

2022 -- H 7945

LC005362

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO TOWNS AND CITIES – LOW AND MODERATE INCOME HOUSING

Introduced By: Representatives Speakman, Shekarchi, Donovan, Cortvriend, Carson,
Hull, Fogarty, Casimiro, and Alzate

Date Introduced: March 07, 2022

Referred To: House Municipal Government & Housing

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-53-5 and 45-53-7 of the General Laws in Chapter 45-53 entitled
2 "Low and Moderate Income Housing" are hereby amended to read as follows:

3 **45-53-5. Appeals to state housing appeals board -- Judicial review.**

4 (a) Whenever an application filed under the provisions of § 45-53-4 is denied, or is granted
5 with conditions and requirements that make the building or operation of the housing infeasible, the
6 applicant has the right to appeal to the state housing appeals board established by § 45-53-7, for a
7 review of the application. The appeal shall be taken within twenty (20) days after the date of the
8 notice of the decision by the local review board by filing with the appeals board a statement of the
9 prior proceedings and the reasons upon which the appeal is based.

10 (b) The appeals board shall immediately notify the local review board of the filing of the
11 petition for review and the latter shall, within ten (10) days of the receipt of the notice, transmit a
12 copy of its decision and the reasons for that decision to the appeals board.

13 (c)(1) The appeal shall be heard by the appeals board within twenty (20) days after the
14 receipt of the applicant's statement. A stenographic record of the proceedings shall be kept and the
15 appeals board shall render a written decision and order, based upon a majority vote, stating its
16 findings of fact, and its conclusions and the reasons for those conclusions, within thirty (30) days
17 after the termination of the hearing, unless the time has been extended by mutual agreement
18 between the appeals board and the applicant. Provided, the decision and order of the appeals board
19 shall be issued no later than nine (9) months after receipt of the applicant's statement. If the appeals

1 board does not issue a decision and order within the nine (9) month period after receipt of the
2 applicant's statement, a judgment shall be entered in favor of the applicant.

3 (2) The decision and order may be appealed in the superior court within twenty (20) days
4 of the issuance of the decision. The review shall be conducted by the superior court without a jury.
5 The court shall consider the record of the hearing before the state housing appeals board and, if it
6 appears to the court that additional evidence is necessary for the proper disposition of the matter, it
7 may allow any party to the appeal to present that evidence in open court, which evidence, along
8 with the report, constitutes the record upon which the determination of the court is made.

9 (d) The court shall not substitute its judgment for that of the state housing appeals board as
10 to the weight of the evidence on questions of fact, except in the case of a judgment entered in favor
11 of an applicant for failure of the hearing board to issue a decision and order within the nine (9)
12 month period after receipt of the applicant's statement, in which case there shall be a rebuttable
13 presumption in favor of the applicant. The court may affirm the decision of the state housing
14 appeals board or remand the case for further proceedings, or may reverse or modify the decision if
15 substantial rights of the appellant have been prejudiced because of findings, inferences,
16 conclusions, or decisions which are:

17 (1) In violation of constitutional, statutory, or ordinance provisions;

18 (2) In excess of the authority granted to the state housing appeal board by statute or
19 ordinance;

20 (3) Made upon unlawful procedure;

21 (4) Affected by other error of law;

22 (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the
23 whole record; or

24 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
25 exercise of discretion.

26 (7) Provided, if a judgment is entered in favor of an applicant because of the failure of the
27 review board to issue a decision within nine (9) months of receipt of the applicant's statement
28 pursuant to subsection (c) of this section, there shall be a rebuttable presumption that the applicant's
29 position was correct, and the burden shall be upon the opposing party to establish that the
30 applicant's application should be denied. Such burden shall need to be met by a preponderance of
31 the evidence.

32 (e) Any appeal from the superior court to the supreme court pursuant to this section shall
33 be by writ of certiorari.

34 **45-53-7. Housing appeals board.**

1 (a)(1) There shall be within the state a housing appeals board consisting of nine (9) voting
2 members and three (3) alternates as follows: one voting member to be appointed by the speaker of
3 the house; one voting member to be appointed by the president of the senate; and seven (7) voting
4 members to be appointed by the governor, who shall include four (4) local officials, who shall not
5 be from the same city or town; two (2) of whom shall be from a city or town with a population of
6 less than twenty-five thousand (25,000); and two (2) of whom shall be from a city or town with a
7 population of twenty-five thousand (25,000) or greater, and shall include one local zoning board
8 member, one local planning board member, one city council member and one town council
9 member, one of the local official members shall be designated by the governor as the alternative
10 local official member who shall be a voting member of the board only in the event that one or more
11 of the other three (3) local officials is unable to serve at a hearing; one affordable housing
12 developer; one affordable housing advocate; one representative of the business community; and
13 one attorney knowledgeable in land use regulation, who should be chairperson of the board. The
14 speaker shall also appoint two (2) additional alternates to the board who may serve in the event any
15 two (2) other voting members are unable to attend. These two (2) alternates shall be chosen from
16 realtors or developers in the state.

17 (2) Those members of the board as of July 2, 2004 who were appointed to the board by
18 members of the general assembly shall cease to be members of the board on July 2, 2004, and the
19 governor shall thereupon nominate four (4) new members each of whom shall serve for the balance
20 of the current term of his or her predecessor.

21 (3) All other members of the commission as of July 2, 2004 shall continue to serve for the
22 duration of their current terms.

23 (4) All gubernatorial appointments made under this section after July 2, 2004 shall be
24 subject to the advice and consent of the senate.

25 (b) All appointments are for two (2) year terms; except as otherwise provided in subsection
26 (a)(2) of this section, the terms of members appointed after December 31, 2004, shall be for three
27 (3) years. Each member who is duly appointed or continued in office after January 1, 2005, shall
28 hold office for the term for which the member is appointed and until the member's successor shall
29 have been appointed and qualified, or until the member's earlier death, resignation, or removal. A
30 member shall receive no compensation for his or her services, but shall be reimbursed by the state
31 for all reasonable expenses actually and necessarily incurred in the performance of his or her
32 official duties. The board shall hear all petitions for review filed under § 45-53-5, and shall conduct
33 all hearings in accordance with the rules and regulations established by the chair. Rhode Island
34 housing shall provide space, and clerical and other assistance, as the board may require.

1 SECTION 2. Chapter 45-53 of the General Laws entitled "Low and Moderate Income
2 Housing" is hereby amended by adding thereto the following section:

3 **45-53-10. Semi-annual status reports on appeals.**

4 (a) The Rhode Island housing corporation established pursuant to chapter 55 of title 42 (the
5 "corporation") shall maintain accurate records and shall prepare, semi-annual status reports ("status
6 reports") on all active cases and appeals pending before the state housing appeals board (the
7 "board"). These status reports shall be forwarded to the secretary of commerce for housing, the
8 speaker of the house, and the president of the senate. Each of these reports shall also be made
9 available on the corporation's website for a period of at least three (3) years, and shall also be
10 deemed to be a public record. These status reports shall be due on or before April 1 and October 1
11 of each year, commencing in the calendar year 2023.

12 (b) The reports required by this section shall contain the following information for the six
13 (6) month calendar period covered by the report:

14 (1) The total number of cases and appeals pending before the board;

15 (2) The number of cases and appeals for which a decision has been rendered, have been
16 settled by agreement, or have otherwise been disposed of;

17 (3) The number of cases and appealed from a decision has been rendered and which have
18 been appealed; and

19 (4) The length of time cases and appeals have been before the board, aggregated by:

20 (i) Cases and appeals before the board for less than six (6) months;

21 (ii) Cases and appeals before the board for between six (6) and nine (9) months; and

22 (iii) Cases and appeals before the board for more than nine (9) months.

23 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TOWNS AND CITIES – LOW AND MODERATE INCOME HOUSING

1 This act would amend the composition of the state housing appeals board by adding a
2 member selected by the speaker of the house and a member selected by the senate president, as
3 well as two (2) more alternates selected by the speaker. This act would also provide that if a
4 decision on an applicant's appeal was not made within nine (9) months of receipt of the applicant's
5 statement, a judgment would automatically be entered in favor of the applicant's position. The act
6 would also provide for semi-annual reports to be issued on the status of cases and appeals before
7 the state housing appeals board.

8 This act would take effect upon passage.

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