

Committee Report

REGULAR CALENDAR

March 12, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Municipal and County Government to which was referred HB 392,

AN ACT relative to the membership of local land use boards. Having considered the same, report the same with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Richard Tripp

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Municipal and County Government
Bill Number:	HB 392
Title:	relative to the membership of local land use boards.
Date:	March 12, 2021
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill would amend RSA 673:1 by first deleting the requirement that members of the planning board shall be residents of the municipality, and then by adding a new paragraph requiring that voting members, including ex officio members of any local land use board, shall be residents of the municipality. This results in three changes, the first being that ex officio members are now explicitly required to be residents of the municipality, the second being that non-voting alternate members are not required to be residents, and the lastly being that RSA 673:1 now duplicates the board residency requirements found in RSA 673:3 and RSA 673:4. This bill clearly creates more problems than it solves.

Vote 15-4.

Rep. Richard Tripp
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Municipal and County Government

HB 392, relative to the membership of local land use boards. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Richard Tripp for the **Majority** of Municipal and County Government. This bill would amend RSA 673:1 by first deleting the requirement that members of the planning board shall be residents of the municipality, and then by adding a new paragraph requiring that voting members, including ex officio members of any local land use board, shall be residents of the municipality. This results in three changes, the first being that ex officio members are now explicitly required to be residents of the municipality, the second being that non-voting alternate members are not required to be residents, and the lastly being that RSA 673:1 now duplicates the board residency requirements found in RSA 673:3 and RSA 673:4. This bill clearly creates more problems than it solves. **Vote 15-4.**

REGULAR CALENDAR

March 12, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Municipal and County Government to which was referred HB 392,

AN ACT relative to the membership of local land use boards. Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.

Rep. Susan Treleaven

FOR THE MINORITY OF THE COMMITTEE

MINORITY COMMITTEE REPORT

Committee:	Municipal and County Government
Bill Number:	HB 392
Title:	relative to the membership of local land use boards.
Date:	March 12, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

The minority believes that employees of cities and towns who serve on local land use boards yet reside in a different town should have a vote on that board. The employee(s) may have different knowledge about uses than an elected member who resides in said city or town.

Rep. Susan Treleven
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Municipal and County Government

HB 392, relative to the membership of local land use boards. **OUGHT TO PASS.**

Rep. Susan Treleaven for the **Minority** of Municipal and County Government. The minority believes that employees of cities and towns who serve on local land use boards yet reside in a different town should have a vote on that board. The employee(s) may have different knowledge about uses than an elected member who resides in said city or town.

Original: House Clerk

Cc: Committee Bill File

Voting Sheets

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

EXECUTIVE SESSION on HB 392

BILL TITLE: relative to the membership of local land use boards.

DATE: March 8, 2021

LOB ROOM: Hybrid

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Tripp

Seconded by Rep. Lascelles

Vote: 15-4

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep John MacDonald, Clerk



2021 SESSION

Municipal and County Government

HB 392

Bill #: _____ Motion: ITL AM #: _____ Exec Session Date: 3/8/21

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Dolan, Tom Chairman	15		
Piemonte, Tony Vice Chairman	1		
MacDonald, John T. Clerk	2		
Tripp, Richard P.	3		
Guthrie, Joseph A. <u>Wallace</u>	4		
Lascelles, Richard W.	5		
McBride, Everett P.	6		
Melvin, Charles R.	7		
Ayer, Paul F.	8		
Pauer, Diane	9		
Porter, Marjorie A.	10		
Treleaven, Susan GS		1	
Gilman, Julie D.	11		
Maggiore, Jim V.		2	
Stavis, Laurel	12		
Mangipudi, Latha D.		3	
Vann, Ivy C.		4	
Klee, Patricia S.	13		
Gallager, Eric B.	14		
TOTAL VOTE:	15	4	

Public Hearing

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

PUBLIC HEARING ON HB 392

BILL TITLE: relative to the membership of local land use boards.

DATE: March 8, 2021

LOB ROOM: Hybrid **Time Public Hearing Called to Order:** 10:33 a.m.

Time Adjourned: 10:55 a.m.

Committee Members: Reps. Dolan, Piemonte, J. MacDonald, Tripp, Lascelles, McBride, Melvin, Ayer, Pauer, Porter, Treleaven, Gilman, Maggiore, Stavis, Mangipudi, Vann, Klee and Gallagher

Bill Sponsors:

Rep. Somssich
Rep. Ward

Rep. Meuse

Rep. Hamblet

TESTIMONY

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

***Rep. Somssich** - Prime sponsor of the bill. Submitted written testimony. Requires all voting members be residents of municipality. Changes RSA 673 - voting member of any land use board shall be residents of the municipalities that they serve.

Rep. Piemonte: What is the need for this? The exofficio members generally do not have a vote. ANS: The court has said that if they are members of the board, they can vote, They are not excluded in the RSA.

Rep. Tripp: Members can be elected or appointed. I withdraw my question.

***Cordell Johnston, NH Municipal Association** - Neutral. Feels the board is unnecessary. If you want to clarify, not a problem. Building Inspection is a land use board. He may not be a resident of the town. The resident requirement should not apply to the building inspection. All members are required to be members of the municipality.

Mark Brighton - Supports the bill. Changes in Portsmouth. Expressed our opinion concerning the project. The exofficio member lived in Kittery and Stratham. We took the city to court, we did it prose. We were joined by other residents (16). The judge agreed with the residency. Because of the pandemic, the Supreme Court, they need to have skin in the game.

Rep. Tripp: People have residents, positions do not.

Rep. Somssich - If a position is in Portsmouth and they live somewhere else. However, are exofficio members are voting members they should be residents of the community.

Rep. Treleaven: Doesn't the employee of the town have skin in the game? ANS: As a resident, I may have an entire different view then the employee of the municipality. The employee may have a different perspective.

Rep. Pauer: It will specify that exofficio members shall be residents of the municipalities.

Rep. Somssich - If they are not residents, they cannot vote on matters, but can provide advice.

Respectfully submitted,

Rep. John MacDonald
Clerk

House Remote Testify

Municipal and County Government Committee Testify List for Bill HB392 on 2021

Support: 3 Oppose: 1 Neutral: 1 Total to Testify: 3

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Si</u>
Brighton, Mark	Portsmouth, NH markbrighton1@gmail.com	A Member of the Public	Myself	Support	Yes (3m)	2/
Johnston, Cordell	Concord, NH cjohnston@nhmunicipal.org	A Lobbyist	NH Municipal Association	Neutral	Yes (3m)	3/
Somssich, Peter	Portsmouth, NH staterep27nh@gmail.com	An Elected Official	Myself	Support	Yes (3m)	2/

Testimony

Testimony to House Municipal and County Government

in Support of HB 392 regarding Local Land Use Board Membership

Rep. Peter Somssich, District 27, Portsmouth, tel. 603-436-5382 and email: staterrep27nh@gmail.com (March 8, 2021)

Thank you, Chair Dolan, and committee members, for giving me this opportunity to provide testimony in support of HB 392 (which was also sent to you by email).

Proposed Bill:

HB 392 proposes a change the Local Land Use Board Membership Requirements

Intend of the Bill:

This bill makes a change to the requirements for serving on local land use boards by requiring that all voting members, **including ex-officio members**, shall be residents of the respective municipality.

Background Information for Bill:

In 2020 a planning board decision in Portsmouth was appealed to the Superior Court when a local planning board made a decision with the votes of 2 ex-officio members, who were not residents of Portsmouth. The appeal made the assumption that all of the board members were required to be residents of Portsmouth. However, as currently written the RSA Title LXIV, Planning and Zoning, Chapter 673 Local Land Use Boards, Establishment of Boards, Section 673:1, paragraph I, does not explicitly mention ex-officio members. This bill makes clear that, while ex-officio members can serve on municipal boards and provide important insights, to be eligible to vote as a member of that board, the member must be a resident of that municipality.

The resident from Portsmouth who brought this issue to the Superior Court, Mr. Mark Brighton, will also testify regarding his experience with this issue.

Details of the Bill:

The bill makes a change to RSA 673:1, paragraph I, so that it would read “Any local legislative body may establish a planning board.”

and also changes RSA 673:2, paragraph VI, so that it would read, “Voting members of any local land use board established pursuant to paragraphs I-V, including ex officio members, shall be residents of the municipality in which they serve. “



March 7, 2021

Hon. Tom Dolan, Chairman
House Municipal & County Government Committee
Legislative Office Building
Concord, New Hampshire

Via Electronic Mail Only

Re: HB 392, relative to the membership of local land use boards

Dear Chairman Dolan:

I write to offer the New Hampshire Municipal Association's comments on HB 392, which would amend [RSA 673:1](#) by adding a new paragraph VI, stating that "voting members of any local land use board established pursuant to paragraphs I-V, including ex officio members, shall be residents of the municipality in which they serve." We do not necessarily object to the policy of this bill, but we think it is unnecessary and may create confusion.

The "local land use boards" that may be established under paragraphs I-V of RSA 673:1 are the following:

- planning board (paragraph I);
- heritage commission, historic district commission, agricultural commission, or housing commission (paragraph II);
- an "inspector of buildings" (paragraph III) or "building inspector" (paragraph V);
- zoning board of adjustment (paragraph IV); and
- building code board of appeals (paragraph V).

Except for the building inspector, the applicable statute for each of these boards already requires that all members be residents of the municipality. These statutes are:

- RSA 673:1, I (planning board—"the members of which shall be residents of the municipality");
- RSA 673:4-a, II (heritage commission—each member "shall be a resident of the city or town which establishes the commission");
- RSA 673:4, II (historic district commission—same);
- RSA 673:4-b, II (agricultural commission—same);
- RSA 673:4-c, II (housing commission—same);
- RSA 673:3, I (zoning board of adjustment—each member "shall be a resident of the municipality");
- RSA 673:3, IV (building code board of appeals—same).

Hon. Tom Dolan, Chairman

March 7, 2021

Page 2 of 2

Because each of these boards already has a residency requirement in statute, it seems unnecessary to include a new requirement. Further, the new requirement could cause confusion, because it refers only to “voting members,” while the existing statutes simply refer to “members” or “each member.” Most land use boards have alternate members, who are only “voting members” some of the time—but they are always “members,” so the existing law requires that they be residents. A new requirement that only “voting members” be residents could be read as implying that alternate members do not need to be residents.

The one “land use board” that does not currently have a residency requirement is the building inspector. The reason for this is obvious—the building inspector is one individual, not an actual “board,” and he or she is a full-time or part-time employee or contractor of the municipality. There is no reason to require that the building inspector be a resident. In fact, many building inspectors work for more than one municipality, and it would not be possible for them to be a resident of each one. I am fairly sure it is not the intent of the bill to impose a residency requirement on the building inspector, but if the bill is read literally, that is what it does.

Again, I am not sure the bill is necessary at all, but if the committee is inclined to recommend it, I suggest two changes: (1) delete the word “voting” on line 7, so it is clear that it applies to all members of the board; and (2) make an explicit exception for the building inspector.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Cordell A. Johnston". The signature is written in a cursive style with a large initial 'C'.

Cordell A. Johnston
Government Affairs Counsel

Bill as
Introduced

HB 392 - AS INTRODUCED

2021 SESSION

21-0477

11/10

HOUSE BILL **392**

AN ACT relative to the membership of local land use boards.

SPONSORS: Rep. Somssich, Rock. 27; Rep. Meuse, Rock. 29; Rep. Hamblet, Rock. 31; Rep. Ward, Rock. 28

COMMITTEE: Municipal and County Government

ANALYSIS

This bill requires that all voting members of local land use boards shall be residents of the communities in which they serve.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struck through.]~~
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 relative to the membership of local land use boards.

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

1 1 Establishment of Local Land Use Boards; Membership. Amend RSA 673:1, I to read as
2 follows:

3 I. Any local legislative body may establish a planning board~~[-the members of which shall be~~
4 ~~residents of the municipality].~~

5 2 New Paragraph; Establishment of Local Land Use Boards; Membership. Amend RSA 673:1 by
6 inserting after paragraph V the following new paragraph:

7 VI. Voting members of any local land use board established pursuant to paragraphs I-V,
8 including ex officio members, shall be residents of the municipality in which they serve.

9 2 Effective Date. This act shall take effect 60 days after its passage.