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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

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

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

Date Introduced: March 07, 2022

Referred To: House Municipal Government & Housing

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-53-3, 45-53-4, 45-53-5, 45-53-6 and 45-53-7 of the General
2 Laws in Chapter 45-53 entitled "Low and Moderate Income Housing" are hereby amended to read
3 as follows:

4 **45-53-3. Definitions.**

5 The following words, wherever used in this chapter, unless a different meaning clearly
6 appears from the context, have the following meanings:

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

10 (2) "Approved affordable housing plan" means an affordable housing plan that has been
11 approved by the director of administration as meeting the guidelines for the local comprehensive
12 plan as promulgated by the state planning council; provided, however, that state review and
13 approval, for plans submitted by December 31, 2004, shall not be contingent on the city or town
14 having completed, adopted, or amended its comprehensive plan as provided for in § 45-22.2-8, §
15 45-22.2-9, or § 45-22.2-12.

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

18 (4) "Consistent with local needs" means reasonable in view of the state need for low and
19 moderate income housing, considered with the number of low income persons in the city or town

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

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

14 (ii) The city or town has promulgated zoning or land use ordinances, requirements, and
15 regulations to implement a comprehensive plan which has been adopted and approved pursuant to
16 chapters 22.2 and 22.3 of this title, and the housing element of the comprehensive plan provides
17 for low and moderate income housing in excess of either ten percent (10%) of the year-round
18 housing units or fifteen percent (15%) of the occupied year-round rental housing units as provided
19 in subdivision (4)(i).

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

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

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

1 (8) "Local review board" means the planning board as defined by § 45-22.2-4(20), or if
2 designated by ordinance as the board to act on comprehensive permits for the town, the zoning
3 board of review established pursuant to § 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 under
7 any program to assist the construction or rehabilitation of housing affordable to low or moderate
8 income households, as defined in the applicable federal or state statute, or local ordinance and that
9 will remain affordable through a land lease and/or deed restriction for ninety-nine (99) years or
10 such other period that is either agreed to by the applicant and town or prescribed by the federal,
11 state, or municipal government subsidy program but that is not less than thirty (30) years from
12 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 [\(11\) "Monitoring agents" means those monitoring agents appointed by the Rhode Island](#)
18 [housing resources commission pursuant to §45-53-3.1 to provide the monitoring and oversight set](#)
19 [forth in this chapter, including, but not limited to, §§ 45-53-3.1 and 45-53-4.](#)

20 ~~(11)~~ (12) "Municipal government subsidy" means assistance that is made available through
21 a city or town program sufficient to make housing affordable, as affordable housing is defined in §
22 42-128-8.1(d)(1); such assistance may include, but is not limited to, direct financial support,
23 abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal
24 subsidies, and any combination of forms of assistance.

25 **45-53-4. Procedure for approval of construction of low or moderate income housing.**

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

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

32 (i) A letter of eligibility issued by the Rhode Island housing mortgage finance corporation,
33 or in the case of projects primarily funded by the U.S. Department of Housing and Urban
34 Development or other state or federal agencies, an award letter indicating the subsidy, or

1 application in such form as may be prescribed for a municipal government subsidy; and

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

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

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

12 (v) Identification of an approved entity that will monitor the long-term affordability of the
13 low and moderate income units; provided, on or after July 1, 2022, this entity shall include the
14 Rhode Island housing resources commission established pursuant to chapter 128 of title 42 and
15 acting through its monitoring agents, and these agents shall monitor the long-term affordability of
16 the low and moderate income units; and

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

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

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

1 financially infeasible; and

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

6 (2) Certification of completeness. The application must be certified complete or incomplete
7 by the administrative officer according to the provisions of § 45-23-36; provided, however, that for
8 a major land development or major subdivision, the certificate for a master plan shall be granted
9 within ~~thirty (30)~~ twenty-five (25) days and for a preliminary plan shall be granted within ~~forty-~~
10 ~~five (45)~~ twenty-five (25) days. The running of the time period set forth herein will be deemed
11 stopped upon the issuance of a certificate of incompleteness of the application by the administrative
12 officer and will recommence upon the resubmission of a corrected application by the applicant.
13 However, in no event will the administrative officer be required to certify a corrected submission
14 as complete or incomplete less than ~~fourteen (14)~~ ten (10) days after its resubmission. If the
15 administrative officer certifies the application as incomplete, the officer shall set forth in writing
16 with specificity the missing or incomplete items.

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

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

32 (i) Notification. Upon issuance of a certificate of completeness for a comprehensive permit,
33 the local review board shall immediately notify each local board, as applicable, of the filing of the
34 application, by sending a copy to the local boards and to other parties entitled to notice of hearings

1 on applications under the zoning ordinance and/or land development and subdivision regulations
2 as applicable.

3 (ii) Public Notice. Public notice for all public hearings will be the same notice required
4 under local regulations for a public hearing for a preliminary plan promulgated in accordance with
5 § 45-23-42. The cost of notice shall be paid by the applicant.

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

14 (iv) Review of major projects. In the review of a comprehensive permit application
15 involving a major land development and/or major subdivision, the local review board shall hold a
16 public hearing on the master plan and shall, within ~~one hundred and twenty (120)~~ ninety (90) days
17 of issuance of the certification of completeness, or within such further amount of time as may be
18 agreed to by the local review board and the applicant, render a decision. Preliminary and final plan
19 review shall be conducted according to local regulations promulgated pursuant to chapter 23 of this
20 title except as otherwise specified in this section.

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

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

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

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

1 occupancy of any market rate units.

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

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

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

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

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

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

33 (viii) All local review board decisions on comprehensive permits shall be by majority vote
34 ~~of the membership of the board~~ of the members present at the proceeding; provided that, there is at

1 [least a minimum quorum of a majority of the local review board members present and voting at the](#)
2 [proceeding.](#) and may be appealed by the applicant to the state housing appeals board.

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

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

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

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

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

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

1 for the initiation of hearings, commencing upon the decision of the earlier filed application.

2 (b)(1) The general assembly finds and declares that in January 2004 towns throughout
3 Rhode Island have been confronted by an unprecedented volume and complexity of development
4 applications as a result of private for-profit developers using the provisions of this chapter and that
5 in order to protect the public health and welfare in communities and to provide sufficient time to
6 establish a reasonable and orderly process for the consideration of applications made under the
7 provisions of this chapter, and to have communities prepare plans to meet low and moderate income
8 housing goals, that it is necessary to impose a moratorium on the use of comprehensive permit
9 applications as herein provided by private for-profit developers; a moratorium is hereby imposed
10 on the use of the provisions of this chapter by private for-profit developers, which moratorium shall
11 be effective on passage and shall expire on January 31, 2005 and may be revisited prior to expiration
12 and extended to such other date as may be established by law. Notwithstanding the provisions of
13 subsection (a) of this section, private for-profit developers may not utilize the procedure of this
14 chapter until the expiration of the moratorium.

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

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

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

31 (d) If any provision of this section or the application thereof shall for any reason be judged
32 invalid, such judgment shall not affect, impair, or invalidate the remainder of this section or of any
33 other provision of this chapter, but shall be confined in its effect to the provision or application
34 directly involved in the controversy giving rise to the judgment, and a moratorium on the

1 applications of for-profit developers pursuant to this chapter shall remain and continue to be in
2 effect for the period commencing on the day this section becomes law [February 13, 2004] and
3 continue until it shall expire on January 31, 2005, or until amended further.

4 (e) In planning for, awarding and otherwise administering programs and funds for housing
5 and for community development, state departments, agencies, boards and commissions, public
6 corporations, as defined in chapter 18 of title 35, shall among the towns subject to the provision of
7 § 45-53-3(ii) give priority to the maximum extent allowable by law, to towns with an approved
8 affordable housing plan. The director of administration shall adopt not later than January 31, 2005,
9 regulations to implement the provisions of this section.

10 **45-53-5. Appeals to state housing appeals board -- Judicial review.**

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

17 (b) The appeals board shall immediately notify the local review board of the filing of the
18 petition for review, ~~and the latter shall, within ten (10) days of the receipt of the notice, transmit a~~
19 ~~copy of its decision and the reasons for that decision to the appeals board.~~ Municipalities shall
20 submit the complete local review board record to the state housing appeals board ("SHAB") within
21 thirty (30) days of receiving notification from SHAB that an appeal has been filed.

22 (c) ~~The appeal shall be heard by the appeals board within twenty (20) days after the receipt~~
23 ~~of the applicant's statement.~~ SHAB decisions shall be made within nine (9) months of the filing of
24 the appeal, which time period may only be extended by an affirmative vote of the SHAB to so
25 extend the time, if circumstances demand more time. A stenographic record of the proceedings
26 shall be kept and the appeals board shall render a written decision and order, based upon a majority
27 vote of the members present at the proceeding; provided that, there is at least a minimum quorum
28 of members of the appeals board present and voting at the proceeding, stating its findings of fact,
29 and its conclusions and the reasons for those conclusions, within thirty (30) days after the
30 termination of the hearing, unless the time has been extended by mutual agreement between the
31 appeals board and the applicant. The decision and order may be appealed in the superior court
32 within twenty (20) days of the issuance of the decision. The review shall be conducted by the
33 superior court without a jury. The court shall consider the record of the hearing before the state
34 housing appeals board and, if it appears to the court that additional evidence is necessary for the

1 proper disposition of the matter, it may allow any party to the appeal to present that evidence in
2 open court, which evidence, along with the report, constitutes the record upon which the
3 determination of the court is made.

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

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

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

12 (3) Made upon unlawful procedure;

13 (4) Affected by other error of law;

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

16 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
17 exercise of discretion.

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

20 **45-53-6. Power of state housing appeals board.**

21 (a) The state housing appeals board shall have the powers to: (i) adopt, amend and repeal
22 rules and regulations that are consistent with this chapter and are necessary to implement the
23 requirements of §§ 45-53-5, 45-53-6, and 45-53-7; (ii) receive and expend state appropriations; and
24 (iii) establish a reasonable fee schedule, which may be waived, to carry out its duties.

25 (b) In hearing the appeal, the state housing appeals board shall determine whether: (i) in
26 the case of the denial of an application, the decision of the local review board was consistent with
27 an approved affordable housing plan, or if the town does not have an approved affordable housing
28 plan, was reasonable and consistent with local needs; and (ii) in the case of an approval of an
29 application with conditions and requirements imposed, whether those conditions and requirements
30 make the construction or operation of the housing infeasible and whether those conditions and
31 requirements are consistent with an approved affordable housing plan, or if the town does not have
32 an approved affordable housing plan, are consistent with local needs.

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

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

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

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

7 (4) The consideration of environmental protection; and

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

10 (d) Upon any appeal under this section, the burden shall be on the local review board to
11 prove:

12 (1) That the decision from which such appeal is taken, and the reasons cited for such
13 decision are supported by sufficient evidence in the record;

14 (2) That the decision is necessary to protect substantial public interests in health, safety or
15 other matters which the local review board may legally consider;

16 (3) Such public interests clearly outweigh the state and local need for affordable housing;
17 and

18 (4) Such public interests cannot be protected by reasonable changes to the proposed
19 affordable housing development.

20 ~~If the appeals board finds, in the case of a denial, that the decision of the local review board~~
21 ~~was not consistent with an approved affordable housing plan, or if the town does not have an~~
22 ~~approved affordable housing plan, was not reasonable and consistent with local needs, it shall~~
23 ~~vacate the decision and issue a decision and order approving the application, denying the~~
24 ~~application, or approving with various conditions consistent with local needs. If the appeals board~~
25 ~~finds, in the case of an approval with conditions and requirements imposed, that the decision of the~~
26 ~~local review board makes the building or operation of the housing infeasible, and/or the conditions~~
27 ~~and requirements are not consistent with an approved affordable housing plan, or if the town does~~
28 ~~not have an approved affordable housing plan, are not consistent with local needs, it shall issue a~~
29 ~~decision and order, modifying or removing any condition or requirement so as to make the proposal~~
30 ~~no longer infeasible and/or consistent, and approving the application; provided, that the appeals~~
31 ~~board shall not issue any decision and order that would permit the building or operation of the~~
32 ~~housing in accordance with standards less safe than the applicable building and site plan~~
33 ~~requirements of the federal Department of Housing and Urban Development or the Rhode Island~~
34 ~~housing and mortgage finance corporation, whichever agency is financially assisting the housing.~~

1 ~~Decisions or conditions and requirements imposed by a local review board that are consistent with~~
2 ~~approved affordable housing plans and/or with local needs shall not be vacated, modified, or~~
3 ~~removed by the appeals board notwithstanding that the decision or conditions and requirements~~
4 ~~have the effect of denying or making the applicant's proposal infeasible.~~

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

13 If the appeals board finds in the case of a denial, that the local review board has failed to
14 meet its burden under subsection (d) of this section, it shall vacate the decision and issue a decision
15 and order approving the application, denying the application, or approving with various conditions
16 consistent with local needs. If the appeals board finds, in the case of an approval with conditions
17 and requirements imposed, that the local review board has failed to meet its burden under
18 subsection (d) of this section, it shall issue a decision and order modifying or removing any
19 condition or requirement so as to make the proposal no longer infeasible and/or consistent with
20 local needs and approving the application.

21 (f) The state housing appeals board shall:

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

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

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

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

34 (C) Evidence of site control;

1 (D) Evidence of eligibility for a state or federal government subsidy, including a letter from
2 the funding agency indicating the applicant and the project;

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

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

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

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

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

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

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

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

1 (3) Hear and decide appeals, other than those covered by subdivision (1) of this subsection,
2 for which it took jurisdiction on or before May 1, 2004.

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

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

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

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

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

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

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

30 (b)(1) All appointments are for two (2) year terms; except as otherwise provided in
31 subsection (a)(2) of this section, the terms of members appointed after December 31, 2004, shall
32 be for three (3) years. Each member who is duly appointed or continued in office after January 1,
33 2005, shall hold office for the term for which the member is appointed and until the member's
34 successor shall have been appointed and qualified, or until the member's earlier death, resignation,

1 or removal. A member shall receive no compensation for his or her services, but shall be reimbursed
2 by the state for all reasonable expenses actually and necessarily incurred in the performance of his
3 or her official duties. The board shall hear all petitions for review filed under § 45-53-5, and shall
4 conduct all hearings in accordance with the rules and regulations established by the chair. Rhode
5 Island housing shall provide space, and clerical and other assistance, as the board may require.

6 (2) Provided, effective January 1, 2023, the Rhode Island housing resources commission
7 (the “commission”) established pursuant to chapter 128 of title 42 shall provide all space, and
8 clerical and other assistance, as the board may require. All duties and responsibilities of Rhode
9 Island as to providing space, clerical and other assistance to the board pursuant to subsection (b)(1)
10 of this section shall be transferred to the commission effective January 1, 2023.

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

13 **45-53-3.1. Approved monitoring agent program.**

14 (a) There is hereby established an approved monitoring agent program (the “program”).
15 Effective July 1, 2022, the Rhode Island housing resources commission (the “commission”)
16 established pursuant to chapter 128 of title 42 shall have authority to appoint and oversee approved
17 monitoring agents as part of this program.

18 (b) On or before July 1, 2023, the commission shall promulgate rules and regulations
19 pursuant to chapter 35 of title 42 (“administrative procedures”) for the implementation of the
20 program, which shall include a process for the selection and approval of monitoring agents. These
21 rules and regulations shall be prepared to ensure the selection and appointment of individuals who
22 shall be capable of monitoring and ensuring that municipally subsidized housing developments
23 remain affordable, and that income eligible buyers and tenants are occupying these units. The
24 commission shall appoint these monitoring agents, who shall serve for terms of not more than ten
25 (10) consecutive years; provided that, the term of an approved monitoring agent may be renewed
26 by the commission. The commission shall appoint monitoring agents as soon as practicable after
27 the rules and regulations take effect.

28 (c) As used in this section, the term “LMI” means low and moderate income housing and
29 includes area median income levels as determined by the Secretary of Housing and Urban
30 Development (“HUD”).

31 (d) Specific duties of approved monitoring agents shall include, but not be limited to, the
32 following:

33 (1) To oversee, monitor, and ensure that tenants in affordable rental units meet income
34 limits and the project has been maintained in a safe and sanitary condition consistent with the low

1 and moderate income guidelines and the recorded deed restrictions, or for homeownership units,
2 that LMI units continue to serve as owners' principal residences; and that any LMI units that have
3 been resold during the prior two (2) years have been resold in compliance with LMI income
4 requirements.

5 (2) The monitoring agent shall monitor LMI-approved accessory apartments on a biennial
6 basis to verify their continued affordability and compliance with all income and occupancy
7 restrictions contained in the affordable housing restriction. An "accessory apartment" is an
8 apartment that has been approved as an LMI housing unit through the comprehensive permit
9 process provided by §45-53-4, is subject to recorded use restrictions in a form approved by the
10 commission that has a term of not less than ten (10) years, and otherwise meets the requirements
11 of this chapter. Forms to obtain approval by the commission shall be made available on the
12 commission's website;

13 (3) That in the case of the resale of affordable housing units at any time during the period
14 of a deed restriction or in any other situation occurring outside the time period of a deed restriction
15 where there is an intent on the buyer and seller to maintain the property as affordable housing, that
16 such sale be conducted pursuant such terms and conditions as may be required by law for such sale,
17 including, but not limited to, any rules and regulations established by the commission, the Rhode
18 Island housing and mortgage finance corporation established pursuant to chapter 55 of title 42, or
19 by HUD; and

20 (4) Such other duties as the commission sets forth in its rules and regulations for the
21 monitoring agents.

22 (e) The commission shall also promulgate rules and regulations providing for the terms of
23 employment of the approved monitoring agents, standards for approval and recertification of the
24 approved monitoring agents, and establish reporting requirements for the approved monitoring
25 agents to the commission.

26 (f) Commencing on or before January 1, 2023, and on or before January 1 thereafter, the
27 commission shall prepare a report on the approved monitoring agent program to the governor, the
28 speaker of the house, the president of the senate, and the secretary of commerce for housing.

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

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

1 This act would revise the comprehensive permitting process and the appeals process in
2 regard to low and moderate income housing. The act would add two (2) additional alternates to the
3 state housing appeals board, and would transfer the duty to support and provide space for the board
4 to the Rhode Island housing resources commission. This act would also direct the Rhode Island
5 housing resources commission to appoint monitoring agents, and to promulgate rules and
6 regulations pertaining to these agents.

7 This act would take effect upon passage.

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