

2016 -- S 2876 SUBSTITUTE A

=====
LC005590/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

—————
A N A C T

RELATING TO TOWNS AND CITIES - LOW AND MODERATE INCOME HOUSING

Introduced By: Senator Dennis L. Algiere

Date Introduced: March 31, 2016

Referred To: Senate Housing & Municipal Government

(by request)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-53-3 and 45-53-4 of the General Laws in Chapter 45-53
2 entitled "Low and Moderate Income Housing" are hereby amended to read as follows:

3 **45-53-3. Definitions.** -- The following words, wherever used in this chapter, unless a
4 different meaning clearly appears from the context, have the following meanings:

5 (1) "Affordable housing plan" means a component of a housing element, as defined in
6 subdivision 45-22.2-4(1), to meet housing needs in a city or town that is prepared in accordance
7 with guidelines adopted by the state planning council, and/or to meet the provisions of subsection
8 45-53-4(b)(1) and (c).

9 (2) "Approved affordable housing plan" means an affordable housing plan that has been
10 approved by the director of administration as meeting the guidelines for the local comprehensive
11 plan as promulgated by the state planning council; provided, however, that state review and
12 approval, for plans submitted by December 31, 2004, shall not be contingent on the city or town
13 having completed, adopted, or amended its comprehensive plan as provided for in sections 45-
14 22.2-8, 45-22.2-9, or 45-22.2-12.

15 (3) "Comprehensive plan" means a comprehensive plan adopted and approved by a city
16 or town pursuant to chapters 22.2 and 22.3 of this title.

17 (4) "Consistent with local needs" means reasonable in view of the state need for low and
18 moderate income housing, considered with the number of low income persons in the city or town
19 affected and the need to protect the health and safety of the occupants of the proposed housing or

1 of the residence of the city or town, to promote better site and building design in relation to the
2 surroundings, or to preserve open spaces, and if the local zoning or land use ordinances,
3 requirements, and regulations are applied as equally as possible to both subsidized and
4 unsubsidized housing. Local zoning and land use ordinances, requirements, or regulations are
5 consistent with local needs when imposed by a city or town council after comprehensive hearing
6 in a city or town where:

7 (i) Low or moderate income housing exists which is: (A) in the case of an urban city or
8 town which has at least ~~5,000~~ three thousand (3,000) occupied year-round rental units and the
9 units, as reported in the latest decennial census of the city or town, comprise twenty-five percent
10 (25%) or more of the year-round housing units, is in excess of ~~fifteen percent (15%)~~ twelve
11 percent (12%) of the total occupied year-round rental units; or (B) in the case of all other cities or
12 towns, is in excess of ten percent (10%) of the year-round housing units reported in the census.

13 (ii) The city or town has promulgated zoning or land use ordinances, requirements, and
14 regulations to implement a comprehensive plan which has been adopted and approved pursuant to
15 chapters 22.2 and 22.3 of this title, and the housing element of the comprehensive plan provides
16 for low and moderate income housing in excess of either ten percent (10%) of the year-round
17 housing units or fifteen percent (15%) of the occupied year-round rental housing units as
18 provided in subdivision (2)(i).

19 (5) "Infeasible" means any condition brought about by any single factor or combination
20 of factors, as a result of limitations imposed on the development by conditions attached to the
21 approval of the comprehensive permit, to the extent that it makes it impossible for a public
22 agency, nonprofit organization, or limited equity housing cooperative to proceed in building or
23 operating low or moderate income housing without financial loss, within the limitations set by the
24 subsidizing agency of government, on the size or character of the development, on the amount or
25 nature of the subsidy, or on the tenants, rentals, and income permissible, and without substantially
26 changing the rent levels and unit sizes proposed by the public agency, nonprofit organization, or
27 limited equity housing cooperative.

28 (6) "Letter of eligibility" means a letter issued by the Rhode Island housing and
29 mortgage finance corporation in accordance with subsection 42-55-5.3(a).

30 (7) "Local board" means any town or city official, zoning board of review, planning
31 board or commission, board of appeal or zoning enforcement officer, local conservation
32 commission, historic district commission, or other municipal board having supervision of the
33 construction of buildings or the power of enforcing land use regulations, such as subdivision, or
34 zoning laws.

1 (8) "Local review board" means the planning board as defined by subdivision 45-22.2-
2 4(26), or if designated by ordinance as the board to act on comprehensive permits for the town,
3 the zoning board of review established pursuant to section 45-24-56.

4 (9) "Low or moderate income housing" means any housing whether built or operated by
5 any public agency or any nonprofit organization or by any limited equity housing cooperative or
6 any private developer, that is subsidized by a federal, state, or municipal government subsidy
7 under any program to assist the construction or rehabilitation of housing affordable to low or
8 moderate income households, as defined in the applicable federal or state statute, or local
9 ordinance and that will remain affordable through a land lease and/or deed restriction for ninety-
10 nine (99) years or such other period that is either agreed to by the applicant and town or
11 prescribed by the federal, state, or municipal government subsidy program but that is not less than
12 thirty (30) years from initial occupancy.

13 (10) "Meeting housing needs" means adoption of the implementation program of an
14 approved affordable housing plan and the absence of unreasonable denial of applications that are
15 made pursuant to an approved affordable housing plan in order to accomplish the purposes and
16 expectations of the approved affordable housing plan.

17 (11) "Municipal government subsidy" means assistance that is made available through a
18 city or town program sufficient to make housing affordable, as affordable housing is defined in §
19 42-128-8.1(d)(1); such assistance may include, but is not limited to, direct financial support,
20 abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal
21 subsidies, and any combination of forms of assistance.

22 **45-53-4. Procedure for approval of construction of low or moderate income housing.**

23 == (a) Any applicant proposing to build low or moderate income housing may submit to the local
24 review board a single application for a comprehensive permit to build that housing in lieu of
25 separate applications to the applicable local boards. This procedure is only available for proposals
26 in which at least twenty-five percent (25%) of the housing is low or moderate income housing.
27 The application and review process for a comprehensive permit shall be as follows:

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

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

33 (ii) A written request to the local review board to submit a single application to build or
34 rehabilitate low or moderate income housing in lieu of separate applications to the applicable

1 local boards. The written request shall identify the specific sections and provisions of applicable
2 local ordinances and regulations from which the applicant is seeking relief; and

3 (iii) A proposed timetable for the commencement of construction and completion of the
4 project; and

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

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

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

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

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

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

34 (2) Certification of completeness. - The application must be certified complete or

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

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

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

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

33 (ii) Public Notice. - Public notice for all public hearings will be the same notice required
34 under local regulations for a public hearing for a preliminary plan promulgated in accordance

1 with § 45-23-42. The cost of notice shall be paid by the applicant.

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

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

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

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

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

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

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

34 (E) There will be no significant negative impacts on the health and safety of current or

1 future residents of the community, in areas including, but not limited to, safe circulation of
2 pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability
3 of potable water, adequate surface water run-off, and the preservation of natural, historical or
4 cultural features that contribute to the attractiveness of the community.

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

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

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

17 (vii) In reviewing the comprehensive permit request, the local review board may deny
18 the request for any of the following reasons: (A) if city or town has an approved affordable
19 housing plan and is meeting housing needs, and the proposal is inconsistent with the affordable
20 housing plan; (B) the proposal is not consistent with local needs, including, but not limited to, the
21 needs identified in an approved comprehensive plan, and/or local zoning ordinances and
22 procedures promulgated in conformance with the comprehensive plan; (C) the proposal is not in
23 conformance with the comprehensive plan; (D) the community has met or has plans to meet the
24 goal of ten percent (10%) of the year-round units or, ~~in the case of an urban town or city, fifteen~~
25 ~~percent (15%) of the occupied rental housing units as defined in § 45-53-3(2)(i) being low and~~
26 ~~moderate income housing~~ low or moderate income housing exists as defined in §45-53-3(4)(i); or
27 (E) concerns for the environment and the health and safety of current residents have not been
28 adequately addressed.

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

32 (ix) If the public hearing is not convened or a decision is not rendered within the time
33 allowed in subsection (a)(4)(iii) and (iv), the application is deemed to have been allowed and the
34 relevant approval shall issue immediately; provided, however, that this provision shall not apply

1 to any application remanded for hearing in any town where more than one application has been
2 remanded for hearing provided for in § 45-53-6(f)(2).

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

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

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

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

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

32 (b) (1) The general assembly finds and declares that in January 2004 towns throughout
33 Rhode Island have been confronted by an unprecedented volume and complexity of development
34 applications as a result of private for-profit developers using the provisions of this chapter and

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

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

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

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

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

34 (e) In planning for, awarding and otherwise administering programs and funds for

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

6 SECTION 2. This act shall take effect upon passage.

=====
LC005590/SUB A
=====

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 change the definition of low or moderate income housing existing, in the
- 2 case of an urban city or town, to three thousand (3,000) occupied year-round rental units.
- 3 This act would take effect upon passage.

=====
LC005590/SUB A
=====