

2019 -- S 0453

LC001656

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO TOWNS AND CITIES - LOCAL PLANNING BOARD OR COMMISSION

Introduced By: Senators Euer, and McCaffrey

Date Introduced: February 27, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 45-22-7 of the General Laws in Chapter 45-22 entitled "Local
2 Planning Board or Commission" is hereby amended to read as follows:

3 **45-22-7. Powers and duties of a planning board or commission.**

4 (a) A planning board or commission shall have the sole responsibility for performing all
5 those acts necessary to prepare a comprehensive plan for a municipality in accordance with the
6 provisions of chapter 22.2 of title 45.

7 (b) Pursuant to § 45-23-51, a planning board or commission shall be empowered by the
8 city or town council, by ordinance, to adopt, modify, and amend regulations and rules governing
9 land-development and subdivision projects within that municipality and to control land-
10 development and subdivision projects pursuant to those regulations and rules. The planning board
11 or commission shall also provide for the administration, interpretation, and enforcement of land-
12 development and subdivision review regulations, pursuant to § 45-23-52.

13 (c) When directed by the city or town zoning ordinance pursuant to § 45-24-46.4 and the
14 city or town land development and subdivision review regulations pursuant to § 45-23-50.1, a
15 planning board or commission shall have the power to review and approve, approve with
16 conditions, or deny requests for variances and special-use permits submitted as part of land-
17 development and subdivision applications.

18 (d) A planning board or commission established under the provisions of this chapter shall
19 make studies and prepare plans and reports on the needs and resources of the community with

1 reference to its physical, economic, and social growth and development as affecting the health,
2 safety, morals, and general welfare of the people. The studies, plans, and reports shall concern,
3 but not necessarily be limited to, the following:

- 4 (1) Land use and land-use regulation;
- 5 (2) Transportation facilities;
- 6 (3) Public facilities, including recreation areas, utilities, schools, fire stations, police
7 stations, and others;
- 8 (4) Blighted areas, including the designation of general areas for redevelopment, renewal,
9 rehabilitation, or conservation;
- 10 (5) Problems of housing and the development of housing programs;
- 11 (6) Environmental protection;
- 12 (7) Natural resource conservation;
- 13 (8) Protection from disaster;
- 14 (9) Economic and social characteristics of the population;
- 15 (10) Preservation of historic sites and buildings; and
- 16 (11) Economic development.

17 (e) When directed by the city or town council or by the appointing authority, a planning
18 board or commission shall prepare an annual capital budget and a comprehensive, long-range
19 capital-improvement program for submission to the council, the appointing authority, or other
20 designated official or agency.

21 (f) A planning board or commission shall submit an advisory opinion and
22 recommendation on all zoning matters referred to it by the zoning board of review under the
23 provisions of the city or town zoning ordinance and report on any other matter referred to it, by
24 the city or town council, the chief executive, or the appointing authority.

25 (g) A planning board or commission shall perform any other duties that may be assigned
26 to the board or commission, from time to time, by any act of the general assembly or by any
27 ordinance, code, regulation order, or resolution of the city or town council or by the appointing
28 authority.

29 (h) A planning board or commission has authority to call upon other departments, boards,
30 and committees of the city or town and upon regional, state, and federal agencies for information
31 and assistance necessary to the performance of its duties, and shall cooperate with the city or
32 town, regional, state, and federal agencies on matters of community, regional, and state planning
33 and development.

34 (i) Each planning board or commission must adopt a provision requiring any person who

1 will be required to file a request for access pursuant to § 24-8-34 to file that request not later than
2 the day on which that person files any document in connection with the project in question with
3 the applicable town or city, and to provide a copy of the request to the town or city.

4 (j) Each member of a planning board or commission shall participate in training and
5 education classes concerning the effects of development in a flood plain and the effects of sea-
6 level rise once every two (2) years promulgated pursuant to chapter 69 of title 45 entitled
7 "continuing education for local planning and zoning boards" which requires annual continuing
8 education and biennial education components. ~~Each member shall complete two (2) hours of~~
9 ~~training in order to be certified for the two (2) years required by this subsection. Upon completion~~
10 ~~of the training, the planning board or commission member shall file with the municipal clerk a~~
11 ~~statement asserting that the training course has been completed.~~

12 SECTION 2. Section 45-24-57 of the General Laws in Chapter 45-24 entitled "Zoning
13 Ordinances" is hereby amended to read as follows:

14 **45-24-57. Administration -- Powers and duties of zoning board of review.**

15 A zoning ordinance adopted pursuant to this chapter shall provide that the zoning board
16 of review shall:

17 (1) Have the following powers and duties:

18 (i) To hear and decide appeals within sixty-five (65) days of the date of the filing of the
19 appeal where it is alleged there is an error in any order, requirement, decision, or determination
20 made by an administrative officer or agency in the enforcement or interpretation of this chapter,
21 or of any ordinance adopted pursuant hereto;

22 (ii) To hear and decide appeals from a party aggrieved by a decision of an historic district
23 commission, pursuant to §§ 45-24.1-7.1 and 45-24.1-7.2;

24 (iii) To hear and decide appeals where the zoning board of review is appointed as the
25 board of appeals for airport zoning regulations, pursuant to § 1-3-19;

26 (iv) To authorize, upon application, in specific cases of hardship, variances in the
27 application of the terms of the zoning ordinance, pursuant to § 45-24-41;

28 (v) To authorize, upon application, in specific cases, special-use permits, pursuant to §
29 45-24-42, where the zoning board of review is designated as a permit authority for special-use
30 permits;

31 (vi) To refer matters to the planning board or commission, or to other boards or agencies
32 of the city or town as the zoning board of review may deem appropriate, for findings and
33 recommendations;

34 (vii) To provide for the issuance of conditional zoning approvals where a proposed

1 application would otherwise be approved except that one or more state or federal agency
2 approvals that are necessary are pending. A conditional zoning approval shall be revoked in the
3 instance where any necessary state or federal agency approvals are not received within a specified
4 time period; and

5 (viii) To hear and decide other matters, according to the terms of the ordinance or other
6 statutes, and upon which the board may be authorized to pass under the ordinance or other
7 statutes; and

8 (2) Be required to vote as follows:

9 (i) Five (5) active members are necessary to conduct a hearing. As soon as a conflict
10 occurs for a member, that member shall recuse himself or herself, shall not sit as an active
11 member, and shall take no part in the conduct of the hearing. Only five (5) active members are
12 entitled to vote on any issue;

13 (ii) The concurring vote of three (3) of the five (5) members of the zoning board of
14 review sitting at a hearing are necessary to reverse any order, requirement, decision, or
15 determination of any zoning administrative officer from whom an appeal was taken; and

16 (iii) The concurring vote of four (4) of the five (5) members of the zoning board of
17 review sitting at a hearing is required to decide in favor of an applicant on any matter within the
18 discretion of the board upon which it is required to pass under the ordinance, including variances
19 and special-use permits.

20 (3) All members, including alternate members, or any zoning board shall be required to
21 participate in continuing education courses promulgated pursuant to chapter 69 of title 45 entitled
22 "continuing education for local planning and zoning boards".

23 SECTION 3. Title 45 of the General Laws entitled "TOWNS AND CITIES" is hereby
24 amended by adding thereto the following chapter:

25 CHAPTER 69

26 CONTINUING EDUCATION FOR LOCAL PLANNING AND ZONING BOARDS

27 **45-69-1. Purpose.**

28 The purpose of this chapter is to establish requirements and standards for initial, biennial,
29 and continuing education programs for members and alternate members of local planning boards
30 or commissions or any combined boards or commissions or zoning boards performing land
31 planning or zoning functions as authorized pursuant to the general laws.

32 **45-69-2. Applicability.**

33 This chapter shall apply to the following:

34 (1) All members, including alternate members, of any local planning board or

1 commission authorized pursuant to chapter 22 of title 45.

2 (2) All members, including alternate members, of any zoning board or commission
3 authorized pursuant to chapter 24 of title 45.

4 (3) All members, including alternate members, of any combined board or commission
5 authorized pursuant to the general laws to have a role in local land use and planning.

6 **45-69-3. Land use law and planning – Required education for local planning and**
7 **zoning board members.**

8 (a) Every current member or alternate member of a local planning and zoning board or
9 commission or combined board or commission performing land planning or zoning functions
10 shall be required to have satisfactorily completed an education program in land use law and
11 planning to be prepared by the director of the department of administration.

12 (b) The education program pursuant to this chapter shall be prepared and offered within
13 twelve (12) months of the enactment of this chapter and shall include an introductory program
14 offered for new or prospective board members and continuing education courses offered for
15 existing board members. Furthermore, the education program shall be sufficient in design and
16 duration to adequately and reasonably address the topic areas related to land use and planning
17 including all topics determined relevant by the director, and shall consist of no less than three (3)
18 hours of scheduled instruction for the introductory course or courses and no less than one hour of
19 scheduled instruction for any subsequent annual continuing education requirements. Reasonable
20 efforts shall be made by the director to have said course of study structured in such a manner that
21 a member may satisfy these requirements through a variety of instructional means including, but
22 not limited to, traditional style classroom and seminar training, distance learning, webinars, on-
23 site presentations, and by other means as deemed appropriate by the director. Education program
24 topics to be considered may include, but not be limited to, the following:

25 (1) History and purposes of planning and zoning;

26 (2) What state laws and local ordinances, rules and regulations are applicable to the work
27 planning and zoning members do;

28 (3) Overview of the functions of the boards, statutory requirements, and the main tools of
29 planning, zoning, and subdivision review;

30 (4) Role of others in the planning and zoning process (citizens, applicants, planning and
31 zoning staff, and elected officials);

32 (5) Understanding and interpreting local comprehensive plans in helping to make land
33 use decisions;

34 (6) Understanding basic property rights;

- 1 (7) Legal context for the decision-making process and making legal, defensible decisions;
2 (8) Basics of "findings of fact", making the record, and the legal context for planning;
3 (9) Public hearings, voting requirements and other key procedural requirements;
4 (10) How to review site plans and subdivisions;
5 (11) Types of conditions boards may impose when approving special permit(s) or
6 variance application(s);
7 (12) Open meetings/ethics requirements/avoiding ethical dilemmas;
8 (13) Proper ways to manage public meetings including quorums, recusals, and rules of
9 order.

10 (c) Every current member or alternate member of a local planning board pursuant to
11 chapter 22 of title 45 shall, in addition to any other education requirement promulgated pursuant
12 to this chapter, complete two (2) hours of training and education concerning the effects of
13 development in a flood plain and the effects of sea-level rise once every two (2) years. Each
14 member shall complete two (2) hours of training in order to be certified for the two (2) years
15 required by this chapter.

16 (d) Except as otherwise provided in this chapter, any person who is serving as a member
17 or alternate member of a planning, zoning, or combined board or commission performing land
18 use and planning pursuant to general laws, shall be required to complete the introductory
19 education program within twenty-four (24) months of the effective date of this chapter or within
20 (24) months of appointment, whichever is later, and shall also complete the required annual
21 continuing education requirements as may be required. No decision of a planning board, zoning
22 board shall be voided or declared invalid because of failure of a member to comply with these
23 training requirements.

24 (e) Upon completion of the training required pursuant to this chapter, the local planning
25 and zoning board or commission or combined board or commission member shall file with the
26 municipal clerk a statement asserting the training course has been completed.

27 **45-69-4. Exemptions.**

28 The following persons shall be exempt from the educational requirements established
29 pursuant to this chapter:

30 (1) The chief municipal officer of the city or town or person designated to serve on a
31 planning board in an ex officio and non-voting capacity.

32 (2) Any person who offers satisfactory proof of having completed a course of study in
33 land use law and planning within one year prior to the effective date of this chapter, that, in the
34 determination of the director of the department of administration (the "director") in consultation

1 with the division of statewide planning, is equivalent to or more extensive than the course offered
2 pursuant to the requirements of this chapter will be exempt from the initial three (3) hours of
3 training, but still are subject to annual continuing education requirements. An
4 appointee/reappointee must file with the city or town clerk a statement explaining why he or she
5 is exempt from the initial introductory training following the effective date of this chapter.

6 (3) Any person who demonstrates that he or she is certified by the American Institute of
7 Certified Planners (AICP) or has a master's or doctorate degree in planning from an accredited
8 college or university will be exempt from the initial three (3) hours of training, but still are
9 subject to annual continuing education requirements. An appointee/reappointee must file with the
10 city or town clerk a statement explaining why he or she is exempt from the initial introductory
11 training following the effective date of this chapter.

12 **45-69-5. Advisory committee.**

13 The state planning council shall appoint an advisory committee to assist in the
14 development of the education program that shall include, but not be limited to, representatives
15 from American Planning Association (R.I. Chapter), American Council of Engineering
16 Companies - Rhode Island, Grow Smart Rhode Island, Rhode Island League of Cities and Towns,
17 the Rhode Island Builders Association and the University of Rhode Island Coastal Resource
18 Center. The division of statewide planning shall provide administrative support to and facilitate
19 meetings of the advisory committee to meet at a minimum of once a year to evaluate and make
20 improvements to the training program.

21 **45-69-6. Rules and regulations.**

22 The state planning council is hereby authorized and empowered to promulgate rules and
23 regulations necessary to carry out the provisions of this chapter. The department of administration
24 division of statewide planning shall submit to the governor, the speaker of the house, and the
25 senate president, a report detailing the program development and completion levels of training by
26 board members of each community no later than April 30, 2023.

27 SECTION 4. This act shall take effect on July 1, 2019.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TOWNS AND CITIES - LOCAL PLANNING BOARD OR COMMISSION

1 This act would require initial, biennial, and continuing education in land use law and
2 planning for local planning, zoning, or historic board and commission members.

3 This act would take effect on July 1, 2019.

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