HOUSE BILL 1629-FN

AN ACT relative to training and procedures for zoning and planning boards.


COMMITTEE: Municipal and County Government

AMENDED ANALYSIS

This bill provides for free training materials for members of a zoning board of adjustment or planning board, modifies the appeals process for zoning decisions, and provides for fee shifting and posting of bond in appeals to superior court from decisions of boards of adjustment.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
HB 1629-FN - AS AMENDED BY THE HOUSE

5Mar2020... 0552h 20-2552
11/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

AN ACT relative to training and procedures for zoning and planning boards.

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

1 Local Land Use Boards; Training. Amend RSA 673:3-a to read as follows:

673:3-a Training. [Within the first year of assuming office, a new] Any member of a zoning board of adjustment or planning board may complete training offered by the office of strategic initiatives or another organization that provides similar training covering the processes, procedures, regulations, and statutes related to the board on which the member serves. The office of strategic initiatives may provide this training, which may be designed in a variety of formats including, but not limited to, web-based, distance learning, traditional classroom style, or self-study. The office of strategic initiatives shall develop standard self-training materials and corresponding tests for zoning boards of adjustment and planning boards which shall be provided to members free of charge. The office of strategic initiatives may provide other types of training, which may be designed in a variety of formats including, but not limited to, web-based, distance learning, or traditional classroom style. For purposes of this section, the term "member" includes regular and alternate members of zoning boards of adjustment and planning boards.

2 New Paragraph; Local Land Use Boards; Staff; Finances. Amend RSA 673:16 by inserting after paragraph II the following new paragraph:

III. Any fee which a city or town imposes on an applicant pursuant to this title shall be published in a location accessible to the public during normal business hours. Any fee not published in accordance with this paragraph at the time an applicant submits an application shall be considered waived for purposes of that application. A city or town may comply with the requirements of this section by publicly posting a list of fees at the city or town hall or by publishing a list of fees on the city or town's Internet website.

3 Local Land Use Planning and Regulatory Powers; Innovative Land Use Controls. Amend RSA 674:21, II to read as follows:

II.(a) An innovative land use control adopted under RSA 674:16 may be required when supported by the master plan and shall contain within it the standards which shall guide the person or board which administers the ordinance. An innovative land use control ordinance may provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall be reviewed by the planning board
prior to final consideration by the administrator. In such a case, the planning board shall set forth its comments on the proposal in writing and the administrator shall, to the extent that the planning board’s comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board’s comments.

(b) If a municipality allows an increased density, reduced lot size, expedited approval, or other dimensional or procedural incentive under this section for the development of housing for older persons, as defined and regulated pursuant to RSA 354-A:15, it shall allow the same incentive for the development of workforce housing as defined in RSA 674:58, IV. Beginning July 1, 2021, incentives established for housing for older persons shall be deemed applicable to workforce housing development, regardless of whether a local land use ordinance or regulation specifically provides for their application to workforce housing development.

4 Local Land Use Planning and Regulator Powers; Innovative Land Use Controls. Amend RSA 674:21, IV(a) to read as follows:

IV. As used in this section:

(a) “Inclusionary zoning” means land use control regulations which require a property owner to produce, as part of a development which meets certain characteristics, housing units which are affordable to persons or families of low and moderate income or provide a voluntary incentive or benefit to a property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low and moderate income. Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined application process. Inclusionary zoning ordinances shall include standards that do not reduce the economic viability of developments in comparison to developments that do not require housing affordability. Such ordinances shall also enable the planning board to waive or modify in individual cases any standards that are demonstrated by an applicant to reduce the economic feasibility of a development.

5 Planning and Zoning; Administrative and Enforcement Procedures; Issuance of Decision. Amend RSA 676:3, I to read as follows:

I. The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval. If the application is not approved, the board shall provide the applicant with written reasons for the
disapproval. If the application is approved with conditions, the board shall include in the written
decision a detailed description of all conditions necessary to obtain final approval.

6 New Paragraph; Powers of Zoning Board of Adjustment. Amend RSA 674:33 by inserting after
paragraph VII the following new paragraph:

VIII. Upon receipt of any application for action pursuant to this section, the zoning board of
adjustment shall begin formal consideration and shall approve or disapprove such application within
90 days of the date of receipt, provided that the applicant may waive this requirement and consent to
such extension as may be mutually agreeable. If a zoning board of adjustment determines that it
lacks sufficient information to make a final decision on an application, the board may, in its
discretion, deny the application without prejudice, in which case the applicant may submit a new
application for the same or substantially similar request for relief.

7 Workforce Housing; Definitions. Amend RSA 674:58, IV to read as follows:

IV. "Workforce housing" means housing which is intended for sale and which is affordable to
a household with an income of no more than \([100\%] 120\) percent of the median income for a 4-person
household for the metropolitan area or county in which the housing is located as published annually
by the United States Department of Housing and Urban Development. "Workforce housing" also
means rental housing which is affordable to a household with an income of no more than 60 percent
of the median income for a 3-person household for the metropolitan area or county in which the
housing is located as published annually by the United States Department of Housing and Urban
Development. Housing developments that exclude minor children from more than 20 percent of the
units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, or are
subject to age restrictions, shall not constitute workforce housing for the purposes of this
subdivision.

8 Planning Board; Board's Procedures on Plats. Amend RSA 676:4, I(c) to read as follows:

(c)(1) The board shall, at the next regular meeting or within 30 days following the
delivery of the application, for which notice can be given in accordance with the requirements of
subparagraph (b), determine if a submitted application is complete according to the board's
regulation and shall vote upon its acceptance. Upon determination by the board that a submitted
application is incomplete according to the board's regulations, the board shall notify the applicant of
the determination in accordance with RSA 676:3, which shall describe the information, procedure, or
other requirement necessary for the application to be complete. Upon determination by the board
that a submitted application is complete according to the board's regulations, the board shall begin
formal consideration and shall act to approve, conditionally approve as provided in subparagraph (i),
or disapprove within 65 days, subject to extension or waiver as provided in subparagraph (f). [Upon
failure of the board to approve, conditionally approve, or disapprove the application, the selectmen or
city council shall, upon request of the applicant, immediately issue an order directing the board to
act on the application within 30 days.] If the board determines that it lacks sufficient
information to make a final decision on an application, the board may, in its discretion, deny the application without prejudice, in which case the applicant may resubmit the same or a substantially similar application. If the planning board does not act on the application within that [30 day] 65-day time period, then [within 40 days of the issuance of the order] the selectmen or city council shall certify on the applicant's application that the plat is approved pursuant to this paragraph, unless within those 40 days the selectmen or city council has identified in writing some specific subdivision regulation or zoning or other ordinance provision with which the application does not comply. Such a certification, citing this paragraph, shall constitute final approval for all purposes including filing and recording under RSA 674:37 and 676:18, and court review under RSA 677:15.

(2) Failure of the selectmen or city council to [issue an order to the planning board under subparagraph (1), or to] certify approval of the plat upon the planning board's failure to [comply with the order] act within the required time period shall constitute grounds for the superior court, upon petition of the applicant, to issue an order approving the application [if the court determines that the proposal complies with existing subdivision regulations and zoning or other ordinances]. The superior court shall act upon such a petition within 30 days. If the court determines that the failure of the selectmen or the city council to act was not justified, the court may order the municipality to pay the applicant's reasonable costs, including attorney's fees, incurred in securing such order.

9 Planning Board; Board's Procedures on Plats. Amend RSA 676:4, I(f) to read as follows:

(f) [The planning board may apply to the selectmen or city council for an extension not to exceed an additional 90 days before acting to approve or disapprove an application.] The applicant may waive the requirement for planning board action within the time periods specified in subparagraph (c) and consent to such extension as may be mutually agreeable.

10 Planning and Zoning; Rehearing and Appeal Procedures; Court Review. Amend RSA 677:15, IV to read as follows:

IV. [The court shall give any hearing under this section priority on the court calendar.] Whenever an appeal to the superior court is initiated under this section, the court shall give the appeal priority on its calendar and shall issue a final decision within 120 days of the date upon which a certiorari order was delivered to the planning board pursuant to paragraph II. If the court stays an appeal pursuant to subparagraph I(b), then it shall issue a decision within 120 days of final resolution of all matters before the board of adjustment.

11 Planning and Zoning; Rehearing and Appeal Procedures; Priority. Amend RSA 677:5 to read as follows:

677:5 Priority. [Any hearing by the superior court upon an appeal under RSA 677:4 shall be given priority on the court calendar.] Whenever an appeal to the superior court is initiated
under RSA 677:4, the court shall give the appeal priority on its calendar and shall issue a final decision with 120 days of the date upon which the petition was served on the zoning board of adjustment or local legislative body.

12 New Subdivision; Fee Shifting and Posting of Bond. Amend RSA 677 by inserting after section 19 the following new subdivision:

Fee Shifting and Posting of Bond

677:20 Fee Shifting and Posting of Bond.

I. Whenever an appeal to the superior court is initiated under this chapter, the court may in its discretion require the person or persons appealing to file a bond with sufficient surety for such a sum as shall be fixed by the court to indemnify and save harmless the person or persons in whose favor the decision was rendered from damages and costs which he or she may sustain in case the decision being appealed is affirmed.

II. In any appeal initiated under this chapter the court may, subject to the provisions of this paragraph or any other provision of law, award attorney's fees and costs to the prevailing party. Costs and attorney's fees shall not be allowed against a local land use board unless it shall appear to the court that the board, in making the decision from which the appeal arose, acted with gross negligence, in bad faith, or with malice. Costs and attorney's fees shall not be allowed against the party appealing from the decision of a local land use board unless it shall appear to the court that said party acted in bad faith or with malice in appealing to court.

13 Effective Date. This act shall take effect January 1, 2021.
AN ACT relative to training and procedures for zoning and planning boards.

FISCAL IMPACT: [ X ] State [ ] County [ X ] Local [ ] None

<table>
<thead>
<tr>
<th>STATE:</th>
<th>Estimated Increase / (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY 2020</td>
</tr>
<tr>
<td>Appropriation</td>
<td>$0</td>
</tr>
<tr>
<td>Revenue</td>
<td>$0</td>
</tr>
<tr>
<td>Expenditures</td>
<td>$0</td>
</tr>
<tr>
<td>Funding Source:</td>
<td>[ X ] General</td>
</tr>
</tbody>
</table>

LOCAL:

| Revenue | $0 | $0 | $0 | $0 |
| Expenditures | $0 | Indeterminable | Indeterminable | Indeterminable |

METHODOLOGY:

This bill amends the existing voluntary training provisions applicable to new planning or zoning board members by allowing all planning and zoning board members to receive training from the Office of Strategic Initiatives free of charge. OSI training may be designed in a variety of formats, including web-based, distance learning or traditional classroom style.

OSI indicates these requirements could be interpreted broadly for the provision of course materials and reasonable access to training and tests statewide, resulting in an indeterminable fiscal impact on the agency. The New Hampshire Municipal Association (NHMA) indicates that municipalities are afforded such training by OSI free of charge to fulfill the requirement, therefore any cost incurred by a municipality would be discretionary.

NHMA states that other provisions of the bill may negatively impact municipal expenditures, but due to the unknown number or extent of such occurrences, such impact is indeterminable. These provisions relate to the posting of a bond if a municipality appeals a land use board decision if ordered by a court, and the awarding of attorney fees if a land use board decision is reversed on appeal and such board acted with gross negligence, in bad faith or with malice. Municipal revenue may increase if a land use board decision is upheld on appeal and the appealing party acted in bad faith or with malice and attorney fees are awarded. Due to the unknown frequency of such an event the fiscal impact on municipal revenue is indeterminable.
The other provisions of the bill are unlikely to affect municipal revenue or expenditures.

Pursuant to RSA 673:2,IV, counties in which there are unincorporated towns or unorganized places may have planning boards. The New Hampshire Association of Counties states there would be no additional cost to county government because a county would never be a "person" taking an appeal from the board to Superior Court. Therefore, the Association concludes a county would never be in a position of having to post a surety bond and incur the costs associated with this bill.

AGENCIES CONTACTED:

Office of Strategic Initiatives, New Hampshire Municipal Association, and New Hampshire Association of Counties