

REGULAR CALENDAR

October 18, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Judiciary to which was referred HB
1389-FN,**

**AN ACT establishing a superior court land use review
docket. Having considered the same, report the same:
NOT RECOMMENDED FOR FUTURE LEGISLATION.**

Rep. Rebecca McBeath

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Judiciary
Bill Number:	HB 1389-FN
Title:	establishing a superior court land use review docket.
Date:	October 18, 2022
Consent Calendar:	REGULAR
Recommendation:	NOT RECOMMENDED FOR FUTURE LEGISLATION

STATEMENT OF INTENT

This bill provided for the establishment of a judge to decide land use cases within the existing structure of NH's superior court. While the idea of creating a specialized court to hear cases arising from municipal land use board decisions has some merit, the majority of the committee considered the present status of the NH judicial branch's caseload and the lack of the full complement of 21 superior court judges sitting on the bench and determined that this initiative is not presently appropriate. In addition, it was suggested that targeted judicial training in the state's core land use principles may adequately address the concern which gave rise to this bill.

Vote 14-5.

Rep. Rebecca McBeath
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

HB 1389-FN, establishing a superior court land use review docket.**NOT RECOMMENDED FOR FUTURE LEGISLATION .**

Rep. Rebecca McBeath for Judiciary. This bill provided for the establishment of a judge to decide land use cases within the existing structure of NH's superior court. While the idea of creating a specialized court to hear cases arising from municipal land use board decisions has some merit, the majority of the committee considered the present status of the NH judicial branch's caseload and the lack of the full complement of 21 superior court judges sitting on the bench and determined that this initiative is not presently appropriate. In addition, it was suggested that targeted judicial training in the state's core land use principles may adequately address the concern which gave rise to this bill. **Vote 14-5.**

REGULAR CALENDAR

February 3, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Judiciary to which
was referred HB 1389-FN,**

**AN ACT establishing a superior court land use review
docket. Having considered the same, report the same
with the recommendation that the bill be REFERRED
FOR INTERIM STUDY.**

Rep. Marjorie Smith

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	HB 1389-FN
Title:	establishing a superior court land use review docket.
Date:	February 3, 2022
Consent Calendar:	REGULAR
Recommendation:	REFER FOR INTERIM STUDY

STATEMENT OF INTENT

The sponsor's goal was to create a Superior Court land use docket. A proposed amendment would have increased the number of judges on the Superior Court and would have provided for additional funding. The judicial branch offered no opinion, giving no indication that if the number of judges were increased the court would choose to allocate additional resources for this purpose. The Judiciary Committee would like to hear from the court and other interested parties as to the costs and benefits related to this proposed change, and therefore voted overwhelmingly for Interim Study.

Vote 20-1.

Rep. Marjorie Smith
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

HB 1389-FN, establishing a superior court land use review docket. **MAJORITY: REFER FOR INTERIM STUDY. MINORITY: OUGHT TO PASS.**

Rep. Marjorie Smith for the **Majority** of Judiciary. The sponsor's goal was to create a Superior Court land use docket. A proposed amendment would have increased the number of judges on the Superior Court and would have provided for additional funding. The judicial branch offered no opinion, giving no indication that if the number of judges were increased the court would choose to allocate additional resources for this purpose. The Judiciary Committee would like to hear from the court and other interested parties as to the costs and benefits related to this proposed change, and therefore voted overwhelmingly for Interim Study. **Vote 20-1.**

REGULAR CALENDAR

February 3, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on Judiciary to which
was referred HB 1389-FN,**

**AN ACT establishing a superior court land use review
docket. Having considered the same, and being unable
to agree with the Majority, report with the following
amendment, and the recommendation that the bill
OUGHT TO PASS WITH AMENDMENT.**

Rep. Mark McLean

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	HB 1389-FN
Title:	establishing a superior court land use review docket.
Date:	February 3, 2022
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2022-0473

STATEMENT OF INTENT

This bill, as amended, creates a land use review docket in the Superior Court and adds one judge to the Superior Court's headcount to oversee the docket. This presiding justice of the land use review docket would be qualified by reason of their knowledge and experience of land use and real property law. Because land use cases are currently dispersed throughout the court, the application of expertise can be uneven, with one judge having more expertise and another having less. This has created a perception that the courts may tend to favor municipalities and towns when rendering judgment. The intention of this bill is to move these types of cases to an area of the court with a high level of expertise so that judgments will be fairer and more even.

Rep. Mark McLean
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

HB 1389-FN, establishing a superior court land use review docket. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Mark McLean for the **Minority** of Judiciary. This bill, as amended, creates a land use review docket in the Superior Court and adds one judge to the Superior Court's headcount to oversee the docket. This presiding justice of the land use review docket would be qualified by reason of their knowledge and experience of land use and real property law. Because land use cases are currently dispersed throughout the court, the application of expertise can be uneven, with one judge having more expertise and another having less. This has created a perception that the courts may tend to favor municipalities and towns when rendering judgment. The intention of this bill is to move these types of cases to an area of the court with a high level of expertise so that judgments will be fairer and more even.

Original: House Clerk
Cc: Committee Bill File

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1389-FN

BILL TITLE: establishing a superior court land use review docket.

DATE: October 18, 2022

LOB ROOM: 206-208

MOTION:

Interim Study (2nd yr) Not Recommended for Future Legislation

Moved by Rep. McBeath

Seconded by Rep. DiLorenzo

Vote: 14-5

Respectfully submitted,

Rep Kurt Wuelper, Clerk



2022 SESSION

Judiciary

 Bill #: HB1389 Motion: NOT Recommend AM #: _____ Exec Session Date: 10-18-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman		✓	
McLean, Mark Vice Chairman		✓	
Sylvia, Michael J.	✓		
Wuelper, Kurt F. Clerk	✓		
Alexander, Joe H. <u>Johnson, D</u>		✓	
Greene, Bob J.			
Notter, Jeanine M.		✓	
Merner, Troy E.		✓	
Kelley, Diane E.	✓		
Trottier, Douglas R.			
Andrus, Louise	✓		
Smith, Marjorie K.	✓		
Berch, Paul S. <u>Rung, R</u>	✓		
Horrigan, Timothy O.	✓		
DiLorenzo, Charlotte I.	✓		
Chase, Wendy	✓		
Kenney, Cam E. <u>Chretien</u>	✓		
Langley, Diane M.	✓		
McBeath, Rebecca Susan	✓		
Paige, Mark	✓		
Simpson, Alexis	✓		
	14	5	

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1389

BILL TITLE: establishing a superior court land use review docket.

DATE: 1/13//2022

LOB ROOM: 206-208

Time Public Hearing Called to Order: 10:15 AM

Time Adjourned: 10:42 AM

Committee Members: Reps. Gordon, McLean, Wuelper, Sylvia, Alexander Jr., Notter, Merner, Greene, D. Kelley, Andrus, Trottier, M. Smith, Berch, Horrigan, DiLorenzo, Chase, Kenney, Langley, McBeath, Paige and Simpson

Bill Sponsors: Rep Lynn

TESTIMONY

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

***Rep. Lynn Sponsor**

I have a small change to the bill. "Conservation commissions" should be removed and replaced with "local governing bodies". The purpose of this docket is to bring more efficiency to the land use cases. Regarding the HAB, deals only with housing cases., and this docket would be much broader. The idea is that all land use cases will go to a judge who specializes in that area of law, similar to the Business Court docket, h has worked very well.

Q Wuelper: Are you suggesting repeal of the HAB?

Ans: No

Q Horrigan: Are you suggesting a current judge be posted to this court?

Ans: I anticipate there will be a new judge authorized for this. I think this specialized docket would require more resources.

Q Langley: How would conflicting decisions between the HAB and the Court be handled?

Ans: Similar to the BTLA, those conflicts would go the Supreme Court.

Q what is the difference between the "Associate" judge and gthe typical judge?

Ans: I think all the lower court judges are called "Associate" judges and this would allow this docket judge to have they typical abilities of other judges.

Q what about the HAB?

Ans: as with BTLA you would have a choice as to the avenue you take and the decision in either path can be appealed to Supreme Court

Richard Head Judicial Branch Policy Coordinator

It simply adds one judge to the number allowed. As in some other classes, land use cases involve specialized knowledge in the Court and this docket would allow for that specialization which has proven effective in some other classes and expedite those cases.

Q Trottier: The Fiscal note shows a \$229 thousand and it doubles the next year and continues to increase. Can you explain?

Ans: We thought it would take effect in the middle of a fiscal year and then go to full years.

Q Could you send us a diagram of how this would work?

Ans: it would be a simple diagram. There is a decision and someone, there could be many, wants to appeal. That appellant would choose which avenue to appeal and the difference would be that a court decision appeal must be taken by the Supreme Court where the HAB decisions the Supreme Court may decline to take the case.

Q Horrigan: When might this be actually implemented:

Ans: I likely would be after January 1.

Q Gordon: if Superior court is given half a million dollars what would be its priority?

Ans: The purpose of setting up the docket would be to give these cases priority especially for a new judge.

Greg Moore AFP NH Support I think the state is being held back by. long time for hearing these cases now. Justice in these cases may take three years. The short time frames in this bill would be a major improvement. We have local officials overstepping their authority and a poor way of challenging that. Having a single judge will help generate a consistent body of case law which will help local the planning and zoning boards. I think this will lead to more cases because many don't go forward now due to the long time frame involved.



Rep Kurt Wuelper, Clerk

House Remote Testify

Judiciary Committee Testify List for Bill HB1389 on 2022-01-13

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

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>Non-Germane</u>	<u>Signed Up</u>
Pollack, Ari	Concord, NH pollack@gcglaw.com	A Lobbyist	NH Homebuilders	Neutral	No	No	1/11/2022 2:26 PM
Frost, Ben	Bedford, NH bfrost@nhhfa.org	State Agency Staff	NH Housing	Oppose	No	No	1/12/2022 10:52 PM
Osborne, Jason	Auburn, NH houserepoffice@leg.state.nh.us	An Elected Official	Myself	Support	No	No	1/13/2022 8:42 AM

Archived: Friday, March 11, 2022 3:16:17 PM

From: [Richard W. Head](#)

Sent: Thursday, February 10, 2022 8:04:00 PM

To: ~House Judiciary Committee

Cc: [Bob Lynn](#)

Subject: HB 1389 (Land Use Docket)

Importance: Normal

Attachments:

[HB 1389 Land Use Docket. Judicial Branch Letter.pdf](#) 

Good evening Chairman Gordon and members of the House Judiciary Committee. Attached please find supplemental written testimony from the Judicial Branch regarding House Bill 1389. Should you have any questions, please do not hesitate to contact me.

Thank you.

Richard

Richard W. Head
Government Affairs Coordinator
New Hampshire Judicial Branch
One Granite Place, Suite N400
Concord, NH 03301
rhead@courts.state.nh.us
Cell: 603-716-8235

Archived: Wednesday, March 16, 2022 10:39:07 AM
From: [Robert Lynn](#)
Sent: Saturday, January 15, 2022 10:05:47 AM
To: ~House Judiciary Committee
Subject: HB1389
Importance: Normal

Dear Judiciary Committee Members,

Per Chairman Gordan's request, this is to confirm my request that the Committee make the following amendment to the bill as presented at last week's hearing (deleted material in strikethrough; new matter in bold).

On the first page of the text of the bill, under proposed RSA 491:7-b, amend paragraph I to read as follows:

- I. Without limiting the jurisdiction vested in any court in the state, and subject to the appointment of a presiding justice by the governor with the consent of the executive council as provided in this section, the supreme court may establish by court order not inconsistent with this section, a land use review docket in the superior court which shall have jurisdiction to hear appeals from decisions of local land use boards, including but not limited to decisions of municipal planning boards, zoning boards, historic district commissions, and ~~conservation commissions~~ **local governing bodies**. The jurisdiction of this docket shall not include appeals of decisions by state agencies.

No other changes to the bill are requested.

As I explained at the hearing, conservation commissions are established under RSA 36-A, not the land use laws, and they do not have the authority to make the kinds of decisions that are the intended subject of the docket created by this bill. In the main, any decisions of conservation commissions that arguably could impact the use of land have to be approved by the local governing body (selectmen, board of mayor and aldermen, etc.) in order to become effective, and that is why, among other reasons, I added the language including appeals from decisions of "local governing bodies," which is a defined term under the land use statutes.

I am working with Richard Head from the judicial branch to prepare the flow chart requested by one member of the committee, and we will provide that in short order.

Best regards,

Rep. Bob Lynn
Rockingham Dist. 7 (Windham)

Sent from [Mail](#) for Windows

HB 1389-FN - AS INTRODUCED

2022 SESSION

22-2662

05/04

HOUSE BILL ***1389-FN***

AN ACT establishing a superior court land use review docket.

SPONSORS: Rep. Lynn, Rock. 7; Rep. Osborne, Rock. 4

COMMITTEE: Judiciary

ANALYSIS

This bill establishes the land use review docket in the superior court.

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 Two

AN ACT establishing a superior court land use review docket.

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

1 1 New Section; Superior Court; Land Use Review Docket. Amend RSA 491 by inserting after
2 section 7-a the following new section:

3 491:7-b Land Use Review Docket.

4 I. Without limiting the jurisdiction vested in any court in the state, and subject to the
5 appointment of a presiding justice by the governor with the consent of the executive council as
6 provided in this section, the supreme court may establish by court order not inconsistent with this
7 section, a land use review docket in the superior court which shall have jurisdiction to hear appeals
8 from decisions of local land use boards, including but not limited to decisions of municipal planning
9 boards, zoning boards, historic district commissions, and conservation commissions. The jurisdiction
10 of this docket shall not include appeals of decisions by state agencies.

11 II. The governor with the consent of the executive council may appoint the first presiding
12 justice of the land use review docket, who shall be qualified by reason of such person's knowledge
13 and experience in land use and real property law. The chief justice of the superior court, following
14 the appointment or designation of the initial presiding justice, may designate such additional
15 justices to preside over cases assigned to the land use review docket, as necessary, based upon
16 caseload, disqualification of the presiding justice, or efficient allocation of judicial resources.

17 III. The presiding justice of the land use review docket shall be an associate justice of the
18 superior court and shall be entitled to the compensation and benefits provided to all such justices
19 under applicable law, including, but not limited to, RSA 491-A:1 and RSA 100-C.

20 IV. The workload of the presiding justice of the land use review docket shall be the matters
21 before that docket. The presiding justice may be assigned to any other matter within the jurisdiction
22 of the superior court or sit by designation on any other court in the same manner as any other
23 associate justice of the superior court, as determined to be necessary by the chief justices of the
24 superior and supreme courts.

25 V. Subject to the provisions of this section, all appeals to superior court filed pursuant to
26 RSA 677 and all proceedings for such appeals, shall be assigned to the land use review docket,
27 including motion practice, discovery, injunctive relief, alternative dispute resolution, and hearing on
28 the merits.

29 VI. The court shall hold a structuring conference within 30 days of its receipt of the notice of
30 appeal. At the structuring conference the court shall set a deadline for the filing with the court of
31 the certified record and shall schedule a hearing on the merits to be held within 60 days of receipt of

HB 1389-FN - AS INTRODUCED

- Page 2 -

1 the certified record. The court shall issue a decision on the merits within 60 days of the hearing.
2 The court may extend any of the deadlines established in this paragraph upon agreement of the
3 parties or for other good cause shown, but if the extension is based upon good cause, the court shall
4 articulate in its order granting the extension the specific facts and circumstances that warrant the
5 extension.

6 2 Effective Date. This act shall take effect January 1, 2023.

**HB 1389-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT establishing a superior court land use review docket.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	\$279,000	\$557,000	\$570,000
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill establishes the land use review docket in the superior court.

The Judicial Branch assumes, with an effective date on the bill of January 1,2023 the new associate superior court justice would be appointed during FY 2023 and the docket would receive approximately 70-100 new cases per year. Given the complexity of some land use cases, the concentrated docket with accelerated deadlines and a new presiding justice to oversee the docket, the Branch believes a law clerk, court monitor and administrative court assistant would be needed to manage the caseload and provide assistance to the presiding justice. The Branch estimated the additional expenditures would be \$279,000 in FY 2023, \$557,000 in FY 2024 and \$570,000 in FY 2025. The amount in the first year would include one-time costs, including computers, phones and IT licenses for the new positions.

This bill does not include an appropriation.

AGENCIES CONTACTED:

Judicial Branch