



Senate

General Assembly

File No. 396

January Session, 2007

Substitute Senate Bill No. 1084

Senate, April 10, 2007

The Committee on Planning and Development reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT REORGANIZING LOCAL LAND USE COMMISSIONS,
BOARDS AND AGENCIES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2008*) (a) It is declared by the
2 General Assembly that (1) municipalities may implement an
3 alternative to the existing land use system of boards and commissions
4 created by the General Assembly and delegated to municipalities over
5 many decades, (2) an updated and reorganized system of local land
6 use authorities created pursuant to sections 2 to 12, inclusive, of this
7 act will benefit public health, safety and welfare, as set forth in
8 subsection (c) of this section, in municipalities adopting the provisions
9 of said sections 2 to 12, inclusive, (3) the existing system of local land
10 use boards and commissions, including, but not limited to, zoning
11 commissions, planning commissions, planning and zoning
12 commissions, inland wetland agencies and zoning boards of appeal
13 could be improved by reorganization into the following three local
14 commissions and boards with distinct functions: (A) A land use

15 commission created by section 4 of this act, (B) a development review
16 agency created by section 5 of this act, and (C) a land use board of
17 appeals created by sections 7 to 9, inclusive, of this act, and (4) to
18 prevent the proliferation of various types of land use systems in the
19 state, all the provisions of the optional alternative system authorized
20 pursuant to sections 2 to 12, inclusive, of this act shall be adopted.

21 (b) The reorganization of local land use commissions and boards
22 pursuant to sections 2 to 12, inclusive, of this act is intended to have
23 the following public benefits: (1) To preserve local control over land
24 uses under planning, zoning and other land use enabling statutes; (2)
25 to clarify, simplify and streamline the land use process for all
26 constituents; (3) to better coordinate land use planning with regulatory
27 implementation; (4) to ensure that the local plan of conservation and
28 development and all land use maps, zoning and natural resource
29 boundaries and regulations are coordinated through their adoption by
30 the same local commission; (5) to ensure that all local land use maps,
31 zoning and natural resource boundaries and all land use regulations
32 are coordinated, eliminating conflicting provisions, and consolidated
33 into a single regulatory structure; (6) to provide a single responsible
34 commission for creating the land use vision of a municipality,
35 planning its land uses and facilitating the public involvement in such
36 process; (7) to eliminate unnecessary permit and other approval
37 processing delays and applicant referrals to other boards and
38 commissions for approvals; (8) to create a single, one-stop review
39 agency for all land use applications to ensure a land use application
40 complies with all applicable regulations; and (9) to empower local
41 citizens to better plan and design their municipality through adoption
42 of the local plan of conservation and development and implementing
43 land use regulations while reviewing land use applications in a
44 streamlined administrative process.

45 (c) The Legislative Commissioners' Office in codifying the
46 provisions of this section and sections 2 to 12, inclusive, of this act shall
47 codify such provisions in a new chapter of the general statutes. Any
48 municipality adopting the land use system established by said sections

49 shall be known as a land use municipality under said chapter.

50 Sec. 2. (NEW) (*Effective January 1, 2008*) (a) Wherever authority has
51 been delegated by any provision of the general statutes or any special
52 act to a local land use commission, board or agency to adopt local land
53 use plans, maps, natural resource boundaries or regulations under
54 chapter 124, 125a, 126, 126a or 440 of the general statutes, or to receive
55 petitions or requests to adopt or amend such plans, maps, boundaries
56 or regulations, such authority may be vested in the land use
57 commission established by a municipality under section 3 of this act.

58 (b) Wherever authority has been delegated by any provision of the
59 general statutes or any special act to a local land use commission,
60 board or agency to accept, review, approve, deny or otherwise act
61 upon an application or request to use or conduct an activity on land
62 under chapter 124, 125a, 126, 126a or 440 of the general statutes, such
63 authority may be vested in the development review agency established
64 by a municipality pursuant to section 4 of this act.

65 (c) Whenever authority has been delegated by any provision of the
66 general statutes or any special act to a zoning board of appeals to act
67 under chapter 124, 125a, 126, 126a or 440 of the general statutes, such
68 authority may be vested in a land use board of appeal established
69 pursuant to section 6 this act.

70 Sec. 3. (NEW) (*Effective January 1, 2008*) (a) To the extent that a
71 municipality has adopted the provisions of chapter 124, 125a, 126, 126a
72 or 440 of the general statutes, each such municipality may, by
73 municipal charter or ordinance adopted by its legislative body,
74 establish a land use commission. The land use commission shall adopt
75 a plan of conservation and development, zoning and natural resource
76 maps and boundaries and regulations that control the use of or
77 activities on land, and shall receive petitions or requests to adopt or
78 amend such plans, maps, boundaries or regulations under said
79 chapters 124, 125a, 126, 126a and 440.

80 (b) Such commission shall consist of either five, seven or nine

81 members, who shall be electors of such municipality and whose terms
82 of office and method of election or appointment shall be fixed in the
83 charter or ordinance. Minority representation shall be determined
84 pursuant to section 9-167a of the general statutes. The number of such
85 members and the method of selection and removal for cause and terms
86 of office shall be determined by charter or ordinance. No such charter
87 or ordinance may designate the legislative body of the municipality to
88 act as the commission, except that in a municipality with a population
89 of less than five thousand, such ordinance or charter may designate the
90 selectmen as such land use commission. The charter or ordinance may
91 provide that members may be municipal employees if the municipality
92 has adopted an ordinance authorizing such membership pursuant to
93 the provisions of subparagraph (C) of subdivision (2) of subsection (e)
94 of section 7-421 of the general statutes. The chief executive officer of
95 the municipality and the engineer thereof or commissioner of public
96 works, if any, shall also be members of the land use commission,
97 without voting privileges. The terms of office shall be so arranged that
98 the terms of not more than three shall expire in any one year if such
99 commission has five members, not more than four shall expire in any
100 one year if such commission has seven members, or not more than five
101 shall expire in any one year if such commission has nine members.
102 Unless otherwise provided by charter or ordinance, vacancies shall be
103 filled by such commission for the unexpired portion of the term. Such
104 commission shall elect a chairperson and a secretary from its members,
105 shall adopt rules for the transaction of business and shall keep a public
106 record of its activities. Such commission shall file an annual report
107 with the legislative body thereof.

108 (c) Each municipality, in addition to such powers as it has under the
109 provisions of the general statutes or any special act, shall have the
110 power to provide, by charter or ordinance adopted by its legislative
111 body, for the appointment or election of up to three alternate members
112 to its land use commission. Such alternate members shall have all the
113 powers and duties set forth in the general statutes or any special act
114 relating to such municipality for such commission and its members.
115 Such alternate members shall be electors and shall not be members of

116 the development review agency established pursuant to section 4 of
117 this act or land use board of appeals established pursuant to section 6
118 of this act. Such charter or ordinance shall provide for the manner of
119 designating alternates to act on matters before the commission.

120 Sec. 4. (NEW) (*Effective January 1, 2008*) (a) To the extent that a
121 municipality has adopted the provisions of chapter 124, 125a, 126, 126a
122 or 440 of the general statutes, each such municipality may, by
123 municipal charter or by ordinance adopted by its legislative body,
124 establish a development review agency. The development review
125 agency shall review and act on all applications or requests to use land
126 or conduct an activity on land requiring a permit or other approval
127 pursuant to maps, boundaries and regulations adopted by the land use
128 commission.

129 (b) Such development review agency shall consist of five, seven or
130 nine members, who shall be electors of such municipality and whose
131 terms of office and method of election or appointment shall be fixed in
132 the charter or ordinance creating the agency. Minority representation
133 shall be determined pursuant to section 9-167a of the general statutes.
134 The number of such members and the method of selection and
135 removal for cause and terms of office shall be determined by such
136 charter or ordinance, except that the legislative body of such
137 municipality shall not be designated to act as the development review
138 agency. The charter or ordinance may provide that members may be
139 municipal employees if the municipality has adopted an ordinance
140 authorizing such membership pursuant to the provisions of
141 subparagraph (C) of subdivision (2) of subsection (e) of section 7-421 of
142 the general statutes. The chief executive officer of the municipality and
143 the engineer or commissioner of public works thereof, if any, shall also
144 be members of the development review agency, without voting
145 privileges. The terms of office shall be so arranged that the terms of not
146 more than three shall expire in any one year if such agency has five
147 members, not more than four shall expire in any one year if such
148 agency has seven members, or not more than five shall expire in any
149 one year if such agency has nine members. Unless otherwise provided

150 by charter or ordinance, vacancies shall be filled by such agency for the
151 unexpired portion of the term. Such agency shall elect a chairperson
152 and a secretary from its members, shall adopt rules for the transaction
153 of business and shall keep a public record of its activities.

154 (c) Each municipality, in addition to such powers as it has under the
155 provisions of the general statutes or any special act, may by charter or
156 by ordinance adopted by its legislative body provide for the
157 appointment or election of up to three alternate members to its
158 development review agency. Such alternate members shall have all the
159 powers and duties set forth in the general statutes or any special act
160 relating to such municipality for such agency and its members. Such
161 alternate members shall be electors and shall not be members of the
162 land use commission established under section 3 of this act or land use
163 board of appeals established under section 6 of this act. Such charter or
164 ordinance shall provide for the manner of designating alternates to act
165 on matters before the agency.

166 (d) If a petition or request to adopt or amend such maps, boundaries
167 or regulations under chapters 124, 125a, 126, 126a and 440 of the
168 general statutes is filed with the land use commission established
169 pursuant to section 3 this act and such petition or request is related to
170 an application or request to use or conduct an activity on land that is
171 filed with the development review agency established under this
172 section, such petitions, requests and applications to the commission
173 and agency may be filed on or about the same time but,
174 notwithstanding any other time for decision provided for in the
175 general statutes, the decision of the development review agency may
176 be made not more than thirty-five days after the decision of the land
177 use commission. The land use commission and development review
178 agency shall conduct a joint public hearing on any applications
179 requesting a decision from the commission and agency.

180 Sec. 5. (NEW) (*Effective January 1, 2008*) Upon the establishment by a
181 municipality of a land use commission pursuant to section 3 of this act
182 and a development review agency pursuant to section 4 of this act, and

183 the appointment or election of members of such commission and
184 agency, any planning commission, zoning commission, planning and
185 zoning commission and inland wetland agency in the municipality
186 established under any previous act of the General Assembly or by
187 special act shall terminate, and its books and records related to plans,
188 maps, zoning and natural resource boundaries and regulations shall be
189 turned over to the land use commission established by said section 3
190 and its books and records related to denials, approvals, permits or
191 other actions on land use applications or requests to use or conduct an
192 activity on land pursuant to adopted maps, boundaries and
193 regulations shall be turned over to the development review agency
194 established under said section 4, provided all regulations adopted and
195 actions taken by such planning commission, zoning commission,
196 planning and zoning commission and inland wetland agency prior to
197 such transfer shall continue in full force and effect until modified,
198 repealed or superseded in accordance with the provisions of sections 1
199 to 12, inclusive, of this act.

200 Sec. 6. (NEW) (*Effective January 1, 2008*) (a) To the extent that a
201 municipality has adopted the provisions of chapter 124, 125a, 126, 126a
202 or 440 of the general statutes, each such municipality may, by
203 municipal charter or ordinance adopted by its legislative body,
204 establish a land use board of appeals consisting of five regular
205 members and three alternate members, unless otherwise provided by
206 special act. Such alternate members may be referred to as the panel of
207 alternates. Such alternate members shall, when seated in accordance
208 with the provisions of this section, have all the powers and duties set
209 forth in the general statutes relating to land use boards of appeals and
210 their members. Notwithstanding the provisions of any special act, the
211 regular members and alternate members of such land use board of
212 appeals shall be electors and shall not be members of the land use
213 commission or development review agency. Such board and such
214 panel of alternates shall, unless otherwise provided by special act, be
215 elected or appointed in such manner and for such terms as is
216 determined for each by ordinance or charter adopted by the
217 municipality. Any vacancy in such board, including any vacancy in the

218 panel of alternates, unless otherwise provided by ordinance, charter or
219 special act, shall be filled for the unexpired portion of the term, by the
220 board of selectmen of towns or the chief executive officer of cities and
221 boroughs. Such board by vote of its regular members only shall elect a
222 chairperson from among its members, unless otherwise provided by
223 special act, and all meetings of such board shall be held at the call of
224 the chairperson and at such other times as the board determines and
225 shall be open to the public. Such chairperson, or in his or her absence
226 the acting chairperson, may administer oaths and compel the
227 attendance of witnesses. The board shall keep minutes of its
228 proceedings showing the vote of each member and each alternate
229 member when seated upon each question or, if absent or failing to
230 vote, indicating such fact, and shall also keep records of its
231 examinations and other official actions. Each rule or regulation and
232 each amendment or repeal thereof and each order, requirement or
233 decision of the board shall immediately be filed in the office of the
234 board and shall be a public record.

235 (b) The land use board of appeals of any town shall have
236 jurisdiction over that part of the town outside of any city or borough
237 contained therein except that the legislative body of any city or
238 borough may, by ordinance adopted by its legislative body, designate
239 the land use board of appeals of the town in which such city or
240 borough is situated as the land use board of appeals of such city or
241 borough.

242 (c) If a regular member of a land use board of appeals is absent,
243 such member may designate an alternate from the panel of alternates
244 to act in his or her place. If such member fails to make such
245 designation or is disqualified, the chairperson of the board shall
246 designate an alternate from such panel, choosing alternates in rotation
247 so that the alternates act as nearly equal a number of times as possible.
248 If any alternate is not available in accordance with such rotation, such
249 fact shall be recorded in the minutes of the meeting.

250 (d) Any town, city or borough, in addition to such powers as it has

251 under the provisions of the general statutes or any special act, may
252 provide by ordinance adopted by its legislative body for the
253 appointment of three alternate members to its land use board of
254 appeals as is set forth in this section.

255 Sec. 7. (NEW) (*Effective January 1, 2008*) (a) The land use board of
256 appeals established in section 6 of this act shall have the following
257 powers and duties: (1) To hear and decide appeals where it is alleged
258 that there is an error in any order, requirement or decision made by the
259 official charged with the enforcement of chapters 124, 125a, 126, 126a
260 and 440 of the general statutes or the enforcement of any bylaw,
261 ordinance or regulation adopted under the provisions of chapters 124,
262 125a, 126, 126a and 440 of the general statutes; (2) to hear and decide
263 all matters including special exceptions and special exemptions under
264 section 8-2g of the general statutes upon which it is required to pass by
265 the specific terms of the zoning bylaw, ordinance or regulation; and (3)
266 to determine and vary the application of any bylaws, ordinances or
267 regulations adopted under chapters 124, 125a, 126, 126a and 440 of the
268 general statutes in harmony with their general purposes and intent
269 and with due consideration for conserving the public health, safety,
270 convenience, welfare and property values solely with respect to a
271 parcel of land where, owing to conditions especially affecting such
272 parcel but not affecting generally the district in which it is situated, a
273 literal enforcement of such bylaws, ordinances or regulations would
274 result in exceptional difficulty or unusual hardship so that substantial
275 justice will be done and the public safety and welfare secured,
276 provided the zoning regulations may specify the extent to which uses
277 shall not be permitted by variance in districts in which such uses are
278 not otherwise allowed. No such board shall be required to hear any
279 application for the same variance or substantially the same variance for
280 a period of six months after a decision by the board or by a court on an
281 earlier such application.

282 (b) Any variance granted by a land use board of appeals shall run
283 with the land and shall not be personal in nature to the person who
284 applied for and received the variance. A variance shall not be

285 extinguished solely because of the transfer of title to the property or
286 the invalidity of any condition attached to the variance that would
287 affect the transfer of the property from the person who initially applied
288 for and received the variance.

289 (c) Whenever an application to a land use board of appeals for the
290 grant of a variance is joined with an appeal from any order,
291 requirement or decision made by the official charged with the
292 enforcement of chapters 124, 125a, 126, 126a and 440 of the general
293 statutes, or the enforcement of any bylaw, ordinance or regulation
294 adopted under the provisions of said chapters 124, 125a, 126, 126a and
295 440, the board shall first decide the issues presented by such appeal.

296 (d) The concurring vote of four members of the land use board of
297 appeals shall be necessary to reverse any order, requirement or
298 decision of the official charged with the enforcement of the regulations
299 adopted under chapters 124, 125a, 126, 126a and 440 of the general
300 statutes or to decide in favor of the applicant upon any matter upon
301 which it is required to pass under any bylaw, ordinance, rule or
302 regulation or to vary the application of any such bylaw, ordinance,
303 rule or regulation. An appeal may be taken to the land use board of
304 appeals by any person aggrieved or by any officer, department, board,
305 commission agency or bureau of any municipality aggrieved and shall
306 be taken within such time as is prescribed by a rule adopted by said
307 board, or, if no such rule is adopted by the board, within thirty days,
308 by filing with the land use commission, development review agency or
309 the officer from whom the appeal has been taken and with said board
310 a notice of appeal specifying the grounds thereof. Such appeal period
311 shall commence for an aggrieved person at the earliest of the
312 following: (1) Upon receipt of the order, requirement or decision from
313 which such person may appeal, (2) upon the publication of a notice in
314 accordance with subsection (f) of section 8-3 of the general statutes, or
315 (3) upon actual or constructive notice of such order, requirement or
316 decision. The officer from whom the appeal has been taken shall
317 immediately transmit to said board all the papers constituting the
318 record upon which the action appealed from was taken. An appeal

319 shall not stay any such order, requirement or decision which prohibits
320 further construction or expansion of a use in violation of such
321 regulations except to such extent that the board grants a stay thereof.
322 An appeal from any other order, requirement or decision shall stay all
323 proceedings in the action appealed from unless the land use
324 commission, development review agency or the officer from whom the
325 appeal has been taken certifies to the land use board of appeals after
326 the notice of appeal has been filed that by reason of facts stated in the
327 certificate a stay would cause imminent peril to life or property, in
328 which case proceedings shall not be stayed, except by a restraining
329 order which may be granted by a court of record on application, on
330 notice to the land use commission, development review agency or the
331 officer from whom the appeal has been taken and on due cause shown.
332 The board shall hold a public hearing on such appeal in accordance
333 with the provisions of section 8-7d of the general statutes. Such board
334 may reverse or affirm wholly or partly or may modify any order,
335 requirement or decision appealed from and shall make such order,
336 requirement or decision as in its opinion should be made in the
337 premises and shall have all the powers of the officer from whom the
338 appeal has been taken but only in accordance with the provisions of
339 this section. Whenever a land use board of appeals grants or denies
340 any special exception or variance in the regulations applicable to any
341 property or sustains or reverses wholly or partly any order,
342 requirement or decision appealed from, it shall state upon its records
343 the reason for its decision and the bylaw, ordinance or regulation
344 which is varied in its application or to which an exception is granted
345 and, when a variance is granted, describe specifically the exceptional
346 difficulty or unusual hardship on which its decision is based. Notice of
347 the decision of the board shall be published in a newspaper having a
348 substantial circulation in the municipality and addressed by certified
349 mail to any person who appeals to the board, by its secretary or clerk,
350 under his or her signature in any written, printed, typewritten or
351 stamped form, within fifteen days after such decision has been
352 rendered. In any case in which such notice is not published within
353 such fifteen-day period, the person who requested or applied for such

354 special exception or variance or took such appeal may provide for the
355 publication of such notice within ten days thereafter. Such exception or
356 variance shall become effective upon the filing of a copy thereof (A) in
357 the office of the town, city or borough clerk, as the case may be, but, in
358 the case of a district, in the offices of both the district clerk and the
359 town clerk of the town in which such district is located, and (B) in the
360 land records of the town in which the affected premises are located, in
361 accordance with the provisions of section 8-3d of the general statutes.

362 Sec. 8. (NEW) (*Effective January 1, 2008*) Upon the establishment of
363 the land use board of appeals as provided for in section 6 of this act,
364 and the appointment or election of members of such board, any zoning
365 board of appeals established under any previous act of the General
366 Assembly or by special act shall terminate, and its books and records
367 shall be transferred to the land use board of appeals established by
368 said section 6, provided all regulations adopted and actions taken by
369 such board prior to such transfer shall continue in full force and effect
370 until modified, repealed or superseded in accordance with the
371 provisions of sections 1 to 12, inclusive, of this act.

372 Sec. 9. (NEW) (*Effective January 1, 2008*) Wherever the words "zoning
373 commission", "planning commission", "planning and zoning
374 commission", "zoning board of appeals" or "inland wetlands agency"
375 or similar terms referring to such local commissions, boards or
376 agencies are used in the general statutes, upon establishment by a
377 municipality of a land use commission pursuant to section 3 of this act,
378 a development review agency pursuant to section 4 of this act, a land
379 use board of appeals pursuant to section 5 of this act and upon the
380 appointment or election of members to each such commission, agency
381 and board, such terms shall be deemed to refer to such land use
382 commission, development review agency or land use board of appeals
383 as is appropriate for the authority provided to and exercised by such
384 commissions, agencies or boards pursuant to the provisions of sections
385 1 to 12, inclusive, of this act.

386 Sec. 10. (NEW) (*Effective January 1, 2008*) (a) Any municipality may,

387 by municipal charter or by ordinance adopted by its legislative body,
388 establish a single land use and development review commission to
389 carry out the provisions of sections 1 to 5, inclusive, and 9 to 12,
390 inclusive, of this act.

391 (b) No municipality shall combine a land use board of appeals
392 established pursuant to section 6 of this act with a land use
393 commission, development review agency or land use and
394 development review commission.

395 Sec. 11. (NEW) (*Effective January 1, 2008*) The legislative body of a
396 municipality may adopt the provisions of sections 2 to 12, inclusive, of
397 this act, provided that all such provisions are adopted. If a
398 municipality does not adopt such provisions, then no provision of said
399 sections shall be construed to effect any existing authority of the
400 municipality under the provisions of any general statutes, special acts
401 or municipal charter.

402 Sec. 12. (NEW) (*Effective January 1, 2008*) Two or more
403 municipalities, upon approval of the legislative bodies of each such
404 municipality, may establish a joint land use commission, joint
405 development review agency, joint land use and review commission or
406 joint land use board of appeals to carry out the provisions of sections 1
407 to 12, inclusive, of this act within the jurisdictions of such
408 municipalities.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2008</i>	New section
Sec. 2	<i>January 1, 2008</i>	New section
Sec. 3	<i>January 1, 2008</i>	New section
Sec. 4	<i>January 1, 2008</i>	New section
Sec. 5	<i>January 1, 2008</i>	New section
Sec. 6	<i>January 1, 2008</i>	New section
Sec. 7	<i>January 1, 2008</i>	New section
Sec. 8	<i>January 1, 2008</i>	New section
Sec. 9	<i>January 1, 2008</i>	New section

Sec. 10	<i>January 1, 2008</i>	New section
Sec. 11	<i>January 1, 2008</i>	New section
Sec. 12	<i>January 1, 2008</i>	New section

Statement of Legislative Commissioners:

Changes were made throughout the bill for clarity.

PD *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact:

Municipalities	Effect	FY 08 \$	FY 09 \$
Various Municipalities	Savings	Potential Minimal	Potential Minimal

Explanation

To the extent that the bill would allow for a municipality to reduce and/or consolidate existing boards and commissions, the municipality could incur a cost savings.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1084*****AN ACT REORGANIZING LOCAL LAND USE COMMISSIONS,
BOARDS AND AGENCIES.*****SUMMARY:**

This bill allows a municipality to establish a (1) land use commission, (2) development review commission, and (3) a land use board of appeals, in lieu of existing land use agencies (planning, zoning, and combined planning and zoning commissions, inland wetland agencies, and zoning board of appeals (ZBAs)). A municipality must create all of the new agencies or none of them. If a municipality does not adopt the bill's provisions, its existing land use authority under the statutes, special acts, or municipal charter is unaffected.

The land use commission would take the place of the planning and zoning commissions and inland wetland agencies with regard to their (1) adoption of local land use plans, maps, natural resource boundaries, or regulations under the planning, zoning, and inland wetlands laws; and (2) receipt of petitions or requests to adopt or amend these plans, maps, boundaries, or regulations. The development review commission would have the same responsibilities as the existing land use agencies in reviewing and acting on applications or requests to use land or conduct an activity on land requiring a permit or other approval pursuant to maps, boundaries and regulations adopted by the land use commission. The land use board of appeals would be responsible for hearing appeals of planning and wetlands decisions, as well as zoning decisions (the latter are currently heard by ZBAs).

The bill establishes membership requirements for the land use and

development review commissions that are a blend of provisions that apply to zoning and planning commissions under current law. It establishes membership requirements for land use appeals boards that are virtually identical those that apply to ZBAs.

Once a municipality establishes its land use and development review commission, and appoints or elects their members, the existing agencies must terminate. They must turn over their books and records related to plans, maps, zoning, and natural resource boundaries and regulations to the land use commission and their books and records related to denials, approvals, permits or other actions on land use applications or requests to use or conduct an activity on land pursuant to adopted maps, boundaries and regulations to the development review commission. All of the powers vested in the existing agencies under current law are transferred to the new agencies. However, all of the regulations adopted and actions taken by the existing agencies prior to the transfer must continue in full force and effect until modified, repealed, or superseded pursuant to the bill.

The bill allows a municipality, by an ordinance adopted by its legislative body or by charter, to establish a single land use and review commission instead of separate agencies. But it bars combining a land use board of appeals with either agency. It also allows two or more municipalities, upon approval of their legislative bodies, to establish joint agencies authorized by the bill jointly.

EFFECTIVE DATE: January 1, 2008

LAND USE COMMISSION

The land commission membership provisions are taken from the laws that currently apply to zoning and planning commissions. As under current law for zoning commissions, a land use commission must consist of five, seven, or nine members, subject to the minority representation law, who must be electors of the municipality. The enabling ordinance or charter must specify (1) their terms of office and method of election or appointment, (2) the number of the members,

and (3) the method of selection and removal for cause. The terms of office must be arranged so that the terms of no more than a bare majority of the members expire in any one year. The ordinance or charter may not designate the municipality's legislative body to act as the commission, but in a municipality with fewer than 5,000 residents, the ordinance or charter may designate the selectmen as the commission.

As under the current law governing planning commissions, the ordinance or charter establishing a land use commission may allow its members to be municipal employees if the municipality has adopted an ordinance authorizing employees to serve on commission. The municipality's chief executive officer and its engineer or public works commissioner, if any, must also be non-voting members of the commission. Unless otherwise provided by ordinance or charter, vacancies must be filled by the commission for the unexpired portion of the term. The commission must (1) elect a chairperson and a secretary from its members, (2) adopt rules for transacting business, (3) keep a public record of its activities, and (4) file an annual report with the municipality's legislative body. Each municipality may, by ordinance adopted by its legislative body or charter, provide for the appointment or election of up to three alternate members to its land use commission. The alternate members must have all the powers and duties as regular members. They must be electors of the municipality and cannot be members of the development review commission or land use board of appeals (under current law, planning commission alternate members cannot be members of zoning commission or ZBA). The ordinance or charter must provide for the manner of designating alternates to act on matters before the commission.

DEVELOPMENT REVIEW COMMISSION

The membership provisions that apply to land use commissions also apply to development review commissions.

If a petition or request to adopt or amend the maps, boundaries, or regulations under the land use law is filed with the land use

commission and the petition or request is related to an application or request to use or conduct an activity on land that is filed with the development review agency, the petitions, requests, and applications to the commission and agency may be filed on or about the same time. But, the decision of the development review agency must be made within 35 days after the land use commission's decision. The land use and development review commissions must conduct a joint public hearing on any applications requesting a decision from both commissions.

LAND USE BOARD OF APPEALS

The bill's provisions regarding the membership of the land use appeals board are virtually identical to those in current law governing ZBAs. However, under current law the regular and alternate members of the ZBA must be electors of the municipality and cannot be members of the commissions whose appeals they hear. The bill specifies, that with regard to the new board, this is true notwithstanding the provisions of any special act. Under current law, the municipality's board of selectmen fills any vacancies on a ZBA, except as provided by ordinance or special act. The bill additionally allows a charter to override this provision with regard to the land use board of appeals.

Under current law, a ZBA hears appeals of decisions made by zoning enforcement officers and can adopt variances to zoning laws. Under the bill, the land use board of appeals can hear appeals of decisions of officers enforcing the zoning, planning, or wetlands laws, and provide variances to all of these laws.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable
Yea 12 Nay 6 (03/23/2007)