OLR Bill Analysis

sHB 5396

AN ACT CONCERNING AFFORDABLE HOUSING DEVELOPMENT ON CERTAIN LAND OWNED BY A RELIGIOUS ORGANIZATION.

SUMMARY

The bill requires all municipalities to consider proposed affordable housing developments that a religious organization wants to build on its own land under a summary review process. This requirement applies regardless of conflicting zoning regulations. The bill (1) defines qualified developments, (2) lists certain restrictions municipalities can put on them, and (3) excludes certain parcels from its requirements.

By law, under a "summary review" process, a project that complies with local zoning regulations is approvable without a public hearing, variance, special permit or exception, or other discretionary zoning action (other than a review of a site plan for regulatory compliance and a determination that public health and safety will not be substantially impacted). The bill requires municipalities to make a decision on a religious organization's application within 90 days of receiving it, unless the organization agrees to one or more extensions totaling up to 90-days or withdraws the application.

The bill's summary review process appears to align with the federal Religious Land Use and Institutionalized Persons Act, which prohibits land use regulations that substantially burden religious exercise, but by providing a process applicable only to religious organizations it is unclear whether it may violate the First Amendment's Establishment Clause (see BACKGROUND).

EFFECTIVE DATE: October 1, 2026

QUALIFYING AFFORDABLE HOUSING DEVELOPMENTS

Under the bill, qualifying affordable housing developments must be proposed by a religious organization, but they may do so jointly with

any developer. Religious organizations must be religious nonprofits under federal tax law.

Under the bill, at least 20% of the dwellings in a qualifying proposed development must be deed-restricted for at least 40 years to preserve them as affordable for people earning no more than 60% of the lesser of the federally determined state or area median income. They may be rental or ownership units.

(Unless at least 30% of the units are preserved for low-income households, these developments will not qualify as set-aside developments for purposes of bringing suit under the Affordable Housing Land Use Appeals Procedure (§ 8-30g). But deed-restricted units in these developments generally would qualify for points toward a moratorium (see BACKGROUND).)

Housing developed under the bill's summary review process is subject to the property tax unless it otherwise qualifies for an exemption under existing law.

Eligible Parcels

A qualifying development must be proposed on property that the institution has owned for at least three years and with access to adequate water and sewer infrastructure. The development cannot require demolishing a property on the national or state registers of historic places, unless the state historic preservation officer gives written approval. Also, the property to be developed cannot be:

1. a cemetery;

2. in a special flood hazard area (as shown on National Flood Insurance Program's rate map); or

3. within 3,200 feet of a natural gas or oil refinery or extraction facility.

SPECIFICALLY AUTHORIZED ZONING RESTRICTIONS

Under the bill, municipal zoning authorities must generally allow

qualified affordable housing developments on an organization's property subject only to a summary review (which by law includes checking whether the proposal meets specified requirements, like those on lot size and building frontage).

The bill specifies certain restrictions on density, setbacks, building height, and parking that may be included in zoning regulations. (Presumably, local regulations cannot conflict with the restrictions the bill permits.)

The bill specifically allows zoning regulations to:

1. limit a development's gross density to (a) 30 units per acre when fewer than 25% of them are deed-restricted affordable units or (b) 50 units per acre when at least 25% are deed-restricted affordable units;

2. set side and rear setbacks of up to 15 feet;

3. set a maximum height for buildings, if it is no lower than the maximum for other residential developments in the municipality; and

4. regardless of the law on setting off-street parking requirements, require one off-street parking space per dwelling unit if the development is over 1/2 mile from a public transit station (the bill does not define "public transit station").

BACKGROUND

Affordable Housing Land Use Appeals Procedure (CGS § 8-30g)

The procedure generally requires municipal land use commissions to defend their decisions to reject affordable housing development applications or approve them with restrictions that would have a substantial adverse impact on the project's viability or the affordability of income-restricted units. (In traditional land use appeals, the appellant (for example, a developer) must convince the court that the commission acted illegally or arbitrarily or abused its discretion.)

Generally, a prospective developer can use the appeals procedure to contest a commission's decision on an application if (1) fewer than 10% of the municipality's housing units are affordable, based on certain statutory criteria, and (2) the municipality has not qualified for a moratorium.

Religious Land Use and Institutionalized Persons Act (RLUIPA)

Broadly, this federal law prohibits the government from implementing a land use regulation that imposes a substantial burden on the religious exercise of any person, including a religious organization, unless it furthers a compelling governmental interest and is the least restrictive means of doing so. RLUIPA may also be violated when a land use regulation treats a religious use less favorably than secular uses (42 U.S.C. § 2000cc et seq.).

U.S. Constitution's Establishment and Free Exercise Clauses

The First Amendment has two provisions concerning religion: the Establishment Clause and the Free Exercise Clause. Broadly, the Establishment Clause limits the government from becoming intertwined with religion by establishing, sponsoring, or supporting it. The Free Exercise Clause limits government interference with religious beliefs.

Courts have taken different approaches to evaluating Establishment Clause claims, including looking to historical practices and understandings and considering whether governmental actions benefiting a religious group serve a secular purpose and avoid entanglement.

Related Bills

sHB 5502, favorably reported by the Planning and Development Committee, extends the law on approving certain middle housing and mixed-use developments under a summary review process to proposed developments on (1) lots that were previously zoned for residential use and (2) certain lots zoned for industrial use.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute
Yea 13 Nay 8 (03/13/2026)