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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO TOWNS AND CITIES - LOW AND MODERATE INCOME HOUSING

Introduced By: Senator Catherine Cool Rumsey

Date Introduced: April 25, 2013

Referred To: Senate Housing & Municipal Government

(by request)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 45-53-9 of the General Laws in Chapter 45-53 entitled "Low and  
2 Moderate Income Housing" is hereby amended to read as follows:

3 **45-53-9. Oversight commission.** -- (a) There is hereby created an oversight commission  
4 to be known as "The Housing Act of 2004 Implementation Oversight Commission" to consist of  
5 fifteen (15) members: chair of house corporations or designee; chair of senate housing and  
6 municipal government or designee; two (2) members of the house appointed by the speaker, one  
7 of whom shall be from the minority party; two (2) members of the senate appointed by the senate  
8 president, one of whom shall be from the minority party; four (4) designees of the president of the  
9 League of Cities and Towns, two (2) of whom shall be from a municipality under twenty-five  
10 thousand (25,000) population, and two (2) of whom shall be from a municipality of twenty-five  
11 thousand (25,000) population or over; and one representative each from the Rhode Island  
12 Builders Association, Rhode Island Housing, Housing Action Coalition, Grow Smart Rhode  
13 Island and Housing Network.

14 (b) The purposes of the commission shall be: (1) to monitor and evaluate the  
15 implementation of the act including the preparation and review, by statewide planning, of local  
16 plans; (2) to monitor the development and adoption of the state strategic housing plan by the  
17 housing resources commission and statewide planning; (3) to review the progress reports  
18 submitted by the housing resources commission; (4) to recommend any changes that may be  
19 needed in the law; and (5) to assess the need for resources to accomplish housing objectives and

1 to make recommendations.

2 (c) The appointing authorities set forth in subsection (g), shall make their respective  
3 appointments and/or reappointments no later than July 1, 2013 and the members of the  
4 commission shall initially meet on September 10, 2013. ~~(e) Forthwith upon the passage of this act~~  
5 ~~[July 2, 2004] the members shall meet at the call of the speaker,~~ and shall elect from among  
6 themselves co-chairs, who shall be legislators. Vacancies in said commission shall be filled in the  
7 manner as the original appointment. Meetings of the full commission shall thereafter be held  
8 during the months of November, 2013 and January, 2014, March, 2014 and May, 2014 at a  
9 minimum.

10 (d) The commission is empowered to appoint committees, which may include persons  
11 who are not members of the commission. Five (5) members of the commission shall constitute a  
12 quorum. All departments and agencies of the state shall furnish such advice and information,  
13 documentary and otherwise, to said commission and its agents as necessary or desirable to  
14 accomplish the purpose set forth in this section. The speaker is hereby authorized and directed to  
15 provide quarters for the commission. The commission shall report findings and recommendations  
16 to the speaker of the house and the president of the senate of the general assembly on or before  
17 ~~March 1, 2013~~ July 1, 2014. The commission shall expire on March 31, 2015.

18 SECTION 2. Section 45-53-4 of the General Laws in Chapter 45-53 entitled "Low and  
19 Moderate Income Housing" is hereby amended to read as follows:

20 **45-53-4. Procedure for approval of construction of low or moderate income housing.**

21 ~~==~~ (a) Any applicant proposing to build low or moderate income housing may submit to the local  
22 review board a single application for a comprehensive permit to build that housing in lieu of  
23 separate applications to the applicable local boards; however, there shall be a moratorium on the  
24 submission of new comprehensive permit applications by private for-profit developers  
25 commencing June 1, 2013 and expiring June 1, 2016 except upon mutual agreement with the  
26 local review board. All pending comprehensive permit applications prior to June 1, 2013 shall  
27 proceed in accordance with the following subsections. This procedure is only available for  
28 proposals in which at least twenty-five percent (25%) of the housing is low or moderate income  
29 housing. The application and review process for a comprehensive permit shall be as follows:

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

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

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

5 (iii) A proposed timetable for the commencement of construction and completion of the  
6 project; and

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

11 (v) Identification of an approved entity that will monitor the long-term affordability of  
12 the low and moderate income units; and

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

14 (vii) For comprehensive permit applications: (A) not involving major land developments  
15 or major subdivisions including, but not limited to, applications seeking relief from specific  
16 provisions of a local zoning ordinance, or involving administrative subdivisions, minor land  
17 developments or minor subdivisions, or other local ordinances and regulations: those items  
18 required by local regulations promulgated pursuant to applicable state law, with the exception of  
19 evidence of state or federal permits; and for comprehensive permit applications; and (B)  
20 involving major land developments and major subdivisions, unless otherwise agreed to by the  
21 applicant and the town; those items included in the checklist for the master plan in the local  
22 regulations promulgated pursuant to section 45-23-40. Subsequent to master plan approval, the  
23 applicant must submit those items included in the checklist for a preliminary plan for a major land  
24 development or major subdivision project in the local regulations promulgated pursuant to section  
25 45-23-41, with the exception of evidence of state or federal permits. All required state and federal  
26 permits must be obtained prior to the final plan approval or the issuance of a building permit; and

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

32 (xi) Notwithstanding the submission requirements set forth above, the local review board  
33 may request additional, reasonable documentation throughout the public hearing, including, but  
34 not limited to, opinions of experts, credible evidence of application for necessary federal and/or

1 state permits, statements and advice from other local boards and officials.

2 (2) Certification of completeness. - The application must be certified complete or  
3 incomplete by the administrative officer according to the provisions of section 45-23-36;  
4 provided, however, that for a major land development or major subdivision, the certificate for a  
5 master plan shall be granted within thirty (30) days and for a preliminary plan shall be granted  
6 within forty-five (45) days. The running of the time period set forth herein will be deemed  
7 stopped upon the issuance of a certificate of incompleteness of the application by the  
8 administrative officer and will recommence upon the resubmission of a corrected application by  
9 the applicant. However, in no event will the administrative officer be required to certify a  
10 corrected submission as complete or incomplete less than fourteen (14) days after its  
11 resubmission. If the administrative officer certifies the application as incomplete, the officer shall  
12 set forth in writing with specificity the missing or incomplete items.

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

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

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

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

4 (iii) Review of minor projects. - The review of a comprehensive permit application  
5 involving only minor land developments or minor subdivisions or requesting zoning ordinance  
6 relief or relief from other local regulations or ordinances not otherwise addressed in this  
7 subsection, shall be conducted following the procedures in the applicable local regulations, with  
8 the exception that all minor land developments or minor subdivisions under this section are  
9 required to hold a public hearing on the application, and within ninety-five (95) days of issuance  
10 of the certificate of completeness, or within such further time as is agreed to by the applicant and  
11 the local review board, render a decision.

12 (iv) Review of major projects. - In the review of a comprehensive permit application  
13 involving a major land development and/or major subdivision, the local review board shall hold a  
14 public hearing on the master plan and shall, within one hundred and twenty (120) days of  
15 issuance of the certification of completeness, or within such further amount of time as may be  
16 agreed to by the local review board and the applicant, render a decision. Preliminary and final  
17 plan review shall be conducted according to local regulations promulgated pursuant to chapter 23  
18 of this title except as otherwise specified in this section.

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

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

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

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

34 (D) There will be no significant negative environmental impacts from the proposed

1 development as shown on the final plan, with all required conditions for approval.

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

7 (F) All proposed land developments and all subdivisions lots will have adequate and  
8 permanent physical access to a public street in accordance with the requirements of section 45-  
9 23-60(5).

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

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

19 (vii) In reviewing the comprehensive permit request, the local review board may deny  
20 the request for any of the following reasons: (A) if city or town has an approved affordable  
21 housing plan and is meeting housing needs, and the proposal is inconsistent with the affordable  
22 housing plan; (B) the proposal is not consistent with local needs, including, but not limited to, the  
23 needs identified in an approved comprehensive plan, and/or local zoning ordinances and  
24 procedures promulgated in conformance with the comprehensive plan; (C) the proposal is not in  
25 conformance with the comprehensive plan; (D) the community has met or has plans to meet the  
26 goal of ten percent (10%) of the year-round units or, in the case of an urban town or city, fifteen  
27 percent (15%) of the occupied rental housing units as defined in section 45-53-3(2)(i) being low  
28 and moderate income housing; or (E) concerns for the environment and the health and safety of  
29 current residents have not been adequately addressed.

30 (viii) All local review board decisions on comprehensive permits shall be by majority  
31 vote of the membership of the board and may be appealed by the applicant to the state housing  
32 appeals board.

33 (ix) If the public hearing is not convened or a decision is not rendered within the time  
34 allowed in subsection (a)(4)(iii) and (iv), the application is deemed to have been allowed and the

1 relevant approval shall issue immediately; provided, however, that this provision shall not apply  
2 to any application remanded for hearing in any town where more than one application has been  
3 remanded for hearing provided for in section 45-53-6(f)(2).

4 (x) Any person aggrieved by the issuance of an approval may appeal to the superior  
5 court within twenty (20) days of the issuance of approval.

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

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

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

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

33 (b) (1) The general assembly finds and declares that in January 2004 towns throughout  
34 Rhode Island have been confronted by an unprecedented volume and complexity of development

1 applications as a result of private for-profit developers using the provisions of this chapter and  
2 that in order to protect the public health and welfare in communities and to provide sufficient  
3 time to establish a reasonable and orderly process for the consideration of applications made  
4 under the provisions of this chapter, and to have communities prepare plans to meet low and  
5 moderate income housing goals, that it is necessary to impose a moratorium on the use of  
6 comprehensive permit applications as herein provided by private for-profit developers; a  
7 moratorium is hereby imposed on the use of the provisions of this chapter by private for-profit  
8 developers, which moratorium shall be effective on passage and shall expire on January 31, 2005  
9 and may be revisited prior to expiration and extended to such other date as may be established by  
10 law. Notwithstanding the provisions of subsection (a) of this section, private for-profit developers  
11 may not utilize the procedure of this chapter until the expiration of the moratorium.

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

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

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

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



1           (e) In planning for, awarding and otherwise administering programs and funds for  
2 housing and for community development, state departments, agencies, boards and commissions,  
3 public corporations, as defined in chapter 18 of title 35, shall among the towns subject to the  
4 provision of section 45-53-3(ii) give priority to the maximum extent allowable by law, to towns  
5 with an approved affordable housing plan. The director of administration shall adopt not later  
6 than January 31, 2005, regulations to implement the provisions of this section.

7           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

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1           This act would require the various appointing authorities to fully staff the members of the  
2 oversight commission by July 1, 2013 and the oversight commission to meet during the months  
3 of September and November 2013 and January, March and May 2014 with the requirement to file  
4 its report with the general assembly by July 1, 2014.

5           This act would impose a moratorium for the filing of new comprehensive permit  
6 applications by for-profit developers relating to low and moderate income housing with the local  
7 review boards commencing June 1, 2013 and expiring on June 1, 2016.

8           This act would take effect upon passage.

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