Western Connecticut
COUNCIL OF GOVERNMENTS

March 12, 2022

Esteemed Chairs Kavros Degraw and Rahman,
Members of the Planning and Development Committee:

The Western Connecticut Council of Governments (WestCOG) appreciates the opportunity to comment on Raised Bill 1141, *An Act Concerning Transit-Oriented Development* (TOD).

SB 1141 is not about transit-oriented development, nor is it about affordable housing. It is about eliminating the ability of communities to decide that development should pay its way – to cover the costs it creates, whether those be social, environmental, or economic. SB 1141 is deregulation that benefits special interests at the expense of the rest.

WestCOG opposes SB 1141. Our opposition is grounded in the below observations:

1. SB 1141 is not about TOD. In fact, **SB 1141 undermines transit-oriented development**. According to state law (CGS §13b-79kk(4)):

   "'Transit-oriented development' means the development of residential, commercial and employment centers within one-half mile or walking distance of public transportation facilities, including rail and bus rapid transit and services, that meet transit supportive standards for land uses, built environment densities and walkable environments, in order to facilitate and encourage the use of those services."[1]

   Likewise, the national Center for Transit-Oriented Development states:

   "Transit-oriented development, or TOD, is a type of community development that includes a mixture of housing, office, retail and/or other commercial development and amenities integrated into a walkable neighborhood and located within a half-mile of quality public transportation."[2]

   SB 1141 would force municipalities to permit single-use housing developments on all parcels in walking distance of transit stations. In doing so, it would eliminate the ability of municipalities to foster a diverse mixture of uses by zoning nearby parcels for different uses or by requiring a mixed uses within individual developments. Without a mixture of residential and commercial uses – which is a prerequisite for walkable communities – transit-oriented development does not exist. In light of this, SB 1141 might better be named "An Act Prohibiting Transit-Oriented Development."

2. **SB 1141 is regressive.** A principal aim of land use regulation is the internalization of costs, that is, ensuring that profits of development are not privatized while its costs are socialized. In most states, this concern is addressed through impact fees[3]. In Connecticut, however,

[1] Chapter 243 - Infrastructure Program
[2] Frequently Asked Questions :: Center for Transit-Oriented Development (ctod.org)
[3] State-by-State Look at Impact Fees | Builder Magazine (builderonline.com)

these fees are not enabled. Consequently, municipalities in Connecticut generally require projects that could have a significant impact on public infrastructure to go through a special permit. This process allows impacts to be quantified, enabling the municipality to make an informed decision about whether a development can be accommodated without cost-shifting to existing property owners or if improvements need to be made to support the development and how those should be funded.

SB 1141 would require municipalities to approve all single-use housing developments within one-half mile of a transit station on developable land by right. In this, the bill would eliminate the ability of municipalities to condition the approval of such developments on appropriate mitigation, for instance through necessary upgrades to infrastructure. This is concerning, given the scale of development SB 1141 would compel municipalities to permit by right (up to 7,500 housing units around each transit station). Such development would exceed the capacity of many roads, water and sewer facilities, and schools and may necessitate major capital investments for infrastructure such as drinking water reservoirs, wastewater treatment plants, or schools. The costs of each of these projects can easily soar into the tens of millions of dollars.

The lack of consideration of infrastructure capacity and the requirement of by right approvals means that the costs of this development not only may fail to be evaluated, but they will be borne by existing residents, who often are less resourced than those proposing new developments. Given limitations on the abilities of municipalities to raise revenue, these costs will be passed on in the form of the property tax – a tax that the state has repeatedly found to be highly regressive with respect to income[4]. By requiring the infrastructure costs associated with new development to be passed on to local taxpayers, SB 1141 will compound this regressiveness.

3. **SB 1141 may be unlawful.** An important principle in our legal and regulatory system is that each person and each case is treated separately. SB 1141 violates that principle by compelling municipalities to approve by right any housing proposal within one-half mile of a transit station as long as the "overall average gross density" of the entire area (rather than the parcel that is the subject of an application) is less than 15 units per acre. In other words, approval of an application depends not just on the merits of the application but also on how other property owners in the same district are using their respective properties.

4. **SB 1141 is inconsistent with responsible growth.** In addition to violating legal principles, basing approval of an application on how nearby property owners use their property may occasion a land rush. Because SB 1141 does not allow municipalities to limit the density of by-right housing developments on a parcel basis, there is an incentive to build as fast and as densely as possible, to get a project built before the area reaches 15 units per acre and the provision for by-right approval extinguishes. This is not a plan for orderly development, but rather for a scattering of large and hurriedly constructed apartment buildings, with the corresponding potential for otherwise avoidable problems and litigation.

[4] Tax Incidence Report (ct.gov)

5. **SB 1141 may crowd out jobs.** In prohibiting density limits for single-use housing projects in station areas and eliminating the ability to ensure that such projects mitigate their impacts, SB 1141 would create a market-distorting regulatory preference that would squeeze out non-residential uses, such as factories, offices, doctors' offices, social services, retail, gyms, hotels, restaurants, entertainment venues, and cultural attractions.

   When properties redevelop, sometimes the firms located there relocate, and sometimes they do not. SB 1141 will reshape city and town centers; the question is what happens to businesses there. Do they move somewhere else in Connecticut, do they leave the state, or do they close?

   Every business is a workplace, and every workplace supports households. Jobs are as important to households – and to TOD – as housing, yet SB 1141 gives no thought to its impact on workplaces and jobs. This is unacceptable. For decades, Connecticut has lagged the nation in job and wage growth; two fundamental roots of the challenges residents face in housing affordability are not having enough jobs and not having jobs that pay enough. Even the state's existing housing law (CGS §8-30g) recognizes the need to provide for employment: properties zoned industrial are exempt from affordable housing appeals[5]. In protecting industry – no manufacturing jobs have ever been lost to a housing appeal – §8-30g does far less damage to the state's economy than SB 1141 could.

6. **SB 1141 would undercut affordable housing construction.** Under §8-30g, an applicant may use the affordable housing appeals process to exempt a project from zoning approval, provided at least 30% of the dwelling units in the development qualify as affordable. SB 1141 would pull the rug out from under §8-30g, allowing developers to build by right development with a mere 10% of units set aside as affordable (in developments of six or more units) and 0% (in developments of up to five units). Given a choice between an appeals process with a 30% affordable unit requirement, and by right with 10% (or no) required affordability, it is unlikely that any developer will opt for the former.

   SB 1141 may have a similar impact on municipalities that have adopted inclusionary zoning. Such regulations require that housing developments above a certain size include at least a certain percentage of affordable units (this is generally at least 10%), or they provide a density bonus for developments that include affordable units. SB 1141 would undermine these successful policies in the same way as it does §8-30g: it is unlikely developers will voluntarily build through inclusionary zoning, when they can build at any density, with fewer or no affordability requirements under SB 1141.

For these reasons, WestCOG urges your Committee to reject SB 1141.

Should you have questions, please do not hesitate to contact me.
Thank you for your consideration.

[5] Given the shift in the state's economic base since that law's inception from manufacturing to services, §8-30g probably should also address commercial uses.

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