

Committee Report

REGULAR CALENDAR

March 10, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Municipal and
County Government to which was referred HB 616-FN,**

AN ACT relative to review of planning board decisions.

**Having considered the same, report the same with the
following resolution: RESOLVED, that it is
INEXPEDIENT TO LEGISLATE.**

Rep. Marjorie Porter

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Municipal and County Government
Bill Number:	HB 616-FN
Title:	relative to review of planning board decisions.
Date:	March 10, 2021
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill would require a bond equal to the assessed value of the property be posted by anyone appealing to the court an approval of a residential or commercial site plan. It also requires the cost to file such an appeal be \$1,700. Citizens have a right to file an appeal. The majority believes this puts an undue financial burden on persons wishing to exercise that right. The sponsor was not present to explain the need for this bill or to answer questions.

Vote 11-8.

Rep. Marjorie Porter
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Municipal and County Government

HB 616-FN, relative to review of planning board decisions. **MAJORITY: INEXPEDIENT TO LEGISLATE. MINORITY: OUGHT TO PASS.**

Rep. Marjorie Porter for the **Majority** of Municipal and County Government. This bill would require a bond equal to the assessed value of the property be posted by anyone appealing to the court an approval of a residential or commercial site plan. It also requires the cost to file such an appeal be \$1,700. Citizens have a right to file an appeal. The majority believes this puts an undue financial burden on persons wishing to exercise that right. The sponsor was not present to explain the need for this bill or to answer questions. **Vote 11-8.**

REGULAR CALENDAR

March 10, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Municipal and County Government to which was referred HB 616-FN,

AN ACT relative to review of planning board decisions.

Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.

Rep. Tony Piemonte

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Municipal and County Government
Bill Number:	HB 616-FN
Title:	relative to review of planning board decisions.
Date:	March 10, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill requires a bond to be posted in certain appeals of zoning decisions. Successful passage of this legislation would serve to indemnify and hold harmless the person or persons in whose favor the zoning decision was rendered from carrying costs and attorneys fees that may be incurred. Attorney fees would be withdrawn from the posted bond.

Rep. Tony Piemonte
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Municipal and County Government

HB 616-FN, relative to review of planning board decisions. **OUGHT TO PASS.**

Rep. Tony Piemonte for the **Minority** of Municipal and County Government. This bill requires a bond to be posted in certain appeals of zoning decisions. Successful passage of this legislation would serve to indemnify and hold harmless the person or persons in whose favor the zoning decision was rendered from carrying costs and attorneys fees that may be incurred. Attorney fees would be withdrawn from the posted bond.

Original: House Clerk

Cc: Committee Bill File

Voting Sheets

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

EXECUTIVE SESSION on HB 616-FN

BILL TITLE: relative to review of planning board decisions.

DATE: March 3, 2021

LOB ROOM: Hybrid

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Porter

Seconded by Rep. Stavis

Vote: 11-8

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep John MacDonald, Clerk



2021 SESSION

Municipal and County Government

Bill #: HB 6016 Motion: FTL AM #: _____ Exec Session Date: 3/3/21

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

Public Hearing

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

PUBLIC HEARING ON HB 616-FN

BILL TITLE: relative to review of planning board decisions.

DATE: March 3, 2021

LOB ROOM: Hybrid **Time Public Hearing Called to Order:** 12:36 p.m.

Time Adjourned: 12:46 p.m.

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

Bill Sponsors:

Rep. Barody

TESTIMONY

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

Bill was introduced by Rep. Maggiore.

Cordell Johnston, NH Municipal Association - Opposes the bill. Very confusing and unfair. Filing fee of \$1,700 dollars plus a bond, pay the opposing parties attorney fees. Very serious expenses to appeal a decision. The appeal would be filed under an existing law. This creates different cases of appeals which will be confusing. The current law applies to any aggrieved party. What law applies, what do I have to do to file an appeal?

Gary Abbott, NH General Contractors Association - We think the law is confusing. We agree with the Municipal Association. We would like to have the existing laws remain the same.

Respectfully submitted,

Rep. John MacDonald
Clerk

House Remote Testify

Municipal and County Government Committee Testify List for Bill HB616 on 2021-03-03

Support: 1 Oppose: 2 Neutral: 0 Total to Testify: 1

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Johnston, Cordell	Concord, NH cjohnston@nhmunicipal.org	A Lobbyist	NH Municipal Association	Oppose	Yes (3m)	3/2/2021 12:40 PM

Testimony

Bill as
Introduced

HB 616-FN - AS INTRODUCED

2021 SESSION

21-0646

11/06

HOUSE BILL ***616-FN***

AN ACT relative to review of planning board decisions.

SPONSORS: Rep. Barody, Hills. 43

COMMITTEE: Municipal and County Government

ANALYSIS

This bill requires a bond to be posted in certain appeals of zoning decisions.

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 relative to review of planning board decisions.

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

1 1 New Subdivision; Posting of Bond. Amend RSA 677 by inserting after section 19 the following
2 new subdivision:

3 Posting of Bond

4 677:20 Posting of Bond Required in Certain Appeals.

5 I. Whenever an appeal of the approval of any residential or commercial site plan, including
6 commercial subdivisions and housing projects, is taken to a court of competent jurisdiction, the court
7 shall require the person or persons appealing to file a bond equal to the assessed value of the
8 property, as determined by the municipality in which the project is based to indemnify and save
9 harmless the person or persons in whose favor the decision was rendered from carrying costs and
10 attorneys fees he or she may sustain in case the decision being appealed is affirmed.

11 II. The cost to file an appeal pursuant to this section shall be \$1,700.

12 III. If an appeal taken under this section is not successful, the appellant party shall be
13 responsible for paying any attorney's fees incurred by the appellee, as well as the carrying costs for
14 the developer during the period of the appeal. Such sums shall be drawn down from the bond posted
15 pursuant to paragraph I if the appellant does not submit payment within 10 days of the decision
16 which affirms the approval.

17 IV. A full accounting of any fees sought to be recovered by the appellee pursuant to
18 paragraph III shall be submitted within 5 days of the date of the decision which affirms the
19 approval.

20 V. Standing for appeals of approvals of projects pursuant to paragraph I shall be limited to
21 direct abutters only.

22 2 Effective Date. This act shall take effect 60 days after its passage.

**HB 616-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to review of planning board decisions.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General <input type="checkbox"/> Education <input type="checkbox"/> Highway <input checked="" type="checkbox"/> Other - Judicial Branch Facility Improvement Fund (RSA 490:26-c) and Technology Fund (RSA 490:26-h)			

LOCAL:

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

METHODOLOGY:

This bill requires the posting of a bond by a direct abutter who wishes to appeal the approval of a residential or commercial site plan. Such bond shall be in the amount of the assessed value of the property. The bond shall cover attorney fees for the appellee and developer carrying costs incurred during the appeal period should the appeal be unsuccessful. The fee to file such appeal is set at \$1,700.

The Judicial Branch indicates the new filing fee of \$1,700 would replace the existing \$280 filing fee. The Branch states it has received 25-30 planning board appeals and 27-45 zoning board appeals per year over the last 2 years. The Branch does not know whether these appeals related to the approval of residential or commercial site plans. Assuming all such appeals would be covered by this legislation, on average 52-75 appeals per year would be subject to the new \$1,700 fee, yielding an additional \$73,000-\$107,000 in revenue. However, the Branch expects the new filing fee, posting of bond and risk of payment of attorney fees would result in less appeals filed. This in turn may lead to a decrease in filing fees and less resources needed for processing these cases. Because of these uncertainties, the fiscal impact is indeterminable.

The New Hampshire Municipal Association states that while the bill references appeals for direct abutters and a new fee, there are existing provisions for appeal of zoning board decisions

(RSA 677:4) and planning board decisions (RSA 677:15) which remain viable and allow for any aggrieved person to appeal. There may be instances where a municipal governing body appeals the decision of a zoning board. In such cases, there may be an additional cost for the posting of the bond required by this bill. If the appeal is unsuccessful, the municipality would incur costs to pay for the appellee's attorney fees and the developer's carrying costs. These amounts would vary depending on the circumstances of each case, so the possible additional expenditure is indeterminable. There will be no impact on municipal revenues.

It is assumed this bill will take effect July 1, 2021.

AGENCIES CONTACTED:

Judicial Branch and New Hampshire Municipal Association