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# Committee Report

**CONSENT CALENDAR**

**January 15, 2019**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Judiciary to which was referred**

**HB 104-FN,**

**AN ACT establishing a housing appeals board within the  
attorney general's office. Having considered the same,  
report the same with the following resolution:**

**RESOLVED, that it is INEXPEDIENT TO LEGISLATE.**

**Rep. Kurt Wuelper**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	HB 104-FN
Title:	establishing a housing appeals board within the attorney general's office.
Date:	January 15, 2019
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

### STATEMENT OF INTENT

This bill would create an appeals board with authority to overrule decisions of "municipal boards, committees, and commissions regarding questions of housing and housing development." The commission would be bound by "strict rules of evidence", while at the same time "may introduce...evidence [from] its own investigation." The committee believes this would amount to a state board with authority to be both investigator and judge and effectively moot local land use regulations, and so recommends its defeat.

Vote 18-0.

Rep. Kurt Wuelper  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

### Judiciary

**HB 104-FN**, establishing a housing appeals board within the attorney general's office.  
**INEXPEDIENT TO LEGISLATE.**

Rep. Kurt Wuelper for Judiciary. This bill would create an appeals board with authority to overrule decisions of "municipal boards, committees, and commissions regarding questions of housing and housing development." The commission would be bound by "strict rules of evidence", while at the same time "may introduce...evidence [from] its own investigation." The committee believes this would amount to a state board with authority to be both investigator and judge and effectively moot local land use regulations, and so recommends its defeat. **Vote 18-0.**

Original: House Clerk  
Cc: Committee Bill File

## COMMITTEE REPORT



Committee:	Judiciary
Bill Number:	HB 104-FN
Title:	establishing a housing appeals board within the attorney general's office.
Date:	January 15, 2019
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

### STATEMENT OF INTENT

This bill would create an appeals board with authority to overrule decisions of "municipal boards, committees, and commissions regarding "question of housing and housing development." The commission would be bound by "strict rules of evidence", while at the same time "may introduce...evidence [from] its own investigation." The committee believes this would amount to a state board with authority to be both investigator and judge and effectively moot local land use regulations, and so recommends its defeat.

Vote 18-0.

Rep. Kurt Wuelper  
FOR THE COMMITTEE

COMMITTEE REPORT

HB 104  
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10

COMMITTEE:

Judiciary

BILL NUMBER:

HB104

TITLE:

DATE:

1-15-19

CONSENT CALENDAR:

YES

NO

OUGHT TO PASS

OUGHT TO PASS W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.

STATEMENT OF INTENT:

The bill would create an appeals board with authority to overrule judgments decisions of local "municipal boards, committees, and commissions regarding "questions of housing and housing development". The commission would be bound by "strict rules of evidence", while at the same time, "may introduce... evidence ~~to~~ [FROM] its own investigation." So the committee believes this would amount to a state board with authority to be both investigator and judge and effectively moot local land use regulations and so recommends ~~its~~ its defeat.

COMMITTEE VOTE:

18-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep.

Kurduluf

For the Committee

# Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 104-FN

BILL TITLE: establishing a housing appeals board within the attorney general's office.

DATE: 1.17.19

LOB ROOM: 208

MOTION: (Please check one box)

- OTP
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. Wuelper Seconded by Rep. Woodbury Vote: 180

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

MOTION: (Please check one box)

- OTP
- OTP/A
- ITL
- Retain (1st year)
- Adoption of Amendment # \_\_\_\_\_ (if offered)
- Interim Study (2nd year)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_

CONSENT CALENDAR:  YES  NO

Minority Report?  Yes  No If yes, author, Rep: \_\_\_\_\_ Motion \_\_\_\_\_

Respectfully submitted: Kurt Wuelper  
Rep Kurt Wuelper, Clerk





2019 SESSION

JUDICIARY

Bill #: 13 104

Title: establishing a housing appeals board

PH Date: 1 1

Exec Session Date: 1 15 19

Motion: ITL

Amendment #: \_\_\_\_\_

MEMBER

YEAS

NAYS

Smith, Marjorie K. Chairman	12 17	
Keans, Sandra B. Vice Chairman	1	
Berch, Paul S.	2	
Horrigan, Timothy O.	3	
Woodbury, David	4	
Altschiller, Debra	5	
DiLorenzo, Charlotte I.	6	
Burroughs, Anita D.	7	
Chase, Wendy	8	
Kenney, Cam E.	9	
Langley, Diane M.	10	
Stevens, Deb	11	
Hopper, Gary S.	12 <del>13</del>	
Sylvia, Michael J.		
Wuelper, Kurt F. Clerk	13 12	
Gordon, Edward M.	14 13	
Janvrin, Jason A.		
Griffin, Barbara J.	15 14	
McLean, Mark	16 15	
Alexander, Joe H.	17 16	
<b>TOTAL VOTE:</b>		

# Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 104-FN

**BILL TITLE:** establishing a housing appeals board within the attorney general's office.

**DATE:** May 14, 2019

**LOB ROOM:** 208 **Time Public Hearing Called to Order:** 10:40 AM

**Time Adjourned:** 11:26 AM

**Committee Members:** Reps. M. Smith, Keans, Wuelper, Horrigan, Woodbury, Altschiller, DiLorenzo, Burroughs, Chase, Kenney, Langley, Stevens, Hopper, Sylvia, Janvrin, B. Griffin and McLean

**Bill Sponsors:**

Rep. L. Ober

Rep. Leishman

Sen. Carson

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Lynne Ober - Prime Sponsor - support**

Redo of SB 557 from last year. Changes from 2018-SB 557. She went on to point out changes between HB 104 and the former SB 557. She identified changes on:

Page 1 line 9 (adding "retained judge")

Page 2 line 4 re: "temporary board member"

Page 2 line 12 re "concurrent" jurisdiction

Page 2 line 21-23 re: disputes owner fees

Page 3 line 14 re: filing fee

Page 3 line 28 "strict rule of evidence"

**Question** - Rep. McLean - Who can appeal?

**Answer** - Anyone.

**Question** - Rep. Woodbury - Land appeals appointed by SC, but this board not?

**Answer** - Current SC Chief doesn't want to appoint - next one might.

**Ben Frost, NH Housing Finance Administrator - support**

Supports but thinks it needs work and retained and merged with senate bill. Some differences with NHMCA.

**Ari Pollack, NH Homebuilders - support**

Board will be expeditious and reduce cost or appeals. Agree about retaining and work with senate.

**Question** - Rep. Sylvia - Are we filing issue with zoning?

**Answer** - Lots of disparity around state - this will help standardize.

**Question** - Rep. Smith - Would this end up with state system?

**Answer** - No, the issue is fair/consistent interpretation of local ordinances

**Question** - So what does "consistency" mean under "standardize"

**Answer** - This provides an alternative track.

**Peter Imse, R.E. Lawyer - oppose**

- Bill is unnecessary
- No problem with current review process. If there is concern with laws, change them but

- Not enough staffing in bill. Long Delays
- Scope: No definition of "housing" or "housing development or breadth of related issues board might deal with
- No clarity as to what info board may consider and conduct it's own investigation - bring in new info?
- No appeal from board?
- Power of review is greater than courts have now. Board could basically override local zoning
- Board can evaluate if a project is "economically viable" - don't do there

**Jim Kennedy, City of Concord Attorney - neutral**

- Similar concerns as Mr. Imse - these matters are pretty expedient under current system
- Staffing/funding very inadequate
- Board jurisdiction wider than BT2A last email money and not proper rules

**Question** - Rep. McLean - appeal of board decisions allowed?

**Answer** - Appeal is filed and enforced as a superior court judgment (page 4 line 15-17)

**Question** - Rep. Smith - Does "enforce" not trump "appeal"?

**Answer** - Not clear.

**Question** - Rep. Janvrin - Court only uses certified record- board the same?

**Answer** - No - this board can add more info vice sending the case back for further review.

**Elliot Berry, Housing Justice at NH Legal Assistant**

Current law requires localities provides reasonable opportunity work force housing but land we ordnances major hindrance to building it.

Respectfully submitted,



Rep. Kurt Wuelper, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 104-FN

BILL TITLE: establishing a housing appeals board within the attorney general's office.

DATE: January 9, 2019

ROOM: 208

Time Public Hearing Called to Order: 10:30<sup>40</sup> a.m.

Time Adjourned: 11:26

(please circle if present)

Committee Members: Reps. M. Smith, Keans, Wuelper, Berch, Horrigan, Woodbury, Altschiller, DiLorenzo, Burroughs, Chase, Kenney, Langley, Stevens, Hopper, Sylvia, Gordon, Janvrin, B. Griffin, McLean and Alexander Jr.

Bill Sponsors:

Rep. L. Ober

Rep. Leishman

Sen. Carson

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

- ① Rep Ober - Prim - Re do of SB557 ~~for~~ from last year  
Changes from 2018-SB557
- ② Ben Frost - NH Housing Finance Admin - Supports but  
thinks it needs work & s/s retained & merged w/ Senate Bill
- ③ Ari Porlock - NH Homebuilders - Supports
- ④ Peter Inse - R.E. Lawyer - opposes
- ⑤ Tim Kennedy - City Council ATTY - NEUTRAL
- ⑥ Elliott Berry - NH legal assistance -

*Handwritten signature*

HB 104

①

① OBER \* See BACK of this sheet for Preceding OBER testimony to Retired Judge

Q Kemy - what change outline of A. from Jan.

Q: McL - who can appeal? Anyone

Q: Wood - Lord appeals Bd appointed by SC, but this board not?

A. Current SC Chief doesn't want to appoint next one might

② Frost: General support? Some differences w/ HOME A

③ Palleck: w/ Homebuilders - Supports? Board will expedite and reduce cost of appeals. Agree about retaining + work w/ Senate

Q: Sylvia: Are we fixing issue w/ zoning? A: Lots of disparity around state - this will help standardize.

Q - Wood - Decisions "Precedential" - A:

Q Smith - would this end up w/ state system? A: No the issue is fair/consistent interpretation of local ordinances.

Q Smith - So what does "consistency" mean unless "standardize" - A: this provides an alternative track

④ Peter Inuse - Self - R.E. Lawyer - Oppose - Bill is unnecessary.

- No problem w/ current review process. If there is concern w/ laws change them but don't need another layer of appeals.
- Not enough staffing in bill long delays
- Scope: no definition of "housing" or "housing development" or breadth of related issues board might deal with.
- No clarity as to what info board may consider and conduct its own investigation - bring in ~~the~~ new info?
- No appeal from Board?
- Power of review is greater than Courts have now. Board could basically override local zoning
- Board can evaluate if a project is "economically viable" - don't go there

## OBER (CONT)

Rep Ober told us this Bill was a Redo of  
Last year's SB 557. She went on to point out  
changes between HB 104 and the former SB 557.  
She identified changes on ~~Page 1 lines 1-4~~; ~~Page 2~~  
~~line 4~~; ~~P~~

Page 4 line 9 ("Caching Retired Judge")

Page ~~4~~<sup>2</sup> line 24 "Temporary board member"

Page 2 line 12 Re "concurrent" jurisdiction

Page 2 lines 21-23 Re Disputes over fees

Page 3 line 14 Re Filing fee

Page 3 line 28- "strict rule of evidence"

Questions on previous page ~~precede these in~~  
Followed these remarks

④ IASZ (CONT)

⑤ Jim Kennedy - Similar concerns as Mr Sme - these matters are pretty expedient under current system

- Staffing/Funding very inadequate
- Board Jurisdiction wider than BTZA but small \$\$ and not proper rules

Q McL - Appeal of Board decisions allowed? A: Appeal is filed and enforced as a Superior Court judgement (Page 4 line 15-17)

Q Smith % Does "enforce" not trump "appeal"? A: Not clear

Q: JANV % Court only uses CRD record - Board the same? A No - This board can add more info nice sending the case back for further review

⑥ Eliot Benz: DR Housing Justice @ NH legal Assistance

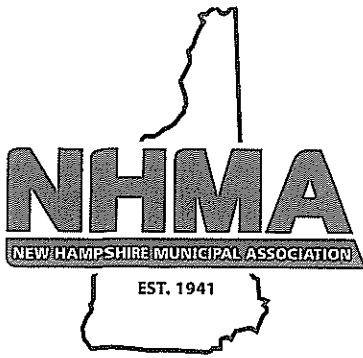
Current law requires localities provide <sup>REASONABLE</sup> opportunity for ~~reasonable~~ workforce housing but land use ordinances major hindrance to building it.

Q wood  
Be





# Testimony



January 9, 2019

Hon. Marjorie Smith, Chair  
House Judiciary Committee  
Legislative Office Building, Room 208  
Concord, New Hampshire

*Re: House Bill 104, establishing a housing appeals board*

Dear Rep. Smith:

I am sorry that I am unable to make it to your committee's hearing today on HB 104. Please accept this letter in lieu of in-person testimony.

HB 104 establishes a housing appeals board to hear appeals from decisions of local land use boards regarding "questions of housing and housing development." The intent, I believe, is to create a faster and less expensive alternative to a superior court appeal. Although NHMA does not oppose the policy of the bill, we have concerns about several of its provisions, and therefore oppose it as drafted. The following summarizes our concerns.

**Jurisdiction.** The board's jurisdiction is ambiguous. The bill states that it would have authority to hear appeals "regarding questions of housing and housing development." In most cases this will be clear enough—for example, the board clearly would have jurisdiction of an appeal regarding the approval of a residential subdivision, and it clearly would not have jurisdiction of an appeal regarding the approval of a grocery store. However, some cases will be unclear. If a home owner applies for a variance to build a garage, is that a "question regarding housing" because the garage is accessory to a house? I believe there needs to be a clear definition of "questions of housing and housing development." Alternatively, the board could be given jurisdiction to hear appeals in *all* land use board cases.

**Who may appeal.** A similar bill last year (SB 557, which the Senate passed but the House killed) allowed the applicant for a local approval to appeal to the board, but did not give the same right to another party, such as an abutter. That seemed unfair. HB 104 appears to address that concern, but it does so rather awkwardly. On page 3, beginning at line 7, it states, "Appeals may be brought before the board by an [sic] petitioner to the municipal board, committee, commission, or abutter." This would be clearer if it said appeals may be brought "by a petitioner to the municipal board, committee, *or* commission, or *by* an abutter."

However, that is still incomplete, if the goal is to provide a remedy parallel to that in superior court. Under existing law, "any person aggrieved" by a planning or zoning board

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N E W H A M P S H I R E M U N I C I P A L A S S O C I A T I O N

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NHMAinfo@nhmunicipal.org • governmentaffairs@nhmunicipal.org • legalinquiries@nhmunicipal.org

Website: www.nhmunicipal.org

decision has standing to appeal, and the courts have held that “persons aggrieved” are not necessarily limited to the applicant and abutters. They may include nearby property owners who are not abutters but who would be directly affected by the development. We think the same should apply here.

The bill also seems internally inconsistent on this issue. Although the sentence quoted above appears to allow an abutter to appeal, the next section (page 3, beginning at line 14) seems to contemplate that only the “petitioner to the municipal board” may appeal. It states that “the petitioner” may file an appeal upon paying a filing fee, and that “the petitioner shall notify the municipal board, committee, or commission of such an appeal.” There is no reference to an abutter filing an appeal or providing notice to the municipal board or to the petitioner.

***Process for appealing.*** The board’s process for accepting appeals is confusing. On page 3, beginning at line 22, the bill states, “The board shall accept appeals on a first-come, first-served basis and shall not accept a new appeal until the existing appeal has been resolved.” I understand this to mean that the board would only ever have one appeal before it, and all others would have to wait in line. This seems inconsistent with the goal of expediting appeals. In addition, the person filing the appeal would have no way of knowing when it will be accepted, yet that person must notify the municipal board at the same time he or she files an appeal, and the municipal board then has 60 days to submit a certified record of its proceedings in the matter—even though the appeals board may not have accepted the appeal yet.

***Consideration of evidence.*** The bill’s section on hearing procedure (page 3, line 28) states that the board “shall be bound by the strict rules of evidence adhered to in the superior courts.” This seems inconsistent with the idea of providing a less expensive and faster appeal process—especially because the superior court itself is not bound by strict rules of evidence in land use appeals. (*See RSA 677:10.*) It is also somewhat confusing, because it goes on to say that “[t]he board may introduce into evidence any information obtained through its own investigations.” That seems at odds with a strict application of the rules of evidence.

***Standard of review.*** A serious problem is that the bill does not indicate what the board’s standard of review will be. The statute governing superior court appeals of land use board decisions states that the decision of the land use board shall not be set aside “except for errors of law [or] unless the court is persuaded by the balance of probabilities . . . that said order or decision is unreasonable.” This makes it clear that the superior court judge may not substitute his or her judgment for that of the local board. HB 104 needs to address this issue as well.

For these reasons, I believe the bill needs some serious work, and urge the committee to examine it very closely before making a recommendation. Thank you very much.

Sincerely,



Cordell Johnston  
Government Affairs Counsel

**Oppose HB 104** - establishing a housing appeals board within the attorney general's office.

Dear Judiciary Committee Members:

I and very many of my constituents oppose HB 104. We believe that this bill is counter to local control. This appeals board would be made up of unelected officials who could choose a result contrary to wishes of the local community. We should tread very carefully into this area.

Please oppose HB 104

Sincerely,

*Rep. Linda Gould*  
Representative Linda Gould  
District 7, Hillsborough

Jane Aitken  
60 Rosewell Rd  
Bedford, NH 03110

House Judiciary Committee  
The New Hampshire General Court  
107 North Main Street  
Concord, NH 03301  
January 11, 2019

To the House Judiciary Committee,

I am hereby submitting my testimony AGAINST HB 104.

**I respectfully request that you vote to "ITL" HB 104.**

HB 104 would create a state level appeals board for developers who did not like the decisions of local zoning boards.

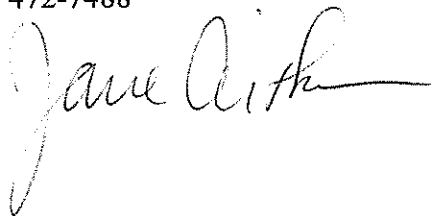
The fact that an unelected State board would then have the final say over local matters seems unconstitutional.

The State should have no say in what local zoning boards decide.

In many towns people have voted or are going to vote to change zoning to protect their property values and the character of their towns, which is their every right. We suspect this is how developers feel they can get around this.

The State, in my opinion, has no right to even consider overruling those local decisions on behalf of 'developers'.

Jane Aitken  
Bedford, NH  
472-7488





House Judiciary Committee  
State House  
Concord, NH 03302  
RE: HB 104, Housing Appeals Board

January 14, 2019

Dear Representative Smith and Members of the House Judiciary Committee:

We are grateful for the opportunity to provide you with more information on legislation that would establish a Housing Appeals Board.

Last week, you held a hearing on HB 104, Rep. Ober's bill to create a Housing Appeals Board within the Attorney General's Office. While we appreciate Rep. Ober's effort, **we recommend that you retain the bill.** As noted in testimony, expect a better bill to do this will be sent to the House by the Senate, specifically Senator Giuda's bill (currently LSR 1047.1).

Both bills are based on last year's SB 557, also sponsored by Senator Giuda, and which had significant support but stalled in House Finance Division I. Division I and the full Finance Committee ultimately recommended this for future legislation.

**This year's Senate bill has broad bi-partisan and bi-cameral support**, as you will see from the list of sponsors soon to be published. The Senate bill also addresses a number of the issues that Rep. Ober identified, including the right of anyone with legal standing to initiate an action with the Housing Appeals Board

Regarding HB 104, you heard testimony that the Housing Appeals Board contemplated in that bill would not work if it consisted of part-time members, as HB 104 requires, and has no dedicated staff. We agree. The Senate bill will feature full-time members and dedicated staff.

You also heard testimony that HB 104 would require the Housing Appeals Board to hear only

one case at a time. Given that one of the purposes of the Housing Appeals Board is to speed up the appeals process, it simply doesn't make sense to limit the Board to hearing only a single case before it can consider another.

Finally, some local officials have expressed concern that the Housing Appeals Board envisioned either by HB 104 or by this year's Senate bill would override local zoning. A simple reading of the bill demonstrates that this is not the case. In fact, last year, the NH Municipal Association, in response to similar criticisms of SB 557, said, "...the board would have no more authority than the superior court and would have to apply the same laws as the superior court."

**There is no override of local zoning and there is no change required of local zoning.** Simply put, the Housing Appeals Board legislation will maintain local control in all respects. Local planning and zoning boards will continue to make decisions according to current legal standards, and those decisions will continue to be adjudicated by the same tests currently applied by the superior courts. That is the design and intention of this legislation.

Thank you for the opportunity to provide comment on this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elissa Margolin', with a stylized flourish at the end.

Elissa Margolin  
Director



Bill as  
Introduced



1 respect to such matter until the same has been fully disposed of before the board.

2 IV. A temporary board member shall meet the qualification requirements established in  
3 RSA 21-M:20 for the board member in whose place they are acting.

4 V. A temporary board member shall be compensated at the same rate as a regular member.

5 VI. In the event of a vacancy on the board, the board shall stay the proceedings while  
6 awaiting the appointment of a temporary board member.

7 21-M:22 Staff; Office. The attorney general shall share administrative staff with the board.  
8 The attorney general shall provide the board with an office in the attorney general's office in  
9 Concord in which all board records, documents, and books shall be kept, and which shall have a  
10 room suitable for holding hearings.

11 21-M:23 Concurrent Jurisdiction.

12 I. In matters within its authority, the board shall have concurrent, appellate jurisdiction  
13 with the superior court. A petitioner who elects to bring an action before the board shall waive his  
14 or her right to bring such action in the superior court. The board shall retain jurisdiction of any  
15 matter originally brought before it.

16 II. The board shall not accept an appeal if the same or a similar case is pending before the  
17 superior court.

18 21-M:24 Authority; Duties.

19 I. The board shall hear and affirm, reverse, or modify, in whole or in part, appeals of final  
20 decisions of municipal boards, committees, and commissions regarding questions of housing and  
21 housing development only after all local appeals have been completed. The board shall not hear or  
22 act on any petition for modification of fees. Disputes over fees shall be resolved in the superior  
23 court.

24 II. The board's authority shall include:

25 (a) Planning board decisions on subdivision or site plans.

26 (b) Board of adjustment decisions on variances, special exceptions, administrative  
27 appeals, and ordinance administration.

28 (c) The use of innovative land use controls, such as project phasing, and including the  
29 issuance of conditional use permits.

30 (d) Growth management controls and interim growth management controls.

31 (e) Decisions of historic district commissions, heritage commissions, and conservation  
32 commissions.

33 (f) Matters relating to mixed-use combinations of residential and nonresidential uses.  
34 Such different uses may occur on separate properties, provided such properties are all part of a  
35 common scheme of development.

36 (g) Appeals of decisions of local land use boards regarding proposals for workforce  
37 housing, including but not limited to whether the municipality's land use ordinances and  
38 regulations provide a reasonable and realistic opportunity for the development of workforce

1 housing; whether the local land use board has imposed conditions of approval that render the  
2 proposal economically nonviable; and whether a denial by a local land use board was unreasonable  
3 or unlawful.

4 (h) Any other municipal permit applicable to housing and housing developments.

5 III. The board may award appropriate remedies available to the superior courts in similar  
6 cases, including permission to develop the proposed housing.

7 IV. Appeals may be brought before the board by an petitioner to the municipal board,  
8 committee, commission, or abutter. The municipality shall be a party to the action. The board shall  
9 grant intervenor status to abutters and to any other aggrieved or injured party who can  
10 demonstrate legal standing to appeal pursuant to RSA 677:4 or RSA 677:15, as may be appropriate.  
11 In determining matters before it, the board may institute its own investigation, or hold hearings,  
12 conduct site visits, or take such other action as it shall deem necessary.

13 21-M:25 Filing Fee; Timing of Appeals and Board Proceedings.

14 I. The petitioner, upon payment of a \$500 filing fee, may file an appeal with the board.

15 II. The board shall not accept an appeal until all available appeals at the local level have  
16 been completed. An appeal shall be filed with the board within 30 days of the final decision of a  
17 municipal board, committee, or commission. At the same time an appeal is filed with the board, the  
18 petitioner shall notify the municipal board, committee, or commission of such appeal. The  
19 petitioner shall pay all costs associated with such notification.

20 III. The municipal board, committee, or commission shall, within 60 days of receipt of such  
21 notice, submit to the board a certified record of its proceedings on the matter subject to the appeal.

22 IV. The board shall accept appeals on a first-come, first-served basis and shall not accept a  
23 new appeal until the existing appeal has been resolved. The board shall serve notice in writing of  
24 the time, place, and cause of any hearing upon all parties at least 20 working days prior to the date  
25 of the hearing. The board shall hold a hearing within 90 working days of accepting an appeal.

26 V. The board shall render a decision on an appeal and notify the parties of the decision  
27 within 60 working days after conducting a hearing.

28 21-M:26 Hearing Procedure. The board shall be bound by the strict rules of evidence adhered  
29 to in the superior courts in this state. The board may introduce into evidence any information  
30 obtained through its own investigation or an external investigation. The board shall record the  
31 proceedings of any hearing before it and shall make such recording available to the public for  
32 inspection.

33 21-M:27 Representation by Nonattorneys. Nonattorneys, including professional engineers,  
34 architects, and land surveyors, may represent petitioners before the board. Nothing in this section  
35 shall prevent the board from denying representation by any individual it deems to be improper,  
36 inappropriate, or unable to adequately represent the interests of the petitioner to the board.

37 21-M:28 Board Meetings. The board's deliberative process in adjudicatory proceedings held  
38 pursuant to RSA 541-A shall not be exempt from the public meeting and notice provisions of RSA

1 91-A. Decisions and orders in adjudicatory proceedings shall be publicly available, but only after  
2 they have been reduced to writing, signed by a quorum of the board, and served upon the parties.  
3 The decision shall set forth the board's rulings of law and findings of fact in support of its decision.  
4 Discussions and actions by the board concerning procedural, administrative, legal, and internal  
5 matters shall be exempt from the meeting and notice provisions of RSA 91-A:2.

6 21-M:29 Administration of Oaths, Subpoenas. The board shall have the power to subpoena  
7 witnesses and administer oaths in any proceeding before it, and to compel the production of any  
8 books, papers, or other memoranda or documents by subpoena duces tecum. Witnesses compelled to  
9 appear shall be paid the same fee and mileage that are paid to witnesses in the superior court of the  
10 state. A subpoena or subpoena duces tecum of the board may be served by any person designated in  
11 the subpoena or subpoena duces tecum to serve it. Any testimony given by a person duly sworn  
12 shall be subject to the pains and penalties of perjury. All applications or petitions to the board for  
13 which no filing fee has been otherwise specified by statute shall be accompanied by a \$65 filing fee.  
14 Costs and attorney's fees may be taxed as in the superior court.

15 21-M:30 Enforcement of Decisions. The board shall, at the request of any party, file a certified  
16 abstract of a final decision in the Merrimack county superior court. The superior court clerk shall  
17 enter judgment thereon and such judgment may be enforced in the same manner as any final  
18 judgment of the superior court.

19 21-M:31 Penalty for Noncompliance. Failure on the part of any municipality or municipal  
20 employee to comply with such orders shall constitute willful neglect of duty, and it shall be subject  
21 to the penalties and damages provided by law in such cases.

22 2 New Subparagraph; Access to Governmental Records and Meetings; Exemptions. Amend  
23 RSA 91-A:5 by inserting after subparagraph X the following new subparagraph:

24 XI. Discussions and actions by the housing appeals board established in RSA 21-M:20  
25 concerning procedural, administrative, legal, and internal matters.

26 3 Effective Date. This act shall take effect July 1, 2021.

HB 104-FN- FISCAL NOTE  
AS INTRODUCED

AN ACT establishing a housing appeals board within the attorney general's office.

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	\$0	Indeterminable	Indeterminable
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

LOCAL:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	Indeterminable	Indeterminable

METHODOLOGY:

This bill establishes a housing appeals board in the attorney general's office to hear appeals of final decisions of municipal boards, committees and commissions regarding questions of housing and housing development.

The Department of Justice indicates it would share administrative support staff and provide the board with an office to hold hearings and keep the board records, documents and books. The Department anticipates that passage of the bill would increase demand for administrative staff support. The Department assumes it would hire an additional legal assistant at a cost of \$69,000 in FY 2022 and \$72,000 in FY 2023. The Department assumes the board members would not be employees of the Department and the fee revenue would not be collected by the Department. Therefore, the additional expenditures for the part-time salaries and benefits for board members and the revenue from fees are cannot be determined at this time.

The New Hampshire Municipal Association assumes the cost for a municipality to defend an appeal before the appeals board would likely be comparable to that of defending an appeal in the superior court. The appeals board would have an expedited process and the Association assumes this may increase in the number of appeals. The file to appeal to the Board would be \$500 whereas the current fee to file an action in the superior court is \$225. Considering these factors, the Association is not able to estimate the effect on municipal expenditures. There

would be no impact on municipal revenue.

The Judicial Branch indicates there could be savings to the Branch to the extent citizens choose not to file appeals in the superior court. The Branch states such an appeal would be classified as a complex equity case in the superior court. The cost to the Branch of a complex equity case is estimated to be \$783 in FY 2020 and \$788 in FY 2021. A potential cost to the Branch could come from appeals to the Supreme Court from the Housing Appeals Board. It is not clear from the bill if appeals of the Housing Appeals Board are appealable to the Supreme Court as of right. Appeals could be filed by petition for writ of certiorari. The Judicial Branch has no information on how many appeals may arise from the proposed bill.

**AGENCIES CONTACTED:**

Department of Justice, New Hampshire Municipal Association and Judicial Branch