

Senate Public and Municipal Affairs Committee

Kelly Flathers 271-3093

SB 173, relative to the use of accessory dwelling units.

Hearing Date: February 1, 2017

Time Opened: 10:45 a.m.

Time Closed: 11:12 a.m.

Members of the Committee Present: Senators Ward, Birdsell, Kahn and Gray

Members of the Committee Absent : Senator McGilvray

Bill Analysis: This bill provides that accessory dwelling units may not be used as short-term rentals.

Sponsors:

Sen. Fuller Clark

Sen. Reagan

Sen. Watters

Rep. Ohm

Rep. J. Belanger

Rep. McBeath

Rep. Oxenham

Who supports the bill: Rep. Jim Belanger - Hillsborough 27; Sen. Fuller Clark - District 21; Jane Ferrini - Portsmouth Mayor Blalock; Cordell Johnston - NH Municipal Association (as amended); Ben Frost - NH Housing Finance Authority (as amended)

Who opposes the bill: Mary Truell - NH Realtors Public Policy Committee; Ryan Donnelly - Granite State Independent Living

Who is neutral on the bill: No one

Summary of testimony presented in support:

Sen. Martha Fuller Clark – District 21

- This bill says that accessory dwelling units may not be used for short-term rentals. Now that we've passed the ADU law, some communities fear that they will be overwhelmed with short-term rentals. We don't want to confuse the original intent of ADUs, which was to increase opportunities for long-term rentals. A short-term rental is any property rented out for less than 30 days. I have an amendment that gives municipalities the ability to make this decision, instead of having a state-wide restriction.

Sen. Gray

- (Q) Do you have the paragraph that defines short-term rentals?
 - (A) **Sen. Fuller Clark:** It's defined under the room and meals tax provision.

Cordell Johnston – NH Municipal Association

- We would support this bill with the amendment.
- We were concerned with the bill as written because it amounts to a state-wide zoning requirement. As amended, this bill allows municipalities to decide.

Jane Ferrini – Portsmouth Mayor Blalock

- I am speaking in support of this bill.
- The Portsmouth city council adopted an ordinance regarding ADUs in response to the new state law. The ordinance authorizes the Planning Board to grant a conditional use permit for an ADU in any zoning district that permits single family dwellings.
- Additionally, to encourage conversion of an existing accessory structure into a small dwelling unit, the City created a separate category of dwellings called “garden cottages”.
- The ordinance requires that all ADUs comply with certain standards, one of which is that the principle dwelling unit and the ADU shall not be separated in ownership or be used for any business, except that the property owner may have a home occupation use.
- The city supports this bill because it would help preserve the stable residential character of single family neighborhoods by prohibiting ADUs from being used as short-term rentals, which municipalities may consider to be a business use.
- We also support legislation that maintains local authority.

Ben Frost – NH Housing Finance Authority

- I am speaking in support of this bill as amended.
- I was significantly involved in the drafting of the ADU law. This amendment came about after conversations with planners throughout the state, who suggested this bill was too rigid. Some communities already allow short-term rental of ADUs. Short-term rentals has a statutory definition in the meals and rooms tax, less than 185 days... There is a bill pending in the house from Rep. Ohm with a different definition, 30 days. I don't think it was ever intended that ADUs would be used for short-term rentals. Longer-term residency for people who aren't tourists is the purpose.

Sen. Kahn

- (Q) Should this bill be aiming for 30 days or 185 days? Should this bill simply define short-term rentals?
 - (A) **Ben Frost:** If the committee chose to define it within the ADU statute as 30 days, I would be fine with that.

Sen. Birdsell

- (Q) If there is a house with an ADU and there's no longer a need for the ADU, what would be the harm in using it as a revenue maker as a short-term rental?
 - (A) **Ben Frost:** The harm has been suggested by the city of Portsmouth; there have been neighborhood complaints related to policing. Throughout the state we have a dramatic shortage of long-term rental units. If someone wants to rent out an ADU long-term, there is a strong market for it. Alternatively, the ADU law has the unusual provision requiring an interior door. That is intended to allow for the reintegration of the ADU into the original unit if it is no longer needed.

Sen. Fuller Clark

- Many communities have made the decision to adopt zoning with business and residential districts.
- If residential districts with ADUs are being turned into short-term rentals with constant turnover, you're undermining the character and quality of life in a residentially zoned area.
- You cannot ban ADUs, but the law gives local communities the right to put in certain restrictions and requirements.
- Some areas experience such an influx of short-term rentals that there were no long-term rentals available. The purpose of ADU law was to create more affordable housing.
- There's a balance between allowing this innovative type of business to exist while allowing local communities to create parameters.

Sen. Kahn

- (Q) Would you be open to defining short-term rental in this bill?
 - (A) **Sen. Fuller Clark:** I can get you the language being proposed in Rep. Ohm's bill, HB 654, if you want to incorporate that definition. I would have no objection to that.

Summary of testimony presented in opposition:

Mary Truell – Chair, NH Realtors Public Policy Committee

- I am speaking in opposition to this bill.
- In NH, residentially zoned property allows for the rental of that property. Both state and federal courts have repeatedly ruled that the rental of residential property is a legitimate residential use.
- Any residentially zoned area contains numerous single family dwellings that may be rented in the short or long term. This bill is a fundamental change in how NH has viewed and protected private property rights.
- Why should the legislature allow long-term rentals but deny short-term

rentals? What problems are we trying to fix that are unique to short-term rentals? There is no evidence to suggest that short-term rentals cause more problems; the opposite has been suggested to be true.

Sen. Kahn

- (Q) What is the duration of a short-term rental?
 - (A) **Mary Truell:** The definition is 30 days or less for tax purposes, but this is different.

Neutral Information Presented: None

Future Action: Pending

KEF

Date Hearing Report completed: February 3, 2017