

# Committee Report

**REGULAR CALENDAR**

**March 2, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Majority of the Committee on Commerce and Consumer Affairs to which was referred HB 336,**

**AN ACT establishing a condominium dispute resolution board. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.**

**Rep. John Potucek**

**FOR THE MAJORITY OF THE COMMITTEE**

## **MAJORITY COMMITTEE REPORT**

Committee:	<b>Commerce and Consumer Affairs</b>
Bill Number:	<b>HB 336</b>
Title:	<b>establishing a condominium dispute resolution board.</b>
Date:	<b>March 2, 2021</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

### **STATEMENT OF INTENT**

This bill establishes a condominium resolution board to resolve matters involving condominium associations and unit owners. The majority does not agree that this bill is necessary, nor is it required to mediate disputes within condominium associations, as alternative means are already available. This bill would also require additional state funding for its operation. Although it is modeled on the Manufactured Housing Board, it really is not applicable since in a mobile home park the home owner owns the mobile home and park fees are exempt from review. Condominium owners, on the other hand, only own their unit interior space and not the exterior of the building. Condominium fees are not exempt from the jurisdiction of the board in the bill and the majority of the issues or complaints are with the elected board, and not a single owner, as with manufactured housing parks.

Vote 11-7.

Rep. John Potucek  
FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Commerce and Consumer Affairs

**HB 336**, establishing a condominium dispute resolution board. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. John Potucek for the **Majority** of Commerce and Consumer Affairs. This bill establishes a condominium resolution board to resolve matters involving condominium associations and unit owners. The majority does not agree that this bill is necessary, nor is it required to mediate disputes within condominium associations, as alternative means are already available. This bill would also require additional state funding for its operation. Although it is modeled on the Manufactured Housing Board, it really is not applicable since in a mobile home park the home owner owns the mobile home and park fees are exempt from review. Condominium owners, on the other hand, only own their unit interior space and not the exterior of the building. Condominium fees are not exempt from the jurisdiction of the board in the bill and the majority of the issues or complaints are with the elected board, and not a single owner, as with manufactured housing parks.

**Vote 11-7.**

**REGULAR CALENDAR**

**March 2, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on Commerce and Consumer Affairs to which was referred HB 336,**

**AN ACT establishing a condominium dispute resolution board. Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.**

**Rep. Constance Van Houten**

**FOR THE MINORITY OF THE COMMITTEE**

## **MINORITY COMMITTEE REPORT**

Committee:	<b>Commerce and Consumer Affairs</b>
Bill Number:	<b>HB 336</b>
Title:	<b>establishing a condominium dispute resolution board.</b>
Date:	<b>March 2, 2021</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

### **STATEMENT OF INTENT**

The minority of the Commerce and Consumer Affairs Committee supports the establishment of a Condominium Dispute Resolution Board. Modeled on the Board of Manufactured Housing established by the legislature in 1994, the Condominium Dispute Resolution Board would seek to resolve matters involving condominium associations and unit owners. The bill establishes board membership and specifics relating to meetings, jurisdiction, procedure, and decision making. The bill provides an avenue for dispute resolution that can be less costly and less onerous than a superior court case.

Rep. Constance Van Houten  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Rep. Constance Van Houten for the **Minority** of Commerce and Consumer Affairs. The minority of the Commerce and Consumer Affairs Committee supports the establishment of a Condominium Dispute Resolution Board. Modeled on the Board of Manufactured Housing established by the legislature in 1994, the Condominium Dispute Resolution Board would seek to resolve matters involving condominium associations and unit owners. The bill establishes board membership and specifics relating to meetings, jurisdiction, procedure, and decision making. The bill provides an avenue for dispute resolution that can be less costly and less onerous than a superior court case.

Original: House Clerk  
Cc: Committee Bill File

**Archived:** Thursday, April 22, 2021 1:49:35 PM  
**From:** JOHN HUNT  
**Sent:** Tuesday, March 9, 2021 9:41:33 AM  
**To:** Carrie Morris  
**Cc:** Pam Smarling  
**Subject:** Fwd: HB336 Majority Blurb - ITL  
**Importance:** Normal

---

ok,  
JBH

Begin forwarded message:

**From:** "John Potucek" <[potucek1@comcast.net](mailto:potucek1@comcast.net)>  
**Subject:** HB336 Majority Blurb - ITL  
**Date:** March 3, 2021 at 8:35:53 AM EST  
**To:** <[jbhunt@prodigy.net](mailto:jbhunt@prodigy.net)>

John,  
Here it is.  
John

Inexpedient To Legislate

Rep. John Potucek for the Majority of Commerce and Consumer Affairs. This bill establishes a condominium resolution board to resolve matters involving condominium associations and unit owners. The majority does not agree that this bill is necessary, nor is it required to mediate disputes within condominium associations, as alternative means are already available. This bill would also require additional state funding for its operation. Although it parallels the Manufactured Housing Bill, it really is not applicable since in a mobile home park the home owner owns the mobile home and park fees are exempt from review. Condo owners, on the other hand, only own their unit interior space and not the exterior of the building. Condo fees are not exempt in the bill and the majority of the issues or complaints are with the elected board and not a single owner as with mobile parks.

he

It is viewed as, "too much third party", and "too many rules". The majority therefore voted 11-7 to ITL this legislation.



**Archived:** Thursday, April 22, 2021 1:55:05 PM  
**From:** JOHN HUNT  
**Sent:** Monday, March 8, 2021 3:16:08 PM  
**To:** Carrie Morris  
**Cc:** Pam Smarling  
**Subject:** Fwd: HB 336 minority report  
**Importance:** Normal

---

OK,  
JBH

Begin forwarded message:

**From:** Constance Van Houten <[Constance.VanHouten@leg.state.nh.us](mailto:Constance.VanHouten@leg.state.nh.us)>  
**Subject:** HB 336 minority report  
**Date:** March 3, 2021 at 8:47:18 PM EST  
**To:** John Hunt <[jbhunt@prodigy.net](mailto:jbhunt@prodigy.net)>

**HB 336**, establishing a condominium dispute resolution board. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Constance Van Houten for the **Minority** of Commerce and Consumer Affairs. The minority of the committee on Commerce and Consumer Affairs supports the establishment of a condominium dispute resolution board by this bill. Modeled on the Board of Manufactured Housing established by the legislature in 1994, the condominium dispute resolution board would seek to resolve matters involving condominium associations and unit owners. The bill sets board membership and specifics of meetings, jurisdiction and procedure, and decision making. The bill provides an avenue for dispute resolution that can be less costly and less onerous than a superior court case.

Representative Connie Van Houten  
Hillsborough District 45  
Manchester wards 10, 11, 12  
603.622.9701

# Voting Sheets

**HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS**

**EXECUTIVE SESSION on HB 336**

**BILL TITLE:** establishing a condominium dispute resolution board.

**DATE:** March 2, 2021

**LOB ROOM:** Zoom

**MOTIONS: INEXPEDIENT TO LEGISLATE**

Moved by Rep. Potucek

Seconded by Rep. Osborne

Vote: 11-7

**CONSENT CALENDAR: NO**

**Statement of Intent: Refer to Committee Report**

Respectfully submitted,

Rep Keith Ammon, Clerk

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION ON HB336\_\_\_\_\_

**BILL TITLE:** establishing a condominium dispute resolution board;

**DATE:** 3/2/2021

**LOB ROOM:** Zoom

---

**MOTION: (Please check one box)**

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

Moved by Rep. Potucek      Seconded by Rep. Osborne      Vote: \_11-7

**MOTION: (Please check one box)**

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

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

**MOTION: (Please check one box)**

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

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

**MOTION: (Please check one box)**

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

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

---

**CONSENT CALENDAR?**      \_\_\_\_\_ Yes      X   No

**Minority Report?**   X   Yes    \_\_\_\_\_ No    If yes, author, Rep.:   Bartlett      Motion:   OTP  

Respectfully submitted, Rep.   Ammon  , Clerk

STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK

1/22/2021 9:55:55 AM  
Roll Call Committee Registers  
Report



2021 SESSION

Commerce and Consumer Affairs

Bill #: HB336 Motion: ITL AM #: \_\_\_\_\_ Exec Session Date: 3/2/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Hunt, John B. Chairman	11		
Potucek, John M. Vice Chairman	1		
Osborne, Jason M.	2		
Ammon, Keith M. Clerk	3		
Abramson, Max	4		
Ham, Bonnie D.	5		
Depalma IV, Joseph	6		
Greeson, Jeffrey	7		
Johnson, Dawn M.	8		
Terry, Paul A.	9		
Bartlett, Christy D.		1	
Abel, Richard M.		2	
Herbert, Christopher J.	10		
Van Houten, Constance		3	
Fargo, Kristina M.		4	
Weston, Joyce		5	
Beaulieu, Jane E.		6	
Burroughs, Anita D.		7	
McAlear, Chris R.			
<b>TOTAL VOTE:</b>	11	7	

# Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 336

**BILL TITLE:** establishing a condominium dispute resolution board.

**DATE:** February 3, 2021

**LOB ROOM:** Hybrid                      **Time Public Hearing Called to Order:** 11:03 a.m.

**Time Adjourned:** 11:39 a.m.

**Committee Members:** Reps. Hunt, Potucek, Ammon, Osborne, Abramson, Ham, Depalma IV, Greeson, Johnson, Terry, Bartlett, Abel, Herbert, Van Houten, Fargo, Weston, Beaulieu, Burroughs and McAleer

**Bill Sponsors:**

**Rep. Gordon**

**Rep. Almy**

**TESTIMONY**

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

**Rep Jeffrey Greeson \***

This bill protects people from harmed by a vaccine. This bill is not anti-vaccine. Just as with every medicine, there are risks. Some people will experience side effects or even death. 100,000 patients die every year from drug side-effects. No vaccine manufacturers are liable after Oct 1988. The national vaccine injury compensation program was created to help people who have been harmed by vaccine. Individuals can file a petition to receive compensation. This is a five step government process. (explains the process) The "special master" determines type and amount of the compensation. 2006-2018 5351 claims files \$2.2 billion claims were paid. Is there a risk that manufacturers would stop selling their product. 58 pharmaceutical products have current lawsuits and are still readily available. NH sued various opioid manufacturers. Most are still in business and selling products within the state. NH received 4 billion from several cigarette manufacturers and you can still buy cigarettes. This legislation holds these companies accountable for the products they sell. VICP program claims can still be made. The number of claims should be low as most people do not have side effects from a vaccine. Most side effects occur within 2 weeks of vaccination.

**Rep Van Houten**

Q: Are you asking a physician too much to come to that determination?

A: Isn't that what a doctor is supposed to do?

Q: To diagnose illness in direct connection to a vaccine?

A: Smoking was determined to cause lung cancer.

**Rep Herbert**

Q: I like the idea of posting a bond, but vaccines side effects are very rare. Do you have statistics of side effects?

A: Claims filed 23,619 through federal VICP 5,351 were compensable claims. We're living testimony that we can receive vaccines and not be injured. But injuries do happen.

Q: Thanks for the state but of the statistics you have quoted, and we're undergoing a massive vaccine program. How many claims that you cited are from covid vaccine?

A: None that I have shared are COVID vaccine injuries. It's an experimental program. Those claims did not include covid.

Q: Can we find out if the bond would interfere with sales?

A: I don't know how to do that. That's why I brought up the fact that the state has sued pharmaceutical manufacturers. I don't think they won't do business with us because we'll hold them accountable. HB20 is calling for a bond with education services as well. It's not an unreasonable demand.

### **Rep Abramson**

Q: What happens when a company decides to stop selling that vaccine. Is there a provision for getting the bond back from the commissioner?

A: This bill does not address that. It's something I had not considered. They should get their balance remaining back. The claims would be paid out of that.

Q: WYB, federal Vaccine injury claim is only paying out 6% with max of \$250,000.

A: I do believe.

### **Rep Abel**

Q: Is the state legislature the right place for this kind of legislation or does this need to be federal? Most examples you gave dealt with federal. Could you repeat what you said about state laws.

A: Presently no state law addresses this. Federal law says no vaccine manufacturer shall be liable for civil action after Oct 1988. Federal law does allow for a civil action against a vaccine manufacturer but only after they go through the arduous VICP process.

Q: When state and federal law contradict that federal law takes the higher position. I'm questioning whether a state law would have any value. Can you persuade me?

A: This isn't a lawsuit. This isn't litigation. This is establishing a bond/fund and you got to pony up.

### **Rep Fargo**

Q: When I get a vaccine, I sign a paper to accept that risk. If a large group of people are affected. Why is this necessary?

A: Just because you sign a waiver doesn't mean they have liability. If someone broke into your home and hurt themselves, they could sue you and be compensated from your home owners insurance.

### **Rep Terry**

Q: Are you aware of similar efforts being introduced in other states?

A: I'm not aware of any.

### **Nick Doherty**

Director policy of Pharma for New England. We represent R&D manufacturers. Pharma is opposed for two reason. 1) preempted by federal law. 2) bill raises due process concerns for pharma manufacturers. There are two programs in existing federal law for compensation for vaccine injuries. PREP act give HHS to limit liability for manufacturers. National childhood injury act. This includes the other vaccines. The bill raises due process concerns. We respectfully ask the legislators to oppose.

### **Thomas McLeod**

Member of Health Freedom group. Vaccine injury has touched an increasing number of residents in NH and country. Parents and children have faced denial and unjust criticism. Since the advent of the corona virus vaccine, adults are receiving adverse reactions. The total number of recommended vaccines for children when from 5 vaccines to 12 vaccines. Parents must sue the federal government to gain any compensation. Less than 10 percent of injuries come before the court. No corona virus



can come before the court. I laud the intent behind the bill to return liabilities to manufacturers. I urge further study of this approach of this bill.

**Rep Abramson**

Q: Federal preemption is an issue?

A: Product liability claims are prevented in state court. My opinion that this would preempt this arrangement.

**John Martin**

Deputy chief legal counsel for HHS. We have no position but have a couple concerns. We don't think HHS is the right entity to hear these claims. We also think this bill opens up the process to possible fraud. Also, the turnaround time to respond is short.

HOUSE COMMITTEE ON COMMERCE & CONSUMER AFFAIRS

PUBLIC HEARING on Bill # HB336

BILL TITLE:

DATE: Feb 3, 2021

ROOM: Zoom

Time Public Hearing Called to Order: 11:03 AM

Time Adjourned: \_\_\_\_\_

(please bold if present)

**Committee Members: Reps. Hunt, Potucek, Ammon, Osborne, Abramson, Ham, Depalma IV, Greeson, Johnson, Terry, Bartlett, Abel, Herbert, Van Houten, Fargo, Weston, Beaulieu, Burroughs and McAleer**

TESTIMONY

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

**Rep Ned Gordon**

Appearing as a member of the condominium oversight committee. Same as prior HB308. Creates a condominium dispute resolution bill. Allows homeowners a remedy other than going to superior court. If owners have a complaint, owners not following bylaws or voting procedures, the condo oversight committee has heard concerns that going to the superior court is expensive and intimidating and requires an attorney. It discourages many condo owners with complaints or concerns. Dispute resolution board would consist of nine members, unit owners, board members, legislators, appointee by the bar association. Modeled after board already in effect that resolves disputes with manufactured housing. The legal effect of decisions does not deprive anyone going to court. The DRB would make a determination regarding complaints, then if either party were unhappy with the outcome, they could then go to court. I don't want to see more levels of bureaucracy but this is a way to allow people to resolve disputes without going to court.

**Rep Abramson**

Q: I have a concern that the members are members of the general court who can't be compensated. I'm guessing there would be a lot of disputes. Why wouldn't these go to the housing board or some other organization?

A: Design of the board are people familiar with the industry. Regarding legislature members, I think having them involved is a good idea. I'm not concerned with their compensation. That's another issue.

**Rep Bartlett**

Q: Could you refresh our memories as to why we haven't been able to move forward with this?

A: Kermit was the prime sponsor last year. This is the same bill as last year, but the bill was substantially amended to only apply to complaints of unit owners. This bill makes it so decision is non-binding. Either party can still go to superior court. This was redesigned to make it more practical.

**Rep Ham**

Q: Does this apply to cooperatives, own land in common and own their own homes?

A: Does not apply to cooperatives, homeowner's associations, or time shares.

Q: Would you believe it should be expanded to other coops?

A: I put in an LSR but didn't bring it forward because of the complexity of the issue and covid. I may bring it forward next year.

**Rep Van Houten**

Q: "Shall serve at the pleasure of board" "May exclude evidence that is irrelevant" Would be open to tighten some language by amendment?

A: I'd be more than happy to do an amendment to make any change needed. I need to understand with the loopholes are.

**Will Infantine**

My company insures 300 condo associations. Issues often work themselves out. I don't think the government should be involved claims disputes. Legislators should not be involved adjudicating things, legislative branch vs. judicial. Opposes the bill.

**Rep Abramson**

Q: Couldn't disputes be taken by the Housing Board of Appeals, RSA 679.

A: I don't know enough about what that board does.

**Rep Bartlett**

Q: Do you know how many dispute bills this committee receives every year? The goal was to keep the legislature out of disputes.

A: Yes. You're always going to have disputes.

Q: Can you come up with a suggestion for the thousands of condo owners who do have disputes?

A: Atty Daddario had some ideas.

**Gary Daddario**

This will impose some measure of cost for the state that may not be warranted. The alternatives are, I see this things addressed in the association documents. Provisions to allow for special meetings, internal hearings before their own board. \$250 filing fee would cover a consultation with an attorney who could explain whether it's something worth pursuing. Two pieces lacking: 1) for an association to seek assistance to deal with unit owner violating the rules. 2) lot of unit owner to unit owner disputes, the

board would not be hearing those complaints. The language is singular focused on a unit owner not liking what the board is doing. Some complaints look valid in a vacuum. Sometimes voting requires unit owners be in good standing or they can't vote. If the merit is based only on a complaint then the outcomes are going to come out only one way. The board is not bound by the rules of evidence. If it's not appealed the decision would go to superior court and be entered as if it were a decision of the superior court where rules of evidence would

**Rep Bartlett**

Q: WYB, the \$250 fee would reduce frivolous complaints? Wouldn't this board reduce the number of complaints?

A: I agree with both of those points. Some new owners don't realize they have restrictions on their ownership because they're part of a condo community. If they're going to spend \$250 it's better spent with an attorney. Associations should be able to apply to this board, or neighbor to neighbor disputes. The board only applies to unit owners complaining that their association isn't doing it right.

**Rep Abramson**

Q: Do you see any problem with sending this to Housing Board of Appeals?

A: I'm not familiar enough.

**Rep Hunt:** That board expertise is about manufactured housing not condos.

**Dean Lennon**

CAI-NE. This bill has heart in the right place, but despite \$250 filing fee, this will have board spending money to defend themselves. If owners have frivolous issues or a misunderstanding could be expensive. Small claims court is also another option. I'm opposed to the bill because it would cause associations to spend a lot of money.

## House Remote Testify

### Commerce and Consumer Affairs Committee Testify List for Bill HB336 on 2021-

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>§</u>
Gordon, Ned	44towne@gmail.com	603.393.8760	An Elected Official	Myself	Support	Yes (4m)	2
Daddario, Gary	gdaddario@meeb.com	603.420.9475	A Member of the Public	Community Associations Institute	Oppose	Yes (3m)	2
Infantine, William	winfantine@aspen-ins.com	603.493.9779	An Elected Official	Myself	Oppose	Yes (2m)	2
Lennon, Dean	Dlennon@meeb.com	617.888.4060	A Member of the Public	CAI-NE	Oppose	Yes (1m)	2
Lord, Kit	kitlord@yahoo.com	603.942.5374	A Member of the Public	Myself	Support	No	2
Rathbun, Eric	ericrathbun@gmail.com	860.912.3751	A Member of the Public	Myself	Oppose	No	2

# Testimony

**Archived:** Tuesday, April 13, 2021 2:48:57 PM

**From:** [SUSAN ALMY](#)

**Sent:** Tuesday, February 9, 2021 9:04:05 PM

**To:** [~House Commerce Committee](#)

**Cc:** [Ned Gordon](#)

**Subject:** HB336 condo dispute board testimony

**Importance:** Normal

**Attachments:**

[Testimony on HB336 Gordon condo dispute board.docx](#) 

---

I apologize deeply for missing the hearing, I had promised to show up and missed the notice.

Written testimony on HB 336, establishing a condominium dispute resolution board  
Commerce and Consumer Protection Committee February 9, 2021

Rep. Susan Almy, 2017-20 Chair, Committee [to Study the Laws Relating to  
Condominium and Homeowners' Associations](#)

I beg the committee's pardon that I missed the notice for the hearing last week, despite being a co-sponsor. I had promised Rep. Gordon I would show up, and missed it in a rush of emails.

This bill has been considered during five terms by the legislature. It continues to be re-submitted because the study committee, the Attorney General's Office Consumer Protection Agency, and according to retired judge and now this bill's prime sponsor, Rep. Ned Gordon, many judges, all these people cannot find another way to handle the constant flow of disputes between condominium unit-owners and their boards and/or property managers. These disputes escalate into situations that threaten the financial viability of the associations and homes of what some sources estimate at one in six homeowners in the state.

Unlike municipalities, which they strongly resemble, the body of law governing condominiums is small, and there is no overarching membership organization such as the NH Municipal Association to provide guidance to the boards as to proper governance. It was only in 2016 that Commerce and the study committee achieved a major overhaul of the governance sections in RSA 356-B, which had been oriented primarily to the principal original intent of the law to protect new unit-owners buying into a new form of homeownership which seems to have been plagued by unscrupulous developers.

But enforcement of that law is an enduring problem. Many of the boards having problems are resistant to changing their ways, and some resort to now-illegal methods to disenfranchise their membership. Some contain large numbers of non-resident and other, busy owners that don't want to be bothered with governance, and often a condominium is well along the way to major property value loss before these owners pay attention and join in voting against the existing board or property management. For the non-board owners who are paying attention, the only recourse before that stage is to sue in Superior Court – a step which can take 2 years to resolve, and upwards of \$20,000. During those two years, they have been persecuted with random fines, property damage and/or shunning within the condominium.



In these disputes, a close analysis shows the fault may lie with any of the parties, unit-owner, board, or property manager. But only the board and property manager have power.

The AG's Office several summers ago started forwarding to me the most persistent requests for help from condos – I spent considerable time trying to advise, as a layperson, about a half dozen of them. Most of them could not find a knowledgeable lawyer, afford the money or time required to sue, or had a problem related to governance that would not produce monetary damages and not be able to be compensated for legal costs.

Many of the situations we have seen are, until a late stage, about inability to learn what the board is doing, and it is hard for a court to attribute significant individual monetary damage. When a board, without reporting it, spends needed capital reserves or special assessment funds on operating costs, or contracts with the most expensive or least competent contractors, or only fixes the road leading to a few members' homes, there is little in the way of monetary damages that a few unit-owners can take to a lawyer to ask her to take the case on spec.

This bill is modeled on the extremely successful 40-year-old manufactured housing board – a board the prime sponsor helped to create. I'm sure he has described its success over several decades in preserving the value and ownership of manufactured homes to you. Rep. Gordon also brought his considerable legal and judicial experience with condos to bear in amending the bill in your committee last term. You passed it, and we expected to pass it in the Senate finally. But COVID intervened. Please pass it again.

Bill as  
Introduced

HB 336 - AS INTRODUCED

2021 SESSION

21-0292

10/05

HOUSE BILL           **336**

AN ACT               establishing a condominium dispute resolution board.

SPONSORS:           Rep. Gordon, Graf. 9; Rep. Almy, Graf. 13

COMMITTEE:         Commerce and Consumer Affairs

---

ANALYSIS

This bill establishes a condominium dispute resolution board to resolve matters involving condominium associations and unit owners.

-----

Explanation:        Matter added to current law appears in ***bold italics***.  
                          Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
                          Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT establishing a condominium dispute resolution board.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Subdivision; Condominium Dispute Resolution Board. Amend RSA 356-B by inserting  
2 after section 70 the following new subdivision:

3 Condominium Dispute Resolution Board

4 356-B:71 Board Established; Members; Terms; Chairperson.

5 I. There is hereby created a condominium dispute resolution board consisting of the  
6 following members:

7 (a) Two members of the house of representatives, appointed by the speaker of the house  
8 of representatives.

9 (b) Three members, appointed by the governor, who are resident owners of  
10 condominiums in New Hampshire and from 3 different executive council districts. Members  
11 appointed under this subparagraph shall not be members of their respective condominium board.

12 (c) Two members, appointed by the governor, who are members of a condominium  
13 association board in New Hampshire, and from 2 different executive council districts, from a list of 3  
14 persons nominated by the New England chapter of the Community Associations Institute.

15 (d) One member, appointed by the governor, who represents a condominium association  
16 management company, from a list of 3 persons nominated by the New England chapter of the  
17 Community Associations Institute.

18 (e) One member of the New Hampshire Bar Association, appointed by the president of  
19 the association.

20 II. No more than 3 members of the board shall be involved professionally or employed in the  
21 condominium industry.

22 III. Non-legislative members of the board shall serve 3-year terms and until a successor is  
23 appointed, except that the initial appointments shall be staggered: 2 members shall be appointed to  
24 one-year terms, 2 members shall be appointed to 2-year terms, and 3 members shall be appointed to  
25 3-year terms. Legislative members shall serve a term coterminous with their term in office.

26 IV. The chairperson for the board shall be chosen from among the members at the initial  
27 organizational meeting and shall serve at the pleasure of the members of the board.

28 V. If there is a vacancy on the board, the provisions of RSA 21:33-a and 21:34 shall apply to  
29 all members.

**HB 336 - AS INTRODUCED**  
**- Page 2 -**

1           VI. If any member of the board is absent for 3 consecutive meetings, without cause, the  
2 board shall inform the appointing authority in writing and the appointing authority shall appoint a  
3 new member to the board within 60 days from the receipt of the written notification.

4           VII. The board shall hold meetings at least every 90 days and may meet more frequently as  
5 deemed necessary by the board.

6           356-B:72 Quorum, Disqualification of Members; Compensation.

7           I. A majority of the board shall constitute a quorum to conduct hearings, and a vote of at  
8 least 4 members present and voting in favor shall be required to adopt and approve any matter  
9 under consideration.

10          II. As a board member, one may disqualify oneself relative to any matter before the board, or  
11 if the board votes that any member has or may have a conflict of interest in any matter before the  
12 board, that member shall be disqualified to sit as a board member on the particular matter. The  
13 board may hear the matter if it has a quorum. If the board does not have a quorum, the governor  
14 shall appoint an additional public member to hear the particular matter pending before the board.

15          III. The legislative members of the board shall receive legislative mileage for meetings of the  
16 board. The remaining members shall receive mileage at the state employee rate for meetings of the  
17 board.

18           356-B:73 Jurisdiction; Procedure.

19          I. The board shall hear and determine matters involving condominium unit owner  
20 complaints related to: failure by the condominium association to follow its declaration and bylaws;  
21 failure to follow proper voting procedures as defined in RSA 356-B:39; other actions not in  
22 compliance with condominium instruments or the condominium act, RSA 356-B. Any matters  
23 relating to time share interests shall not be under the jurisdiction of the board.

24          II. Nothing in this subdivision shall preclude the right of the board to use the services of a  
25 mediator to resolve a dispute.

26          III.(a) Any condominium unit owner may petition the board by filing a complaint with the  
27 board and paying a \$250 filing fee which shall be used to defray the costs of the board. Prior to filing  
28 a complaint, the petitioner shall provide 10 days notice to the opposite party of intent to file. After  
29 review of the claim and a decision by the board that the matter has merit and is not frivolous, the  
30 board shall schedule a hearing. If the board finds the claim to be frivolous or without merit, it shall  
31 dismiss the complaint and explain in writing to the petitioner its reasons for dismissing the  
32 complaint.

33           (b) The board shall serve notice, in writing, of the time and place of the hearing upon all  
34 appropriate parties at least 20 days prior to the date of the hearing. The notice shall inform both  
35 parties to the complaint that they may choose to be represented by counsel.

36           (c) All hearings held by the board shall be held pursuant to RSA 541-A:31 through RSA  
37 541-A:36 unless such proceedings are specifically inconsistent with the provisions of this subdivision.

**HB 336 - AS INTRODUCED**  
**- Page 3 -**

1 All hearings of the board shall be subject to the provisions of RSA 91-A. The board shall not be  
2 bound by common law or statutory rules of evidence but may admit all testimony having a  
3 reasonable probative value. It may exclude evidence which, in the opinion of the board, is  
4 immaterial, irrelevant, or unduly repetitious.

5 356-B:74 Decisions; Judicial Review and Enforcement.

6 I. When the board makes its decision, an order shall be made in writing and shall include  
7 findings of facts. The findings of facts shall be accompanied by a concise and explicit statement of  
8 the underlying facts supporting the findings. The parties shall be notified by mail of any decision or  
9 order.

10 II. A decision of the board may be appealed, by either party following a request for  
11 rehearing, by applying for an appeal to the superior court for the county in which either party  
12 resides in accordance with the procedures set forth in RSA 677:2-14, inclusive.

13 III. If no timely appeal is taken pursuant to paragraph II, the decision of the board shall  
14 become final. The board shall file a certified abstract of any final decision with the clerk of the  
15 superior court in the county of residence of the complainant. The clerk of such court shall enter  
16 judgment thereon, and such judgment may be enforced as with any final judgment of the superior  
17 court.

18 356-B:75 Meetings and Records. The board shall hold meetings in Concord, New Hampshire or  
19 in any other location deemed appropriate by the board. The records of the board shall be maintained  
20 at the office of professional licensure and certification.

21 356-B:76 Legal Assistance Provided by the Department of Justice. The civil bureau of the  
22 department of justice shall act as counsel for the board, and assist in judicial filings and actions as  
23 necessary.

24 356-B:77 Notification and Cooperation Required. The board shall notify the consumer  
25 protection and antitrust bureau, department of justice, that the board may accept and act on written  
26 complaints properly forwarded to it by such bureau relative to condominium association actions and  
27 condominium unit owner complaints.

28 356-B:78 Rulemaking. The board, under the direction of the bureau chief of the consumer  
29 protection and antitrust bureau, shall adopt rules under RSA 541-A relative to the administration of  
30 this subdivision.

31 356-B:79 Annual Report. The board shall submit to the governor, the speaker of the house of  
32 representatives, and the senate president, not later than March 31 of each year, a report of its  
33 activities during the preceding calendar year. The report shall include, but not be limited to, the  
34 number of complaints received, by category according to RSA 356-B:73, and the number and percent  
35 of complaints accepted and rejected. The report may also include recommendations for  
36 improvements, including rule or statutory changes.

**HB 336 - AS INTRODUCED**

**- Page 4 -**

1           2 New Subparagraph; Office of Professional Licensure and Certification; Administration of  
2 Condominium Dispute Resolution Board. Amend RSA 310-A:1-a, I by inserting after subparagraph  
3 (r) the following new subparagraph:

4                   (s) Condominium dispute resolution board under RSA 356-B:71.

5           3 Effective Date. This act shall take effect 60 days after its passage.