

2023 -- S 1050

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO TOWNS AND CITIES -- LOW AND MODERATE INCOME HOUSING

Introduced By: Senators McKenney, and Pearson

Date Introduced: May 19, 2023

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-53-4 and 45-53-5 of the General Laws in Chapter 45-53 entitled
2 "Low and Moderate Income Housing" are hereby amended to read as follows:

3 **45-53-4. Procedure for approval of construction of low- or moderate-income housing.**

4 (a) Any applicant proposing to build low- or moderate-income housing may submit to the
5 local review board a single application for a comprehensive permit to build that housing in lieu of
6 separate applications to the applicable local boards. This procedure is only available for proposals
7 in which at least twenty-five percent (25%) of the housing is low- or moderate-income housing.

8 The application and review process for a comprehensive permit shall be as follows:

9 (1) Submission requirements. Applications for a comprehensive permit shall include:

10 (i) A letter of eligibility issued by the Rhode Island housing and mortgage finance
11 corporation, or in the case of projects primarily funded by the U.S. Department of Housing and
12 Urban Development or other state or federal agencies, an award letter indicating the subsidy, or
13 application in such form as may be prescribed for a municipal government subsidy; and

14 (ii) A written request to the local review board to submit a single application to build or
15 rehabilitate low- or moderate-income housing in lieu of separate applications to the applicable local
16 boards. The written request shall identify the specific sections and provisions of applicable local
17 ordinances and regulations from which the applicant is seeking relief; and

18 (iii) A proposed timetable for the commencement of construction and completion of the
19 project; and

1 (iv) A sample land lease or deed restriction with affordability liens that will restrict use as
2 low- and moderate-income housing in conformance with the guidelines of the agency providing
3 the subsidy for the low- and moderate-income housing, but for a period of not less than thirty (30)
4 years; and

5 (v) Identification of an approved entity that will monitor the long-term affordability of the
6 low- and moderate-income units; provided, that, on and after July 1, 2022, this entity shall include
7 the Rhode Island housing resources commission established pursuant to chapter 128 of title 42 and
8 acting through its monitoring agents, and these agents shall monitor the long-term affordability of
9 the low- and moderate-income units pursuant to § 45-53-3.2; and

10 (vi) A financial pro-forma for the proposed development; and

11 (vii) For comprehensive permit applications: (A) Not involving major land developments
12 or major subdivisions including, but not limited to, applications seeking relief from specific
13 provisions of a local zoning ordinance, or involving administrative subdivisions, minor land
14 developments or minor subdivisions, or other local ordinances and regulations: those items required
15 by local regulations promulgated pursuant to applicable state law, with the exception of evidence
16 of state or federal permits; and for comprehensive permit applications; and (B) Involving major
17 land developments and major subdivisions, unless otherwise agreed to by the applicant and the
18 town; those items included in the checklist for the master plan in the local regulations promulgated
19 pursuant to § 45-23-40. Subsequent to master plan approval, the applicant must submit those items
20 included in the checklist for a preliminary plan for a major land development or major subdivision
21 project in the local regulations promulgated pursuant to § 45-23-41, with the exception of evidence
22 of state or federal permits. All required state and federal permits must be obtained prior to the final
23 plan approval or the issuance of a building permit; and

24 (viii) Municipalities may impose fees on comprehensive permit applications that are
25 consistent with but do not exceed fees that would otherwise be assessed for a project of the same
26 scope and type but not proceeding under this chapter, provided, however, that the imposition of
27 such fees shall not preclude a showing by a nonprofit applicant that the fees make the project
28 financially infeasible; and

29 (xi) Notwithstanding the submission requirements set forth above, the local review board
30 may request additional, reasonable documentation throughout the public hearing, including, but not
31 limited to, opinions of experts, credible evidence of application for necessary federal and/or state
32 permits, statements and advice from other local boards and officials.

33 (2) Certification of completeness. The application must be certified complete or incomplete
34 by the administrative officer according to the provisions of § 45-23-36; provided, however, that for

1 a major land development or major subdivision, the certificate for a master plan shall be granted
2 within twenty-five (25) days and for a preliminary plan shall be granted within twenty-five (25)
3 days. The running of the time period set forth herein will be deemed stopped upon the issuance of
4 a certificate of incompleteness of the application by the administrative officer and will recommence
5 upon the resubmission of a corrected application by the applicant. However, in no event will the
6 administrative officer be required to certify a corrected submission as complete or incomplete less
7 than ten (10) days after its resubmission. If the administrative officer certifies the application as
8 incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

9 (3) Pre-application conference. Where the comprehensive permit application proposal is a
10 major land development project or a major subdivision pursuant to chapter 23 of this title a
11 municipality may require an applicant proposing a project under this chapter to first schedule a pre-
12 application conference with the local review board, the technical review committee established
13 pursuant to § 45-23-56, or with the administrative officer for the local review board and other local
14 officials, as appropriate. To request a pre-application conference, the applicant shall submit a short
15 description of the project in writing including the number of units, type of housing, as well as a
16 location map. The purpose of the pre-application conference shall be to review a concept plan of
17 the proposed development. Upon receipt of a request by an applicant for a pre-application
18 conference, the municipality has thirty (30) days to schedule and hold the pre-application
19 conference. If thirty (30) days has elapsed from the filing of the pre-application submission and no
20 pre-application conference has taken place, nothing shall be deemed to preclude an applicant from
21 thereafter filing and proceeding with an application for a comprehensive permit.

22 (4) Review of applications. An application filed in accordance with this chapter shall be
23 reviewed by the local review board at a public hearing in accordance with the following provisions:

24 (i) Notification. Upon issuance of a certificate of completeness for a comprehensive permit,
25 the local review board shall immediately notify each local board, as applicable, of the filing of the
26 application, by sending a copy to the local boards and to other parties entitled to notice of hearings
27 on applications under the zoning ordinance and/or land development and subdivision regulations
28 as applicable.

29 (ii) Public notice. Public notice for all public hearings will be the same notice required
30 under local regulations for a public hearing for a preliminary plan promulgated in accordance with
31 § 45-23-42. The cost of notice shall be paid by the applicant.

32 (iii) Review of minor projects. The review of a comprehensive permit application involving
33 only minor land developments or minor subdivisions or requesting zoning ordinance relief or relief
34 from other local regulations or ordinances not otherwise addressed in this subsection, shall be

1 conducted following the procedures in the applicable local regulations, with the exception that all
2 minor land developments or minor subdivisions under this section are required to hold a public
3 hearing on the application, and within ninety-five (95) days of issuance of the certificate of
4 completeness, or within such further time as is agreed to by the applicant and the local review
5 board, render a decision.

6 (iv) Review of major projects. In the review of a comprehensive permit application
7 involving a major land development and/or major subdivision, the local review board shall hold a
8 public hearing on the master plan and shall, within ninety (90) days of issuance of the certification
9 of completeness, or within such further amount of time as may be agreed to by the local review
10 board and the applicant, render a decision. Preliminary and final plan review shall be conducted
11 according to local regulations promulgated pursuant to chapter 23 of this title except as otherwise
12 specified in this section.

13 (v) Required findings. In approving an application, the local review board shall make
14 positive findings, supported by legally competent evidence on the record that discloses the nature
15 and character of the observations upon which the fact finders acted, on each of the following
16 standard provisions, where applicable:

17 (A) The proposed development is consistent with local needs as identified in the local
18 comprehensive community plan with particular emphasis on the community's affordable housing
19 plan and/or has satisfactorily addressed the issues where there may be inconsistencies.

20 (B) The proposed development is in compliance with the standards and provisions of the
21 municipality's zoning ordinance and subdivision regulations, and/or where expressly varied or
22 waived local concerns that have been affected by the relief granted do not outweigh the state and
23 local need for low- and moderate-income housing.

24 (C) All low- and moderate-income housing units proposed are integrated throughout the
25 development; are compatible in scale and architectural style to the market rate units within the
26 project; and will be built and occupied prior to, or simultaneous with the construction and
27 occupancy of any market rate units.

28 (D) There will be no significant negative environmental impacts from the proposed
29 development as shown on the final plan, with all required conditions for approval.

30 (E) There will be no significant negative impacts on the health and safety of current or
31 future residents of the community, in areas including, but not limited to, safe circulation of
32 pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability
33 of potable water, adequate surface water run-off, and the preservation of natural, historical, or
34 cultural features that contribute to the attractiveness of the community.

1 (F) All proposed land developments and all subdivisions lots will have adequate and
2 permanent physical access to a public street in accordance with the requirements of § 45-23-60(5).

3 (G) The proposed development will not result in the creation of individual lots with any
4 physical constraints to development that building on those lots according to pertinent regulations
5 and building standards would be impracticable, unless created only as permanent open space or
6 permanently reserved for a public purpose on the approved, recorded plans.

7 (vi) The local review board has the same power to issue permits or approvals that any local
8 board or official who would otherwise act with respect to the application, including, but not limited
9 to, the power to attach to the permit or approval, conditions, and requirements with respect to
10 height, site plan, size or shape, or building materials, as are consistent with the terms of this section.

11 (vii) In reviewing the comprehensive permit request, the local review board may deny the
12 request for any of the following reasons: (A) If the city or town has an approved affordable housing
13 plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing
14 plan; provided that, the local review board also finds that the municipality has made significant
15 progress in implementing that housing plan; (B) The proposal is not consistent with local needs,
16 including, but not limited to, the needs identified in an approved comprehensive plan, and/or local
17 zoning ordinances and procedures promulgated in conformance with the comprehensive plan; (C)
18 The proposal is not in conformance with the comprehensive plan; (D) The community has met or
19 has plans to meet the goal of ten percent (10%) of the year-round units or, in the case of an urban
20 town or city, fifteen percent (15%) of the occupied rental housing units as defined in § 45-53-3(4)(i)
21 being low- and moderate-income housing; provided that, the local review board also finds that the
22 community has achieved or has made significant progress towards meeting the goals required by
23 this section; or (E) Concerns for the environment and the health and safety of current residents have
24 not been adequately addressed.

25 (viii) All local review board decisions on comprehensive permits shall be by majority vote
26 of the members present at the proceeding; ~~provided that, there is at least a quorum of the local
27 review board present and voting at the proceeding, and may be appealed by the applicant to the
28 state housing appeals board.~~

29 (ix) If the public hearing is not convened or a decision is not rendered within the time
30 allowed in subsections (a)(4)(iii) and (iv), the application is deemed to have been allowed and the
31 relevant approval shall issue immediately; provided, however, that this provision shall not apply to
32 any application remanded for hearing in any town where more than one application has been
33 remanded for hearing provided for in § 45-53-6(f)(2).

34 (x) ~~Any person aggrieved by the issuance of an approval may appeal to the superior court~~

1 ~~within twenty (20) days of the issuance of approval.~~

2 (xi) A comprehensive permit shall expire unless construction is started within twelve (12)
3 months and completed within sixty (60) months of final plan approval unless a longer and/or phased
4 period for development is agreed to by the local review board and the applicant. Low- and
5 moderate-income housing units shall be built and occupied prior to, or simultaneous with the
6 construction and occupancy of market rate units.

7 (xii) A town with an approved affordable housing plan and that is meeting local housing
8 needs may by council action limit the annual total number of dwelling units in comprehensive
9 permit applications from for-profit developers to an aggregate of one percent (1%) of the total
10 number of year-round housing units in the town, as recognized in the affordable housing plan and
11 notwithstanding the timetables set forth elsewhere in this section, the local review board shall have
12 the authority to consider comprehensive permit applications from for-profit developers, which are
13 made pursuant to this paragraph, sequentially in the order in which they are submitted.

14 (xiii) The local review board of a town with an approved affordable housing plan shall
15 report the status of implementation to the housing resources commission, including the disposition
16 of any applications made under the plan, as of June 30, 2006, by September 1, 2006, and for each
17 June 30 thereafter by September 1 through 2010. The housing resources commission shall prepare
18 by October 15 and adopt by December 31, a report on the status of implementation, which shall be
19 submitted to the governor, the speaker, and the president of the senate, ~~and the chairperson of the~~
20 ~~state housing appeals board~~, and shall find which towns are not in compliance with implementation
21 requirements.

22 (xiv) Notwithstanding the provisions of § 45-53-4 in effect on February 13, 2004, to
23 commence hearings within thirty (30) days of receiving an application remanded ~~by the state~~
24 ~~housing appeals board~~ pursuant to § ~~45-53-6(f)(2)~~ 45-53-5 or, effective January 1, 2024, § 45-53-
25 5.1 shall be heard as herein provided; in any town with more than one remanded application,
26 applications may be scheduled for hearing in the order in which they were received, and may be
27 taken up sequentially, with the thirty-day (30) requirement for the initiation of hearings,
28 commencing upon the decision of the earlier filed application.

29 (b)(1) The general assembly finds and declares that in January 2004 towns throughout
30 Rhode Island have been confronted by an unprecedented volume and complexity of development
31 applications as a result of private for-profit developers using the provisions of this chapter and that
32 in order to protect the public health and welfare in communities and to provide sufficient time to
33 establish a reasonable and orderly process for the consideration of applications made under the
34 provisions of this chapter, and to have communities prepare plans to meet low- and moderate-

1 income housing goals, that it is necessary to impose a moratorium on the use of comprehensive
2 permit applications as herein provided by private for-profit developers; a moratorium is hereby
3 imposed on the use of the provisions of this chapter by private for-profit developers, which
4 moratorium shall be effective on passage and shall expire on January 31, 2005, and may be revisited
5 prior to expiration and extended to such other date as may be established by law. Notwithstanding
6 the provisions of subsection (a) of this section, private for-profit developers may not utilize the
7 procedure of this chapter until the expiration of the moratorium.

8 (2) No for-profit developer shall submit a new application for comprehensive permits until
9 July 1, 2005, except by mutual agreement with the local review board.

10 (3) Notwithstanding the provisions of subdivision (b)(2) of this section, a local review
11 board in a town which has submitted a plan in accordance with subsection (c) of this section, shall
12 not be required to accept an application for a new comprehensive permit from a for-profit developer
13 until October 1, 2005.

14 (c) Towns and cities that are not in conformity with the provisions of § 45-53-3(4)(i) shall
15 prepare by December 31, 2004, a comprehensive plan housing element for low- and moderate-
16 income housing as specified by § 45-53-3(4)(ii), consistent with applicable law and regulation.
17 That the secretary of the planning board or commission of each city or town subject to the
18 requirements of this paragraph shall report in writing the status of the preparation of the housing
19 element for low- and moderate-income housing on or before June 30, 2004, and on or before
20 December 31, 2004, to the secretary of the state planning council, to the chair of the house
21 committee on corporations and to the chair of the senate committee on commerce, housing and
22 municipal government. ~~The state housing appeals board shall use said plan elements in making~~
23 ~~determinations provided for in § 45-53-6(e)(2).~~

24 (d) If any provision of this section or the application thereof shall for any reason be judged
25 invalid, the judgment shall not affect, impair, or invalidate the remainder of this section or of any
26 other provision of this chapter, but shall be confined in its effect to the provision or application
27 directly involved in the controversy giving rise to the judgment, and a moratorium on the
28 applications of for-profit developers pursuant to this chapter shall remain and continue to be in
29 effect for the period commencing on the day this section becomes law [February 13, 2004] and
30 continue until it shall expire on January 31, 2005, or until amended further.

31 (e) In planning for, awarding, and otherwise administering programs and funds for housing
32 and for community development, state departments, agencies, boards and commissions, and public
33 corporations, as defined in chapter 18 of title 35, shall among the towns subject to the provision of
34 § 45-53-3(ii), give priority to the maximum extent allowable by law to towns with an approved

1 affordable housing plan. The director of administration shall adopt not later than January 31, 2005,
2 regulations to implement the provisions of this section.

3 (f) Multi-family rental units built under a comprehensive permit may be calculated towards
4 meeting the requirements of a municipality's low- or moderate-income housing inventory, as long
5 as the units meet and are in compliance with the provisions of § 45-53-3.1.

6 ~~45-53-5. Appeals to state housing appeals board — Judicial review. [Effective~~
7 ~~January 1, 2023.] Appeals -- Judicial review [Effective until January 1, 2024].~~

8 (a) Effective July 1, 2023, until January 1, 2024, at which time the provisions of this section
9 shall sunset and be repealed and replaced by § 45-53-5.1, any and all existing appeals pending
10 before the state housing appeals board shall continue to be heard and decided in accordance with
11 this chapter until December 31, 2023. All appeals shall continue to be filed with the state housing
12 appeals board in accordance with this chapter until December 31, 2023.

13 ~~(a)~~(b) Whenever an application filed under the provisions of § 45-53-4 is denied, or is
14 granted with conditions and requirements that make the building or operation of the housing
15 infeasible, the applicant has the right to appeal to the ~~state housing appeals board (“SHAB”)~~
16 ~~established by § 45-53-7, for a review of the application~~ superior court for the county in which the
17 property is situated. The appeal shall be taken within twenty (20) days after the date of the ~~notice~~
18 ~~recording and posting~~ of the decision by the local review board by filing with the ~~appeals board~~
19 superior court, a complaint, which contains a statement of the prior proceedings and the reasons
20 upon which the appeal is based. The appeal shall name the local review board as appellee.

21 ~~(b)~~(c) The appeals board shall immediately notify the local review board of the filing of
22 the petition for review. Municipalities shall submit the complete local review board record to the
23 state housing appeals board within thirty (30) days of receiving notification from SHAB that an
24 appeal has been filed.

25 ~~(c) [As amended by P.L. 2022, ch. 208, § 3 and P.L. 2022, ch. 209, § 3.] The appeal shall~~
26 ~~be heard by the appeals board within twenty (20) days after the receipt of the applicant's statement.~~
27 ~~Four (4) active members, which may include an alternate, are necessary to conduct a hearing on an~~
28 ~~appeal. A stenographic record of the proceedings shall be kept and the appeals board shall render a~~
29 ~~written decision and order, based upon a majority vote of members present and voting, stating its~~
30 ~~findings of fact, and its conclusions and the reasons for those conclusions, within thirty (30) days~~
31 ~~after the termination of the hearing, unless the time has been extended by mutual agreement~~
32 ~~between the appeals board and the applicant. The decision and order may be appealed in the~~
33 ~~superior court within twenty (20) days of the issuance of the decision. The review shall be~~
34 ~~conducted by the superior court without a jury. The court shall consider the record of the hearing~~

1 ~~before the state housing appeals board and, if it appears to the court that additional evidence is~~
2 ~~necessary for the proper disposition of the matter, it may allow any party to the appeal to present~~
3 ~~that evidence in open court, which evidence, along with the report, constitutes the record upon~~
4 ~~which the determination of the court is made.~~

5 ~~(e)~~(d) [As amended by P.L. 2022, ch. 413, § 1 and P.L. 2022, ch. 414, § 1.] SHAB
6 decisions shall be made within nine (9) months of the filing of the appeal, ~~which time period may~~
7 ~~only be extended for good cause by an affirmative vote of the SHAB to so extend the time, if~~
8 ~~circumstances demand more time. Any extension beyond the nine month (9) period shall be limited~~
9 ~~to the least extent reasonable and shall not cumulatively extend the decision period by more than~~
10 ~~an additional two (2) months. Five (5) active members, which may include an alternate, are~~
11 ~~necessary to conduct a hearing on appeal.~~ A stenographic record of the proceedings shall be kept
12 and the appeals board shall render a written decision and order, based upon a majority vote of the
13 members present at the proceeding; ~~provided that, there is at least a minimum quorum of members~~
14 ~~of the appeals board present and voting at the proceeding,~~ stating its findings of fact, and its
15 conclusions and the reasons for those conclusions, within thirty (30) days after the termination of
16 the hearing, ~~unless the time has been extended by mutual agreement between the appeals board and~~
17 ~~the applicant.~~ The decision and order may be appealed in the superior court within twenty (20) days
18 of the issuance of the decision. The review shall be conducted by the superior court without a jury.
19 The court shall consider the record of the hearing before the state housing appeals board and, if it
20 appears to the court that additional evidence is necessary for the proper disposition of the matter, it
21 may allow any party to the appeal to present that evidence in open court, which evidence, along
22 with the report, constitutes the record upon which the determination of the court is made.

23 ~~(d)~~(e) The court shall not substitute its judgment for that of the state housing appeals board
24 as to the weight of the evidence on questions of fact. The court may affirm the decision of the state
25 housing appeals board or remand the case for further proceedings, or may reverse or modify the
26 decision if substantial rights of the appellant have been prejudiced because of findings, inferences,
27 conclusions, or decisions which are:

- 28 (1) In violation of constitutional, statutory, or ordinance provisions;
- 29 (2) In excess of the authority granted to the state housing appeals board by statute or
30 ordinance;
- 31 (3) Made upon unlawful procedure;
- 32 (4) Affected by other error of law;
- 33 (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the
34 whole record; or

1 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
2 exercise of discretion.

3 ~~(e)~~(f) Any appeal from the superior court to the supreme court pursuant to this section shall
4 be by writ of certiorari.

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

7 **45-53-5.1. Appeals -- Judicial review [Effective January 1, 2024].**

8 (a) Effective January 1, 2024 as a replacement to § 45-53-5. A decision of a local review
9 board may be appealed by the applicant or an aggrieved party, as defined by § 45-24-31 to the
10 superior court for the county in which the property is situated. The appeal shall be taken within
11 twenty (20) days after the date of the recording and posting of the decision by the local review
12 board by filing with the superior court, a complaint which contains a statement of the prior
13 proceedings and the reasons upon which the appeal is based. The complaint shall name the local
14 review board as the appellee and serve the local review board with the appeal within twenty (20)
15 days of filing of the appeal. If an aggrieved party who is not the applicant files an appeal, the
16 original applicant shall be named as a party and served in the same manner as the local review
17 board.

18 (b) The local review board shall not be required to answer the complaint, but it shall submit
19 the complete local review board record to superior court within thirty (30) days of receiving service
20 of the complaint. Should the local review board fail to file the record within thirty (30) days, the
21 applicant may move for default.

22 (c) The appeal shall be expedited and given priority on the court calendar as soon as proof
23 of service of the complaint on the local review board is filed. The appeal shall be decided as soon
24 as possible by the superior court, without delay.

25 (d) The review shall be conducted by the superior court without a jury. The court shall
26 consider the record of the hearing before the local review board and, if it appears to the court that
27 additional evidence is necessary for the proper disposition of the matter, it may allow any party to
28 the appeal to present that evidence in open court, which evidence, along with the record, constitutes
29 the record upon which the determination of the court is made.

30 (e) The superior court shall review the appeal under the following standards:

31 (1) Whether the decision was arbitrary and capricious or clearly erroneous in light of
32 considerations regarding:

33 (i) The consistency of the decision to deny or condition the permit with the approved
34 affordable housing plan;

1 (ii) The extent to which the community meets or plans to meet housing needs, as defined
2 in an affordable housing plan, including, but not limited to, the ten percent (10%) goal for existing
3 low-and moderate-income housing units as a proportion of year-round housing;

4 (iii) The consideration of environmental protection;

5 (iv) The state's need for low-and moderate-income housing;

6 (v) The need to protect the health and safety of the occupants of the proposed housing or
7 the residents of the city or town;

8 (vi) The need to promote better site and building design in relation to the surroundings or
9 to preserve open space; and

10 (vii) Whether the reasons for denial, local zoning or land use ordinances, requirements and
11 regulations are applied as equally as possible to both subsidized and unsubsidized housing.

12 (f) If the appeal is by an applicant for a decision approving an application with conditions,
13 the superior court shall, in addition to reviewing the standards and considerations set forth in
14 subsection (e) of this section, determine whether such conditions and requirements imposed make
15 the construction or operation of the housing infeasible.

16 (g) The court shall not substitute its judgment for that of the local review board as to the
17 weight of the evidence on questions of fact. The court may affirm the decision of the local review
18 board or remand the case for further proceedings, or may reverse or modify the decision if
19 substantial rights of the appellant have been prejudiced because of findings, inferences,
20 conclusions, or decisions that were arbitrary, capricious or unreasonable.

21 (h) Any appeal from the superior court to the supreme court pursuant to this section shall
22 be by writ of certiorari.

23 (i) Effective January 1, 2024, all matters pending before the state housing appeals board
24 shall be transferred to superior court for the county in which the property is situated by the applicant
25 filing a complaint in superior court and providing a copy of the complaint to the attorney
26 representing the local review board within ten (10) days of filing. An applicant with an appeal
27 pending before the state housing appeals board shall have until March 1, 2024, to file the complaint
28 transferring the matter to superior court for the county in which the property is situated. The parties
29 shall be required to file the entire record before the state housing appeals board with superior court
30 within forty-five (45) days of the filing of the complaint.

31 (j) Effective January 1, 2024, this section shall replace the provisions of § 45-53-5 and any
32 reference in the general laws to § 45-53-5 shall mean §45-53-5.1.

33 SECTION 3. Sections 45-53-6 and 45-53-7 of the General Laws in Chapter 45-53 entitled
34 "Low and Moderate Income Housing" are hereby amended to read as follows:

1 **45-53-6. Powers of state housing appeals board Powers of state housing appeals board**
2 **[Effective until January 1, 2024].**

3 (a) Effective until January 1, 2024, the ~~The~~ state housing appeals board shall have the
4 powers to: (i) Adopt, amend, and repeal rules and regulations that are consistent with this chapter
5 and are necessary to implement the requirements of §§ 45-53-5, 45-53-6, and 45-53-7; (ii) Receive
6 and expend state appropriations; and (iii) Establish a reasonable fee schedule, which may be
7 waived, to carry out its duties.

8 (b) In hearing the appeal, the state housing appeals board shall determine whether: (i) In
9 the case of the denial of an application, the decision of the local review board was consistent with
10 an approved affordable housing plan, or if the town does not have an approved affordable housing
11 plan, was reasonable and consistent with local needs; and (ii) In the case of an approval of an
12 application with conditions and requirements imposed, whether those conditions and requirements
13 make the construction or operation of the housing infeasible and whether those conditions and
14 requirements are consistent with an approved affordable housing plan, or if the town does not have
15 an approved affordable housing plan, are consistent with local needs.

16 (c) In making a determination, the standards for reviewing the appeal include, but are not
17 limited to:

18 (1) The consistency of the decision to deny or condition the permit with the approved
19 affordable housing plan and/or approved comprehensive plan;

20 (2) The extent to which the community meets or plans to meet housing needs, as defined
21 in an affordable housing plan, including, but not limited to, the ten percent (10%) goal for existing
22 low- and moderate-income housing units as a proportion of year-round housing;

23 (3) The consideration of the health and safety of existing residents;

24 (4) The consideration of environmental protection; and

25 (5) The extent to which the community applies local zoning ordinances and review
26 procedures evenly on subsidized and unsubsidized housing applications alike.

27 (d) If the appeals board finds, in the case of a denial, that the decision of the local review
28 board was not consistent with an approved affordable housing plan, or if the town does not have an
29 approved affordable housing plan, was not reasonable and consistent with local needs, it shall
30 vacate the decision and issue a decision and order approving the application, denying the
31 application, or approving with various conditions consistent with local needs. If the appeals board
32 finds, in the case of an approval with conditions and requirements imposed, that the decision of the
33 local review board makes the building or operation of the housing infeasible, and/or the conditions
34 and requirements are not consistent with an approved affordable housing plan, or if the town does

1 not have an approved affordable housing plan, are not consistent with local needs, it shall issue a
2 decision and order, modifying or removing any condition or requirement so as to make the proposal
3 no longer infeasible and/or consistent, and approving the application; provided, that the appeals
4 board shall not issue any decision and order that would permit the building or operation of the
5 housing in accordance with standards less safe than the applicable building and site plan
6 requirements of the federal Department of Housing and Urban Development or the Rhode Island
7 housing and mortgage finance corporation, whichever agency is financially assisting the housing.
8 Decisions or conditions and requirements imposed by a local review board that are consistent with
9 approved affordable housing plans and/or with local needs shall not be vacated, modified, or
10 removed by the appeals board notwithstanding that the decision or conditions and requirements
11 have the effect of denying or making the applicant's proposal infeasible.

12 (e) The appeals board or the applicant has the power to enforce the orders of the appeals
13 board by an action brought in the superior court. The local review board shall carry out the decision
14 and order of the appeals board within thirty (30) days of its entry and, upon failure to do so, the
15 decision and order of the appeals board is, for all purposes, deemed to be the action of the local
16 review board, unless the applicant consents to a different decision or order by the local review
17 board. The decision and order of the appeals board is binding on the city or town, which shall
18 immediately issue any and all necessary permits and approvals to allow the construction and
19 operation of the housing as approved by the appeals board.

20 (f) The state housing appeals board shall:

21 (1) Upon an appeal of the applicant prior to August 1, 2004, rule on December 1, 2004, on
22 the substantial completeness of applications as of February 13, 2004, that were affected by the
23 moratorium established by § 45-53-4(b).

24 (i) The determination of substantial completeness shall be based on whether there was on
25 or before February 13, 2004, substantial completeness of substantially all of the following:

26 (A) A written request to the zoning board of review to submit a single application to build
27 or rehabilitate low- or moderate-income housing in lieu of separate applications to the application
28 local boards;

29 (B) A written list of variances, special use permits and waivers requested to local
30 requirements and regulations, including local codes, ordinances, bylaws or regulations, including
31 any requested waivers from the land development or subdivisions regulations, and a proposed
32 timetable for completion of the project;

33 (C) Evidence of site control;

34 (D) Evidence of eligibility for a state or federal government subsidy, including a letter from

1 the funding agency indicating the applicant and the project;

2 (E) Site development plans showing the locations and outlines of proposed buildings; the
3 proposed location, general dimensions, and materials for street, drives, parking areas, walks, and
4 paved areas; proposed landscaping improvements and open areas within the site; and the proposed
5 location and types of sewage, drainage, and water facilities;

6 (F) A report on existing site conditions and a summary of conditions in the surrounding
7 areas, showing the location and nature of existing buildings, existing street elevations, traffic
8 patterns and character of open areas, including wetlands and flood plains, in the neighborhood;

9 (G) A tabulation of proposed buildings by type, size (number of bedrooms, floor area) and
10 ground coverage and a summary showing the percentage of the tract to be occupied by buildings,
11 by parking and other paved vehicular areas and by open spaces;

12 (H) A master plan, if the development proposal is for a major or minor land development
13 plan or a major or minor subdivision;

14 (I) a sample land lease or deed restrictions with affordability liens that will restrict use as
15 low- and moderate-income housing units for a period of not less than thirty (30) years; and

16 (J) The list of all persons entitled to notice in accordance with § 45-24-53.

17 (ii) Notwithstanding the provisions of subsection (f)(1) of this section, if the zoning board
18 of review determined the application to be substantially complete and/or acted in a manner
19 demonstrating that it considered the application substantially complete for the purposes of
20 reviewing the application, the state housing appeals board shall consider the application
21 substantially complete.

22 (2) Remand for hearing in accordance with the provisions of § 45-53-4 applications that
23 are determined to be substantially complete, which hearings may be conducted (or resume) under
24 the provisions in effect on February 13, 2004, unless the applicant and the board shall mutually
25 agree that the hearing shall proceed under the provisions in effect on December 1, 2004, which
26 hearings may commence on or after January 1, 2005, but shall commence not later than January
27 31, 2005, on applications in the order in which they were received by the town, unless a different
28 commencement date is mutually agreed to by the applicant and the local board hearing the
29 applications; the local review board shall not be obligated to hear, and may deny, any application
30 affected by the moratorium unless it was determined to be substantially complete in accordance
31 with the provisions of subsection (f)(1) of this section, and the local review board may require such
32 additional submissions as may be specified by the town or necessary for the review of the
33 application.

34 (3) Hear and decide appeals, other than those covered by subsection (f)(1) of this section,

1 for which it took jurisdiction on or before May 1, 2004.

2 (4) Continue to hear and decide appeals filed by nonprofit organizations.

3 (5) Conduct such other business as may be reasonable and appropriate in order to facilitate
4 an orderly transfer of activities to the state housing appeals board as it shall be constituted after
5 January 1, 2005.

6 (g) This section shall sunset on January 1, 2024.

7 **45-53-7. ~~Housing appeals board~~ Housing appeals board [Effective until January 1,**
8 **2024].**

9 (a)(1) Effective until January 1, 2024 there ~~There~~ shall be within the state a housing appeals
10 board consisting of nine (9) voting members and three (3) alternates as follows: one voting member
11 who shall be from the Center for Justice Rhode Island; one voting member who shall be from Direct
12 Action for Rights and Equality (DARE); and seven (7) voting members to be appointed by the
13 governor, who shall include four (4) local officials, who shall not be from the same city or town;
14 two (2) of whom shall be from a city or town with a population of less than twenty-five thousand
15 (25,000); and two (2) of whom shall be from a city or town with a population of twenty-five
16 thousand (25,000) or greater, and shall include one local zoning board member, one local planning
17 board member, one city council member and one town council member, one of the local official
18 members shall be designated by the governor as the alternative local official member who shall be
19 a voting member of the board only in the event that one or more of the other three (3) local officials
20 is unable to serve at a hearing; one affordable housing developer; one affordable housing advocate;
21 one representative of the business community; and one attorney knowledgeable in land use
22 regulation, who should be chairperson of the board. There shall be two (2) additional alternates
23 appointed by the governor chosen from candidates submitted by realtors or developers doing
24 business in the state and the alternates shall rotate service as a voting member at the discretion of
25 the chairperson.

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

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

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

34 (b)(1) All appointments are for two-year (2) terms; except as otherwise provided in

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

10 (2) Provided, effective January 1, 2023, the Rhode Island housing resources commission
11 (the "commission") established pursuant to chapter 128 of title 42 shall provide all space, and
12 clerical and other assistance, as the board may require. All duties and responsibilities of Rhode
13 Island housing resources commission as to providing space, clerical and other assistance to the
14 board pursuant to subsection (b)(1) of this section shall be transferred to the commission effective
15 January 1, 2023.

16 [\(c\) This section shall sunset on January 1, 2024.](#)

17 SECTION 4. This act shall take effect upon passage.

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LC002505
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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 several sections of law relating to low-and moderate-income housing
2 and the application, appeal, and judicial review process.

3 This act would take effect upon passage.

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LC002505
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