation docket, for an order (A) that said secretary or commissioner, as applicable, comply with the provisions of this section, and (B) of such relief as such court deems necessary or appropriate to ensure prompt compliance with the provisions of this section, including, but not limited to, permanent or temporary injunctive relief and attorneys' costs and fees.

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

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

(2) (A) Any need for fair share units identified through the
assessment completed by the Secretary of the Office of Policy and
Management, in consultation with the Commissioner of Housing,
pursuant to subdivision (1) of subsection (b) of this section that is unmet
after the allocation of such units to municipalities shall be met by the
state through (i) the issuance of new mobile housing vouchers to
address half of such unmet need, and (ii) the offering of subsidies for
the construction of new affordable housing in which thirty per cent of
the dwelling units are affordable to very low income households.

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

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

(C) No such construction subsidy described in subparagraph (A) of
this subdivision may be used (i) within a municipality in which twenty
per cent or more of such municipality’s population is below the federal
poverty threshold, or (ii) within 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.
This act shall take effect as follows and shall amend the following sections:

| Section 1 | October 1, 2021 | New section |