



HOME BUILDERS & REMODELERS ASSOCIATION  
OF CONNECTICUT, INC.

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*Your Home  
Is Our  
Business*

## Home Building Industry Day at the Capitol

April 7, 2015 {updates 5-5-15}

### Please Help Home Builders & Remodelers Build Our Economy

#### Oppose:

- **SB 1039 (File # 354)** – Creates general contractor joint liability for a subcontractor's employee's wages and workers compensation insurance claims *{Died in Judiciary}*
  - **HB 6705 (File # 363)** – Requires prevailing wage rates be paid on all private construction that receives any state financial assistance
- **HB 6933 (no File #)** – requires employers to provide a work schedule to employees 21 days in advance, and pay a “predictability pay” if schedule changes *{while this bill died in Labor, it's likely to come back as an amendment}*
- **HB 6972 (File # 327)** – Expands the state's Codes & Standards Committee from 21 to 23 members, creating an imbalance in makeup by adding two more fire marshals

#### Oppose Unless Amended:

- **HB 5785 (File # 309)** – Transforms the home improvement contractor (HIC) registration program into licensing, requiring an exam or education *{good amendment filed}*
- **SB 887 (File # 257)** – Sections 1 & 3 allow employees of any general contractor or subcontractor to file a mechanics lien on construction sites where they work. We support section 2, restricting who can file a mechanics lien to properly licensed contractors. *{Fixed in Judiciary}*
- **HB 6808 (File # 321)** – Greatly expands authority of trade contractor licensing boards, independent of the Dept of Consumer Protection Commissioner, to place stop work orders on contractors and otherwise enforce licensing laws. *{likely not moving}*
- **SB 912 (File # 295)** and **HB 6793 (File # 367)** – Increases penalties for violating Dept of Labor stop work orders or violations of CT's unemployment compensation laws – erroneously assuming the “ABC Test” for classifying workers as employees or independent contractors is simple and certain.
- **SB 407 (File # 291)** – Makes changes to 8-30g, Affordable Housing Appeals Act, and to the affordability levels required under the Incentive Housing Zone (IHZ, or HOME CT) affordable housing program.

#### Support:

- **SB 892 (File # 34)** – Provides more flexibility regarding required density of development under the IHZ (HOME CT) affordable housing program, allowing DOH to facilitate more IHZ communities in more municipalities.
- **We Strongly Support the Broad CT20x17 Agenda** – To Transform Connecticut into a Top 20 State for Business, to Grow Jobs & Our Economy

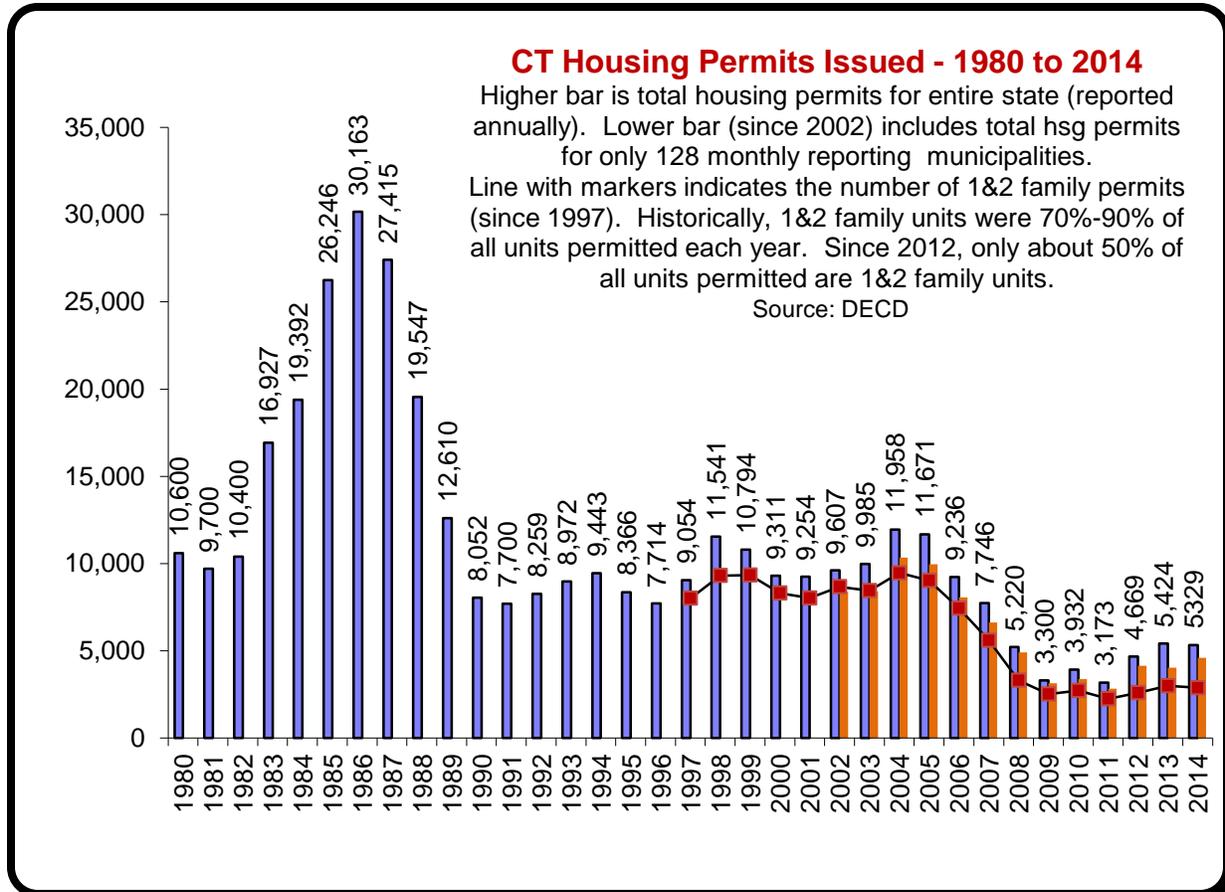
**“Building CT's Economy, Communities and Better Lives with Advocacy and Knowledge that Solves Our Member's Problems.”**

# Home Building's Economic Impact in Connecticut!

## Every 100 New Single Family Homes Create:

334 new jobs, \$29.5 million in wages, and \$4.7 million in Taxes, Fees & Charges paid to State & Local Government in the 1<sup>st</sup> Year Alone!\*

Construction of 10,000 homes would produce 33,400 new jobs.



2011 was the worst year on record for new housing permits. 2009 & 2010 ranked #2 and #3 for all-time worst permit years. While 2012 - 2014 saw some improvement in total permits, half were multifamily, leaving single family construction still struggling to recover. SF home construction was down in 2014 compared to 2013.

**We have a long way to go to get back to normal, healthy levels.\*\***

## **WE CAN HELP TURN THINGS AROUND!**

**But we need gov't to recognize that CT's business regulations and land use approval process severely constrain new home production.**

\* 100 multi-family units create 165 jobs, \$14.5 million in wages and \$2.4 million in taxes & fees in the 1<sup>st</sup> year alone. In the 2<sup>nd</sup> year and subsequent years, on average each 100 housing units (both SF and MF) create another 52 jobs, producing annually \$4.3 million in wages and \$1.4 million in taxes & fees for state & local government, due to occupant's economic activity. **For more on how homes more than pay for themselves, go to [www.hbact.org/HomesDoPay](http://www.hbact.org/HomesDoPay).**

\*\* The average annual number of new housing permits from 2000-2006 was 10,146 (i.e., before the Great Housing Depression started in 2007). The average annual housing permits from 1990-1999 was 8,990 (which includes the housing recession of the early 1990s). While the 1980s averaged 18,300 annual permits, from 2007-2013, we averaged only 4,781 new housing permits. **We can and must do better!**

## Home Builders & Remodelers Association of Connecticut, Inc.

### **Oppose SB 1039: Makes General Contractors Jointly Liable for the Wages and Workers Compensation Claims of the Employees of Subcontractors and all Lower-Tier Subcontractors.**

- Applies to all construction work, from home remodeling and home building to the largest commercial building project.
- Intent of the bill is to make General Contractors (GCs) responsible for taking care of the wages and workers comp claims of all employees of anyone who enters onto a construction site.
- **The bill ignores the reality that a GC has no knowledge about or control over a subcontractor's employee's wages and workers compensation (WC) claims.**
  - No contract between a GC and a subcontractor provides a legal right to the GC to know about or control what a sub pays the sub's employees. Doing so would violate the ABC Test and turn all workers into the GC's employees when they are not.
  - SB 1039 creates liability where there's no legal relationship because a GC does not have a contractual relationship with sub-tier subcontractors (i.e., the subs of a sub).
  - A GC has no legal right to know about or control the wages of any employee except the GC's own employees.
- **Absurd and impossible to predict consequences would occur every day under this bill:**
  - Most home builders have between 1 to 10 employees, and a home builder GC contracts with as many as 25 subcontractors to build a home. Under SB 1039, a home builder would be jointly liable for the wages of an 80 employee flooring company, a 40 employee closet shelving company, a 30 employee kitchen appliance and cabinet installer, or even a 3 employee licensed electrician – all LLCs, corporations or partnerships and legitimate independent contractors. The GC has no control over which of the subcontractor's employees are sent to a home construction site.
- **This bill creates additional liability for the GC beyond the contracted amount for any subcontractor's failure to pay wages to the sub's own employees. The GC contracts with a sub to do a certain job and then pays the sub the contract amount. What the sub does with its payment is beyond the GC's control.**
- **Making GCs jointly liable for a sub's employee's wages is unthinkable unless one thinks there's no such entity as a legitimate, independent contractor, which defies reality.**
- **Connecticut's WC insurance costs for contractors are some of the highest in the nation – A GC's knowledge about a subcontractor's employees WC coverage is limited to a certificate of insurance the GC can require of its subcontractor at the time of contract. Such a certificate is only a snapshot in time and provides no guarantee to the GC that proper coverage is maintained by the subcontractor. That's why GCs carry "primary employer" WC coverage under our WC laws. If a GC is held to be jointly liable for any and all subcontractors' employee's WC claims, it's an unpredictable expansion of the "primary employer" statute. SB 1039 will force GC's WC costs much higher. Please don't let this happen.**
- **The parallel with work safety issues – stated by the bill's proponents – is not valid.** A GC has control over and knows about conditions on a job site. A GC can legally require that all workers who enter a job site follow proper safety procedures. The requisite knowledge about and control over safety issues distinguishes safety issues from the wage and WC issues addressed in SB 1039.
- **GCs are not the top of the "food chain" – owners are.** So, why place this joint liability on GCs? Why not place it on homeowners or other property owners, who after all invited the GC onto the owner's property? Does this not demonstrate the absurdity of this new liability scheme?

## Home Builders & Remodelers Association of Connecticut, Inc.

### Oppose HB 6705: Expands Requirement to Pay Prevailing Wages to Private Construction Receiving any State Funding.

- Would raise the cost of housing and renovation projects connected with any state financial assistance, and have the disastrous consequence of driving many private construction firms away from pursuing such projects, further depressing economic activity in the state.
- **The bill could remove our industry from participating in several worthwhile state housing programs.** Certain housing finance programs administered by the Dept of Housing (DOH) or the CT Housing Finance Agency (CHFA) do not require prevailing wage rates at housing construction sites. We have been working with DOH and CHFA, at their behest, to help these agencies streamline their processes and applications so that more for-profit home building businesses will consider the agencies' resources as a financing source. **The new requirement of HB 6705 to pay prevailing wage rates at sites using any DOH or CHFA resources will shut down this cooperative and worthwhile effort.**
- **While unclear, HB 6705 may also adversely impact the Incentive Housing Zone (IHZ, or HOME CT) program.** The HOME CT program pays state incentives to municipalities that approve IHZ projects. The program depends on the private sector home building industry to engage municipalities, in cooperation, to produce these new housing communities. **If home builders would be required to pay prevailing wages for any HOME CT project, the result is that most if not all will abandon pursuing the HOME CT program.**
- **The bill may encompass energy efficiency rebates, or other rebates, grant or loan programs designed to support energy efficiency upgrades** to commercial and residential buildings, including the construction of alternative energy sources, such as solar photovoltaic systems. Forced to pay artificially higher "prevailing" wages, many small businesses engaged in these types of projects would likely no longer pursue them.

### Oppose HB 6933 – Requires Employee Work Schedules & "Predictability Pay"

- The bill requires employers to provide work schedules to employees 21 days in advance and pay "predictability pay" when those schedules are changed.
- While HB 6933 died in Labor, it's likely to come back as an amendment.
- **It ignores the reality of today's business world and the struggle small businesses have in trying to be profitable.** We live in a fast paced and small world, with decisions from clients and customers constantly changing and demanding immediate responses from companies in order to stay competitive. That necessitates constant and immediate schedule changes.
- **Especially in residential construction, changes in scheduling often occur within the same day due to many factors outside the control of a home builder or remodeler.** These include an employee or subcontractor not showing up yet who is required to do certain work before others can work, changes demanded by home buyers or home owners necessitating a schedule change, inspection delays from building or other officials, and of course adverse weather.
- **Forcing home builder and remodelers, and their many subcontractors, to pay additional "predictability pay" when things change means every construction job will become more expensive.**
- **Change and uncertainty are constant facts of daily life.** Employers and employees not only know this but also should embrace it. For employees, change offers opportunities to rise up and shine, showing one's worth to the employer's bottom line, which is after all the reason people are hired in the first place. This legislation would depress job growth and be one more reason to want to give up and get out of business in CT. Many employees would then lose their jobs.

## Home Builders & Remodelers Association of Connecticut, Inc.

### Oppose HB 6972: Creates an Unbalanced Codes & Standards Committee (CSC) within Dept of Administrative Services by Adding Two Fire Marshals

- The bill expands the size of the CSC – the volunteer body that writes our State Building Code – from 21 to 23 members with the addition of 2 fire marshals

- **The bill creates an unbalanced code development group, giving fire marshals unjustified more representation than any other constituency.**

Current Law	HB 6972
2 architects	2 architects
3 engineers (2 structural, mechanical or electrical engineers, and 1 mechanical or fire protection engineer)	3 engineers (2 structural, mechanical or electrical engineers, and 1 mechanical or fire protection engineer)
2 builders (1 commercial, 1 residential)	2 builders (1 commercial, 1 residential)
1 public health official	1 public health official
2 building officials	2 building officials
2 fire marshals	<b>4 fire marshals</b>
1 building trades labor union member	1 building trades labor union member
1 energy efficiency expert	1 energy efficiency expert
4 public members (1 with expertise in accessibility matters)	4 public members (1 with expertise in accessibility matters)
1 electrician, 1 plumber and 1 HVAC contractor	1 electrician, 1 plumber and 1 HVAC contractor
Total: 21 members	Total: 23 members

- **The Dept of Administrative Services, the Codes and Standards Committee itself, and the entire design and construction industry all oppose this bill. It is supported by only fire marshals.**
- **Fire marshals presented their case for this bill by falsely claiming that no other constituency on CSC is focused on public safety.** The vast majority of our State Building Code is all about public safety, yet has nothing to do with fire safety. Under HB 6972, the CSC would – oddly – have twice as many fire marshals as building officials (see right column above), overweighting fire marshals’ desire for things like mandatory fire sprinklers in all new homes, gaining greater enforcement authority in their local jurisdictions and adoption of alternative codes that have been rejected by the CSC. Most CSC members, including building officials, are also focused on public safety and it is disingenuous for fire marshals to imply otherwise.
- **Balanced representation on CSC is critical to our code development process, because the model codes, upon which our State Building Code is based, are very lengthy, highly technical, and especially imperfect.** Model codes require close scrutiny and careful review and, therefore, it takes a long time to get it right and correct their flaws. The current balanced CSC sorts out the controversial provisions placed into the model codes by the publishers or are otherwise proposed as amendments in CT by various stakeholders. **HB 6972 upsets the CSC’s broad-based balance and skews it toward fire marshal positions, possibly to the detriment of other’s positions.**
- **To the extent they have lost votes on the CSC for items they have wanted, fire marshals should look first to the reasonableness and logic of their requests before seeking to change the voting seats on the CSC.**

# Home Builders & Remodelers Association of Connecticut, Inc.

## Oppose Unless Amended

### **HB 5785, Transforms Home Improvement Contractors (HIC) Registration to Licensing –** (passed General Law 11-7)

- Requires HICs to take an exam or take a course of study based on DCP's HIC booklet that outlines requirements of the HIC Registration Act and consumer protection laws.
- HICs holding a registration for 5 years or any HIC with less than \$30K gross receipts are exempt from the test/education requirement. Effective date is Jan. 1, 2016.
- Requires HICs to carry \$1million in liability coverage and show proof of coverage to building officials

### **The bill needs a lot of work to get it into a shape that we can support. As it stands, the bill will not solve any issues in the HIC industry. This has got to be done right, or not at all.**

- **The HBRA would accept some limited testing or education for HICs if there's no additional fee and there's a significant increase in enforcement of the HIC registration/licensing law:**
  - **We cannot accept a higher fee because HICs already pay more than enough for registration and the HIC consumer guaranty fund.** However, the fund is raided for the general treasury and more costs should not be put onto HICs because the state has not been able to get its fiscal house in order. *While a higher fee is not currently in the bill, given it has a significant adverse fiscal note (i.e., it will cost the state money to implement) we fear a fee could be added by amendment.*
  - **More enforcement is necessary because without it, the 10,000 – 12,000 contractors who remain unregistered in violation of the law will continue to go unlicensed.** Thus, the new exam or education requirement will fall onto only the 23,000 registered HICs. The playing field in the industry will become even more uneven than it is already. **The bill only charges DCP to study its own enforcement efforts and report back on July 1, 2016 (i.e., six months after the exam and education requirements take effect). This is not enough.**
- **The liability insurance requirement is good, but we oppose the provision to show proof of insurance every time an HIC gets a building permit.** Under current law, HICs must show their HIC Reg No. on building permit applications. Under HB 5785, an HIC has to show proof of insurance to DCP to get an HIC Reg No., so showing proof again to a local building official is duplicative and unnecessary. It would require both HICs and building officials to maintain copies of insurance certificates, a paperwork burden that is costly and not warranted.
- **In addition to substantially increasing enforcement (not just charging DCP to study its own enforcement of the law), the bill should be amended to:**
  - **Require DCP to distribute its HIC booklet** to all registered/licensed contractors;
  - **Amend the HIC booklet** to reference nationally recognized performance guidelines that could resolve workmanship disputes, i.e., the most common complaint consumers have about HICs;
  - **Write a consumer version of the booklet** and distribute such version to consumers via request, on the DCP website and thru common retail channels;
  - **Tie both the exam and the alternative education into DCP's HIC booklet more specifically** – currently the bill references only the exam with “written material published and distributed at no charge to the public by [DCP].”
  - **Provide for the designation of a responsible person** to take the exam or education since HICs are usually a business entity (most often a LLC);
  - **Specify that private entities may offer the test and education with approval by DCP**, such as the HBRA's educational subsidiary, the 501(c)(3) CT Institute of Professional Builders and Remodelers, Inc. (CIPBR);
  - **Raise the cap on a consumer's claim from the HIC guaranty fund** from the current \$15,000.

## Home Builders & Remodelers Association of Connecticut, Inc.

### Oppose Unless Amended

#### **SB 887, Oppose Sec. 1 & 3 – Expands Who Can File a Mechanics Lien to Employees; Support Sec. 2 – Limits Who Can File a Mechanic’s Lien to Properly Licensed Contractors:**

- **Sections 1 and 3, added to the original bill, greatly expand our mechanic’s lien statute. It allows employees who have payment claims (presumably for wages) of \$10 or more to file a mechanic’s lien on property at which they worked under the employ of a GC or subcontractor.**
- **It would severely disrupt real estate closings by placing unnecessary clouds on title to property. This goes far beyond the intent of mechanics lien law** of ensuring that GCs, Subs and suppliers get paid for providing services or supplying materials to a construction project.
- **Sections 1 and 3 also expand the scope of mechanics lien law to “services rendered to an owner of land.”** This is in addition to current law that covers “improvements of any lot or in the site development or subdivision of ... land.” So, unexplained in committee, what additional services rendered would now be covered, the lack of payment for which a mechanics lien could be filed?
- **Section 2 is a good provision the HBRA supports.** Offered by the Dept of Consumer Protection (and which was the original bill), it would require that for a mechanics lien to be valid, the person providing services to a construction site must be properly licensed for the work performed. This provision is one additional incentive to get all contractors properly licensed for the work they perform, which will help level the playing field for the entire construction industry.

#### **HB 6808, Greatly Expands Authority of Trade Contractor Licensing Boards, Independent of the Dept of Consumer Protection (DCP) Commissioner** (passed General Law 10-8)

- Allows trade licensing boards to issue cease work orders without going through the DCP Commissioner. Current law requires such boards to go through the DCP when issuing cease work orders to a contractor who is working without a proper license. It also expands authority to cease work to persons who willfully “or negligently” practice work without a proper license.
- **Licensing boards should not be the sole arbiters of scope of practice disputes.** These boards are populated by individuals in a particular licensed trade. They have a vested interest in protecting the scope of work of their own area and, therefore, have a built-in conflict of interest. If DCP’s approach to practice disputes or its follow up on licensing board’s enforcement efforts are not adequate (as proponents have stated), this bill is the wrong solution to that problem.
- **This new, separate authority vested in the licensing boards, without oversight by DCP, is a dangerous step that will create more disruption and delays on construction sites.**
- **DCP acts as a critical check and balance on the potential abuse of authority** that licensing boards could impose on contractors, particularly those who do not fall squarely within a board’s practice area. **Practice disputes among different contractors would rise to a new height under HB 6808.**
- **Without DCP (state agency) oversight, licensing boards and their individual members would no longer enjoy the “state action” anti-trust exemption** under federal anti-trust law and the recent U.S. Supreme Court case, North Carolina Board of Dental Examiners v Federal trade Commission.
- **Written to include all construction, HB 6808 overreaches and applies to a nonexistent problem.** Proponents have stated that practice area disputes are a problem on commercial construction sites, not residential. **An amendment that keeps the final authority at the DCP Commissioner level and removes residential construction from the bill’s reach is necessary.**

## Home Builders & Remodelers Association of Connecticut, Inc.

### **SB 912 and HB 6793, Increase Penalties for Violating DOL Stop Work Orders, and for Wage Violations under CT's Unemployment Compensation Laws**

- SB 912 increases the penalty for violating a DOL stop work order related to the failure to have proper workers compensation insurance from \$1,000/day to \$2,500/day.
- HB 6793 raises the penalty for willful failure to declare the payment of wages on unemployment comp payroll records from 10% to 15% of unpaid UC contributions.

**We support strong enforcement of our laws to ensure a level playing field but our support is contingent on having laws and regulations that are clear and understandable to the regulated community.**

- **The underlying regulation upon which these penalties are imposed is the Dept of Labor's "ABC Test."** A one-size, fits-all rule applicable to all businesses, used to classify workers as employees or independent contractors, **the "ABC Test" DOES NOT WORK for a few specific industries, including construction.**
- **Construction needs a special rule for worker classification – the best solution to create certainty for both employers and workers.** Construction is very unlike other work settings, such as a manufacturing facility, retail store, restaurant, office setting or many other businesses.
- **We have demonstrated how the "ABC Test" DOES NOT WORK for construction – particularly residential construction – through a detailed markup of the test.** Our markup has been provided to DOL and to the Labor Committee, and to be fair to the agency and the committee, we have not yet come together to work on a special rule for construction. We would like the opportunity to pursue a special rule for construction with all stakeholders before raising the penalties for violating the current uncertain rule.
- **Until the worker classification rules are made clear and understandable to construction firms, we find it difficult to support stronger penalties for violations of these rules.**

### **SB 407, Makes Changes to 8-30g, Affordable Housing Appeals Act, and to Incentive Housing Zone (IHZ, or HOME CT) Program**

- Makes it easier for some municipalities to obtain points toward a temporary moratorium from the act (during which a developer cannot use 8-30g)
- Eliminates smaller projects (those with 3 or less affordable units) from the act.
- Section 2 adversely changes the affordability levels for Incentive Housing Zone (IHZ, or HOME CT) developments.
- **The HBRA strongly supports 8-30g as a vital tool to overcome the exclusionary regulations and actions that keep affordable housing out of many communities.**
- **While the 8-30g changes are relatively minor, we know they will not satisfy the opponents of the act.** Therefore, the **bill remains a vehicle for feared worse changes to 8-30g likely to be proposed** as amendments on the floor of the Senate or House.
- **The affordability changes to the HOME CT program will reduce HOME CT developments in high income areas of the state.** The change bases affordability on the lesser of state or area median income (versus current law that's based on area median income only). This means affordability is ratcheted down in higher priced areas, such as Fairfield County. While seemingly a good thing, it means for-profit developers will have a more difficult time making the IHZ program work. Thus, the impact could mean less IHZ projects will be proposed in higher priced areas of the state, **exactly the place where they are needed most.**
- **We urge you to delete Sec. 2, and strongly guard against any further amendments to 8-30g.**

# Home Builders & Remodelers Association of Connecticut, Inc.

## Support

### SB 892, Provides Flexibility Regarding Density Requirements under the Incentive Housing Zone (IHZ, or HOME CT) Program

#### Background:

**The HBRA has been a strong supporter of the HOME CT program.** This program pays incentives to municipalities to zone land that meets IHZ requirements and further incentive payments when building permits are issued. The program is attractive to developers because it sets up a cooperative relationship among developers, the municipality and the state – all working to produce housing that is more affordable than otherwise has been created.

**However, an issue with the IHZ program has been the strict high density requirements of the act** (i.e., 4 SF units/acre; 6 duplex units/acre; or 10 MF units/acre). These high density requirements do not work for many communities and it has been difficult to get municipalities to accept them.

- SB 892 allows DOH to waive the density requirements upon the municipality's showing of 1) infrastructure limitations, or 2) that the municipality owns or controls the underlying land.
- SB 892 also changes the building permit incentives to a flat infrastructure incentive.
- **The new DOH waiver authority could be a good tool to promote more IHZ projects.** An amendment sought by other affordable housing advocates to limit the bill's open ended waiver authority to 50% of the act's underlying density requirements would be acceptable, recognizing that the 50% limit would be as arbitrary as the original required densities. They also seek an amendment to keep the current law requirement that on municipal owned or controlled land that 100% of IHZ units be at affordable levels – this amendment would be acceptable also.
- **Changing the building permit incentives to a flat infrastructure incentive per IHZ project would be easier for the state to administer and better meet the needs of some municipalities, further promoting the use of the IHZ program.**
- **The bill does require a technical amendment** (lines 80 – 95) to fix the reference to “building permits for a development” because such permits are not issued for developments. They are issued for individual units. We suggest eliminating the reference to building permit payments and substituting a new “one-time infrastructure payment” to be paid when all building permits for units in the development are issued.

### Strongly Support the Broad CT20x17 Recommendations for the 2015 Session

- **The CT20x17 campaign has been developed by a broad-based coalition of interests, from business to nonprofits, with the goal of making CT a top 20 state for business by the year 2017.** The HBRA is a 20x17 Steering Committee member. The campaign's desire is to grow jobs and the CT economy.
- **The CT20x17 campaign recognizes what CT has done right and makes many recommendations to reach its stated goals – i.e., things CT needs to change. See attached CT20x17 material or visit [www.CT20x17.org](http://www.CT20x17.org):** The coalition has made many recommendations in eight subject areas: State Budget, Energy, Workforce/Education, Transportation, Labor, Government Regulations, Healthcare, and Technology & Innovation.
- **We can no longer afford to wait. To make CT a Top 20 state for Business, please strongly consider the reforms CT20x17 recommends.**