

**2021 -- H 5392 SUBSTITUTE A**

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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2021**

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A N A C T

RELATING TO TOWNS AND CITIES -- LOCAL PLANNING BOARD OR COMMISSION

Introduced By: Representatives Carson, and Shekarchi

Date Introduced: February 05, 2021

Referred To: House 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, but  
3 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 recommendation  
22 on all zoning matters referred to it by the zoning board of review under the provisions of the city  
23 or town zoning ordinance and report on any other matter referred to it, by the city or town council,  
24 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 town,  
32 regional, state, and federal agencies on matters of community, regional, and state planning and  
33 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 the  
3 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-level  
6 rise once every two (2) years [pursuant to chapter 69 of title 45 entitled "continuing education for](#)  
7 [local planning and zoning boards" which requires annual continuing education and biennial](#)  
8 [education components.](#) ~~Each member shall complete two (2) hours of training in order to be~~  
9 ~~certified for the two (2) years required by this subsection. Upon completion of the training, the~~  
10 ~~planning board or commission member shall file with the municipal clerk a statement asserting that~~  
11 ~~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 of  
16 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, or  
21 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 board  
25 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 § 45-  
29 24-42, where the zoning board of review is designated as a permit authority for special-use permits;
- 30 (vi) To refer matters to the planning board or commission, or to other boards or agencies  
31 of the city or town as the zoning board of review may deem appropriate, for findings and  
32 recommendations;
- 33 (vii) To provide for the issuance of conditional zoning approvals where a proposed  
34 application would otherwise be approved except that one or more state or federal agency approvals

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

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

7 (2) Be required to vote as follows:

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

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

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

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

22 SECTION 3. Section 45-24.1-3 of the General Laws in Chapter 45-24.1 entitled "Historical  
23 Area Zoning" is hereby amended to read as follows:

24 **45-24.1-3. Creation of commission authorized -- Membership appointment -- Term of**  
25 **office.**

26 (a) In order to carry out the purposes of this chapter any city or town council shall have the  
27 authority to create a commission called the historic district commission. The membership of a  
28 commission in a city shall consist of seven (7) qualified members, and in a town shall consist of  
29 not less than three (3) nor more than seven (7) qualified members, whose residence is located in  
30 the city or town; and provided, that the historic district commission of the city of Providence shall  
31 consist of eleven (11) qualified members, two (2) of whom shall be members of the city council  
32 elected by the city council from its councilmanic members to serve for a term of four (4) years. In  
33 a city the members shall be appointed by the mayor, except as provided in the case of the historic  
34 district commission of the city of Providence, and in a town, by the president of the town council.

1 Members of an historic district commission shall be residents of the city or town.

2 (b) The appointed members of the commission shall be appointed for three (3) year terms,  
3 except the initial appointments of some of the members shall be for less than three (3) years so that  
4 the initial appointments are staggered and so that subsequent appointments do not reoccur at the  
5 same time.

6 (c) Any city or town has the right to name an auxiliary member of the commission  
7 appointed in addition to the regular members of the commission; provided, that the city of Newport  
8 shall have the right to appoint two (2) auxiliary members to its historic district commission. An  
9 auxiliary member shall sit as an active member, upon the request of the chair, when and if a regular  
10 member of the commission is unable to serve at any meeting of the commission.

11 (d) Appointed members of the commission are eligible for reappointment, and, upon the  
12 expiration of their term, shall continue to serve until replaced unless otherwise provided for in local  
13 law.

14 (e) In the event of a vacancy on the commission, interim appointments of appointed  
15 members may be made by the appointing authority to complete the unexpired term of the position.

16 (f) Organized and existing preservation societies may present to the appointing authority  
17 of a city or town a list of qualified citizens, from which list the appointing authority may select  
18 members of the commission for his or her respective city or town.

19 (g) Members of a commission shall serve without compensation.

20 (h) Members of a commission shall be required to participate in continuing education  
21 courses promulgated pursuant to chapter 69 of title 45.

22 SECTION 4. Title 45 of the General Laws entitled "TOWNS AND CITIES" is hereby  
23 amended by adding thereto the following chapter:

24 CHAPTER 69

25 CONTINUING EDUCATION FOR LOCAL PLANNING AND ZONING BOARDS AND

26 HISTORIC DISTRICT COMMISSIONS

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 or any historic district  
31 commission performing land planning or zoning functions as authorized pursuant to the general  
32 laws.

33 **45-69-2. Applicability.**

34 This chapter shall apply to the following:

1 (1) All members, including alternate members, of any local planning board or commission  
2 authorized pursuant to chapter 22 of title 45.

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

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

7 (4) All members, including alternate members, of any historic district commission  
8 authorized pursuant to chapter 24.1 of title 45

9 **45-69-3. Land use law and planning -- Required education for local planning and**  
10 **zoning board members and historic district commission members.**

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

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

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

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

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

34 (4) Role of others in the planning and zoning process (citizens, applicants, planning and

1 zoning staff, and elected officials):

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

4 (6) Understanding basic property rights;

5 (7) Legal context for the decision-making process and making legal, defensible decisions;

6 (8) Basics of "findings of fact", making the record, and the legal context for planning;

7 (9) Public hearings, voting requirements and other key procedural requirements;

8 (10) How to review site plans and subdivisions;

9 (11) Types of conditions boards may impose when approving special permit(s) or variance  
10 application(s);

11 (12) Open meetings/ethics requirements/avoiding ethical dilemmas;

12 (13) Proper ways to manage public meetings including quorums, recusals, and rules of  
13 order.

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

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

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

31 **45-69-4. Exemptions.**

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

34 (1) The chief municipal officer of the city or town or person designated to serve on a

1 planning board in an ex officio and non-voting capacity.

2 (2) Any person who offers satisfactory proof of having completed a course of study in land  
3 use law and planning within one year prior to the effective date of this chapter, that, in the  
4 determination of the director of the department of administration (the "director") in consultation  
5 with the division of statewide planning, is equivalent to or more extensive than the course offered  
6 pursuant to the requirements of this chapter will be exempt from the initial three (3) hours of  
7 training, but still are subject to annual continuing education requirements. An  
8 appointee/reappointee must file with the city or town clerk a statement explaining why he or she is  
9 exempt from the initial introductory training following the effective date of this chapter.

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

16 **45-69-5. Advisory committee.**

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

24 **45-69-6. Rules and regulations.**

25 The state planning council is hereby authorized and empowered to promulgate rules and  
26 regulations necessary to carry out the provisions of this chapter no later than December 31, 2021.  
27 The department of administration division of statewide planning shall submit to the governor, the  
28 speaker of the house, and the senate president, a report detailing the program development and  
29 completion levels of training by board members of each community no later than April 30, 2026.

30 SECTION 5. This act shall take effect on July 1, 2022.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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RELATING TO TOWNS AND CITIES -- LOCAL PLANNING BOARD OR COMMISSION

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

4           This act would take effect on July 1, 2022.

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