

Senate Executive Departments and Administration Committee

Cameron Lapine 271-2104

HB 377, relative to the authority of the state fire marshal to grant an exemption from fire code requirements to recovery houses.

Hearing Date: March 24, 2021

Time Opened: 9:15 a.m.

Time Closed: 9:56 a.m.

Members of the Committee Present: Senators Carson, Reagan, Cavanaugh and Prentiss

Members of the Committee Absent: Senator Ricciardi

Bill Analysis: This bill allows substance-free recovery houses to be granted an exemption by the state fire marshal for certain requirements of the state fire code.

Sponsors:

Rep. Connors

Rep. Cornell

Rep. Goley

Rep. Snow

Sen. D'Allesandro

Who supports the bill: Max Schultz (State Fire Marshal's Office), Paul Parisi (State Fire Marshal's Office), Representative Carol McGuire (Merrimack – District 29), Sean Toomey (State Fire Marshal's Office), Representative Erika Connors (Hillsborough – District 15), Lucinda Hope, Representative Jeff Goley (Hillsborough – District 8), Ruth Larson, Nikki Fordey, Richard DeMark, and Patricia Cornell.

Who opposes the bill: Kim Bock (New Hampshire Coalition of Recovery Residences), Elliott Berry, Evan Draper (NHCORR), Christine Wellington, Ryan O'Callaghan, Rachael Azotea, Rebecca Martin, Donna Mombourquette, Jules Johnson, Shanna Large-Reusch, Kristine Paquette, Alyssa Ng, Trey Rich, Dominic Rich, Lisa MacDonald, Adam Moulton, Adam Draper, Freeman Toth (BM-CAP Homeless Outreach & Housing Stabilization), Keith Anderson, Michelle Leclerc, and Shanna Griffin.

Who is neutral on the bill: Jake Berry (New Futures) and Jonathan Gerson.

Summary of testimony presented in support:

Representative Erika Connors

Hillsborough – District 15

- Representative Connors chaired the Committee to Study State and Municipal Authority Governing Recovery Houses (Laws of 2020, 37:151). She said that the Study Committee recommended mirroring the language of HB 311 (2020) as it was amended by the House before dying on the table in the Senate.

- Rep. Connors said that recovery houses offer a bridge for those in recovery between a rehab facility and a home. She said that they offer rules, structure, therapy, and a drug-free environment as a piece of the road to recovery.
- Rep. Connors said that HB 377 does not reduce or eliminate true sober housing. She said that some people take advantage of people in recovery and get around the Life Safety Code.
- Rep. Connors said that people in recovery are protected under the Americans with Disabilities Act (ADA) but are not being protected by bad actors operating recovering housing. She said that HB 377 is permissive legislation allowing true recovery houses to operate under less stringent regulations.
- Senator Reagan said he has participated in conversations about sober homes for many years. He said he was informed that the square footage requirement in HB 377 is four times the federal requirement for square footage. He asked if there was a reason for that.
 - Rep. Connors said that she wasn't sure what the federal requirements were, but that the language in HB 377 came from the Fire Marshal's Office (FMO).
- Senator Reagan asked if anyone could answer his question about square footage requirements.
 - Senator Carson said that there were individuals from the FMO who had signed up to testify.
- Senator Cavanaugh said there have been a lot of problems with bad actors in Manchester, involving 16 adults living in one home in a residential neighborhood. He asked if HB 377 was a way to shut down bad actors.
 - Rep. Connors said that the idea of HB 377 is not to affect zoning in any way, but it is to look at what a sober home is and look at bad actors while helping places doing good.
- Senator Carson asked Rep. Connors to supply the Committee with the Final Report of the Study Committee.
 - Rep. Connors said she did not have the Final Report at hand but would send it to the Committee. She said Senator D'Allesandro was the Senate member on the Study Committee.

Representative Carol McGuire

Merrimack – District 29

- Representative McGuire said that HB 377 sets the specifications for safety requirements that are needed in a recovery home to deal with the large amount of older housing stock without sprinkler systems.
- Rep. McGuire said that HB 377 creates a framework for safety if sprinkler systems are not required.
- Rep. McGuire said that the FMO can currently issue waivers on a one-on-one basis but HB 377 will put in statute what the essential minimum requirements are for a building without a sprinkler system operating as recovery housing.
- Rep. McGuire said that older houses in cities and towns do not have sprinklers and need to take special efforts towards safety if they are going to be used as a recovery home.
- Senator Reagan asked if Rep. McGuire could answer his question about the square footage requirements.
 - Rep. McGuire said that the issue never came up in House Executive Departments and Administration's hearing on HB 377.
- Senator Prentiss asked if there needed to be rulemaking authority to grant waivers under HB 377.
 - Rep. McGuire said that there are already rules for the FMO to issue a waiver and that HB 377 creates an easier, standard waiver rather than requiring a unique one in each case.

Paul Parisi

FMO

- Mr. Parisi said that he has worked with local fire departments, and especially Manchester’s fire department, as well as many in the recovery community to try to find a solution. He said that it is clear that the number of overdose deaths exceed the number of fire deaths and he does not want to tip the scales the other way.
- Mr. Parisi said that HB 377 strikes a balance between fire suppression provisions and the potential financial hardships that some requirements could create. He said that because sober houses are recognized as rooming and lodging houses, they require more robust fire suppression systems.
- Mr. Parisi said that if a recovery home is complying in general and, specifically, with items A through N of HB 377, they can seek an exemption from the greater fire suppression requirements.
- Mr. Parisi said that HB 377 creates a mechanism for residences to demonstrate their safety measures while giving a more viable exemption to portions of Chapter 26 of the Life Safety Code.
- Mr. Parisi said that HB 377 is a standardized process for how the State handles recovery houses from a safety perspective, which may reduce “Not In My Backyard” issues because there will be a clear rule state-wide.
- Mr. Parisi said that HB 377 leverages the existing infrastructure between the New Hampshire Coalition of Recovery Residences (NHCORR) and administrative rules Saf-C 6000, showing the extend of the compromise and allowing the General Court to decide what is appropriate.
- Addressing Senator Reagan’s square footage question, Mr. Parisi said that the NHCORR checklist lists 50 square feet per sleeping room while HB 377 lists 200 square feet as the gross square footage per dwelling unit per person. He said that the NHCORR requirement is per bedroom while HB 377 is discussing the unit itself.
- Senator Cavanaugh said that his biggest issue before the COVID-19 pandemic was the recovery home problem in Manchester. He asked if HB 377 would make it easier to take on bad actors taking advantage of people in recovery.
 - Mr. Parisi said that he would believe that statement to be accurate. He said that HB 377 would legitimize people doing the right thing and acting to help people while weeding out the bad actors. He said that this has been an issue for many years. He said that local fire chiefs have been left in the lurch relative to enforcement while looking for a state-wide solution.
- Senator Carson asked if any buildings would be grandfathered in under HB 377.
 - Mr. Parisi said no. He said that if a fire chief was to come across a recovery residence once the statute was enacted, they would ask the residence to come into compliance. He said that the chief would work with the residence even if they’d been in operation for months or years. Mr. Parisi said it is called a corrective action plan.
- Senator Carson asked how long an existing house would have to come up to code.
 - Mr. Parisi said it would depend on how many issues there are with a home, how much money the home has to spend, and how serious the problems are. He said if a chief went in and there weren’t the proper number of egress points and no smoke or carbon monoxide alarms, there would be a serious and tight corrective action plan. If it was more minor, like needing to develop an evacuation plan or posting a “No Smoking Within 10 Feet” sign, then the chief would give more time.

Paul Toomey

FMO

- Mr. Toomey supported Mr. Parisi’s comments.

Summary of testimony presented in opposition:

Kim Bock

NHCORR

- Ms. Bock said that NHCORR is appointed by the State to certify recovery housing as meeting national standards. She said there are currently 50 houses in New Hampshire that meet those standards.
- Ms. Bock said that HB 377 is not necessary because the FMO already has the legislative authority to issue a variance to the code regulations, in RSA 153:5-IV, which applies to all buildings, structures, and equipment.
- Ms. Bock said that HB 377 was discriminatory, as it only carves out recovery residences and does not apply to any similar homes. She said that RSA 153:5-IV applies to everyone equally.
- Ms. Bock said that HB 377 is oppressive to recovery housing, knowing that there isn't enough housing in New Hampshire. She said that people in recovery have a 60% greater chance of long-term recovery if they enter a recovery home. She said that long-term recovery reduces the societal costs, as it reduces relapse rates and reduces the rate of reentry into treatment.
- Ms. Bock said that HB 377 mandates an additional cost of \$15,000 for every recovery residence. She said that RSA 153:5-IV allows every individual structure to develop their own plan. She said that provisions of HB 377 are non-negotiable and will cost an additional \$15,000.
- Ms. Bock said that recovery houses did not make a huge profit and no one is getting rich off of running them. She said seven houses closed during the COVID-19 pandemic due to the economic downturn.

Elliott Berry

New Hampshire Legal Assistance

- Mr. Berry said that he is opposed to HB 377 but not opposed to what people are trying to do. He said he understands the problem of substandard housing and does not want to fight with the FMO or the Manchester Fire Department.
- Mr. Berry said that HB 377 did not solve the problem. He said that the real problem is substandard sober homes, but the bill only applies to those that have gone through the process of being certified and would, therefore, apply to only responsible actors.
- Mr. Berry said that HB 377 could lead to litigation, which he believed the State would lose. He said that the Fair Housing Act does not allow discrimination on the basis of disability. He said that HB 377 is explicitly aimed at one kind of disability and no other type of housing is subjected to that standard.
- Mr. Berry said that the Fire Code and the Life Safety Code exist to ensure the safety of the building, not to regulate who occupies a building. He said that HB 377 treats recovery housing differently and is going to be struck down by a court.
- Senator Cavanaugh said that he disagreed with Mr. Berry's comments. He said that there are a lot of bad actors in Manchester and there is frustration from the Fire Department that there are too many people living in a home with no way to shut them down. He said that he felt that HB 377 was a tool for fire departments to close down bad actors and help good programs. He said that HB 377 goes towards preventing bad actors from buying houses and having multiple adults living in them and claiming they were a family. He asked Mr. Berry to touch on those comments.
 - Mr. Berry said that he understood Senator Cavanaugh's comments. He said that Line 6 of HB 377 says that the bill only applies to recovery houses that have been certified by NHCORR. He said that irresponsible bad actors would not be covered by HB 377. Mr.

Berry said that, from a technical, legal perspective, HB 377 would be a law that treats certified recovery houses differently than any other kind of facility.

- Senator Cavanaugh said that he felt HB 377 gives leniency to good actors and gives them a break, allowing them to get away from a more expensive sprinkler system upgrade.
 - Mr. Berry said that Senator Cavanaugh could be correct and that it is possible a court could be convinced. He said it would be a battle in court.

Christine Wellington

NHCORR Board Member

- Ms. Wellington supported comments from Ms. Bock and Mr. Berry.
- Ms. Wellington said that people in recovery should have as wide of a choice for housing as other individuals.
- Ms. Wellington said that, in 2016, the federal Department of Justice and the federal Department of Housing and Urban Development issued guidance making it explicit that recovery homes fall under the Fair Housing Act. She said that HB 377 singles out housing for people with a disability and applies more regulations.
- Ms. Wellington said that HB 377 sets 14 different standards that create a rigid standard that certified and registered homes would have to make and do not seem to apply to potential bad actors.
- Ms. Wellington said that many people who are not certified are not bad actors. She said that they would still have to go through the normal process in RSA 153:5-IV, which she said is a good example of a neutral law applying to all housing operators.

Neutral Information Presented:

Jake Berry

New Futures

- Mr. Berry said that New Futures has no position on HB 377. He said that it is a sensitive and important issue and access to stable housing is critical to long-term recovery.
- Mr. Berry said that the safety and security of homes and inhabitants is important.
- Mr. Berry urged the Committee to dig deep into their work and ensure there are no unintended consequences.
- Mr. Berry said that the immediate threat of a fire is not the only danger people in recovery face. He said that they have long-term safety concerns in overcoming the addiction crisis.