

Amendment to SB 400-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to training and procedures for zoning and planning boards; relative to  
4 financial investments and incentives for affordable housing development; limiting  
5 the authority for city council bylaws and ordinances and limiting the authority of  
6 town health officers; and relative to the adoption of school district budget caps.  
7

8 Amend the bill by replacing all after section 3 with the following:

9

10 4 Planning and Zoning; Administrative and Enforcement Procedures; Issuance of Decision.

11 Amend RSA 676:3, I to read as follows:

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

22 5 New Paragraph; Powers of Zoning Board of Adjustment. Amend RSA 674:33 by inserting after  
23 paragraph VII the following new paragraph:

24 VIII. Upon receipt of any application for action pursuant to this section, the zoning board of  
25 adjustment shall begin formal consideration and shall approve or disapprove such application within  
26 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to  
27 such extension as may be mutually agreeable. If a zoning board of adjustment determines that it  
28 lacks sufficient information to make a final decision on an application and the applicant does not  
29 consent to an extension, the board may, in its discretion, deny the application without prejudice, in  
30 which case the applicant may submit a new application for the same or substantially similar request  
31 for relief.

32 6 Workforce Housing: Definition. Amend RSA 674:58, IV to read as follows:

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

12           7 Workforce Housing Opportunities; Water and Sewer Systems. Amend RSA 674:59, IV to read  
13 as follows:

14           IV. Paragraph I shall not be construed to require municipalities to allow workforce housing  
15 that does not meet reasonable standards or conditions of approval related to environmental  
16 protection, water supply, sanitary disposal, traffic safety, and fire and life safety protection.  
17 **Paragraph I shall also not be construed to require municipalities to allow workforce**  
18 **housing in any location not already served by both water and sewer systems owned or**  
19 **operated by a political subdivision, public utility, or other public water or sewer utility.**

20           8 Planning Board; Board's Procedures on Plats. Amend RSA 676:4, I(c) to read as follows:

21           (c)(1) The board shall, at the next regular meeting or within 30 days following the  
22 delivery of the application, for which notice can be given in accordance with the requirements of  
23 subparagraph (b), determine if a submitted application is complete according to the board's  
24 regulation and shall vote upon its acceptance. Upon determination by the board that a submitted  
25 application is incomplete according to the board's regulations, the board shall notify the applicant of  
26 the determination in accordance with RSA 676:3, which shall describe the information, procedure, or  
27 other requirement necessary for the application to be complete. Upon determination by the board  
28 that a submitted application is complete according to the board's regulations, the board shall begin  
29 formal consideration and shall act to approve, conditionally approve as provided in subparagraph (i),  
30 or disapprove within 65 days, subject to extension or waiver as provided in subparagraph (f). In the  
31 case of a determination by the board that the application is a development of regional impact  
32 requiring notice in accordance with RSA 36:57, III, the board shall have an additional 30 days to act  
33 to approve, conditionally approve, as provided in subparagraph (i), or disapprove. ~~[Upon failure of~~  
34 ~~the board to approve, conditionally approve, or disapprove the application, the selectmen or city~~  
35 ~~council shall, upon request of the applicant, immediately issue an order directing the board to act on~~  
36 ~~the application within 30 days.] **If the board determines that it lacks sufficient information to**~~  
37 ~~**make a final decision on an application and the applicant does not consent to an extension**~~

1 *pursuant to subparagraph (f), the board may, in its discretion, deny the application*  
2 *without prejudice, in which case the applicant may resubmit the same or a substantially*  
3 *similar application.* If the planning board does not act on the application within that [~~30-day~~] **65-**  
4 **day** time period, then [~~within 40 days of the issuance of the order,~~] the selectmen or city council  
5 shall certify on the applicant's application that the plat is approved pursuant to this paragraph[  
6 ~~unless within those 40 days the selectmen or city council has identified in writing some specific~~  
7 ~~subdivision regulation or zoning or other ordinance provision with which the application does not~~  
8 ~~comply~~]. Such a certification, citing this paragraph, shall constitute final approval for all purposes  
9 including filing and recording under RSA 674:37 and 676:18, and court review under RSA 677:15.

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

19 9 Planning Board; Board's Procedures on Plats. Amend RSA 676:4, I(f) to read as follows:

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

24 10 Planning and Zoning; Rehearing and Appeal Procedures; Court Review. Amend RSA 677:15,  
25 IV-V to read as follows:

26 IV. [~~The court shall give any hearing under this section priority on the court calendar.~~]  
27 **Whenever an appeal to the superior court is initiated under this section, the court shall**  
28 **give the appeal priority on its calendar. Within 10 days of the certified record being filed**  
29 **with the court, the court shall schedule a hearing to be held within 90 days unless extended**  
30 **by agreement of all parties or by motion. The appellant shall file an opening brief 60 days**  
31 **before the hearing. The appellee shall file a response brief 30 days before the hearing. The**  
32 **appellant may file a reply brief 15 days before the hearing. The court shall issue a decision**  
33 **within 60 days after the hearing, unless the court has received an extension from the chief**  
34 **justice of the superior court.**

35 V. The court may reverse or affirm, wholly or partly, or may modify the decision brought up  
36 for review when there is an error of law or when the court is persuaded by the balance of  
37 probabilities, on the evidence before it, that said decision is unreasonable. Costs shall not be allowed

1 against the municipality unless it shall appear to the court that the planning board acted in bad  
2 faith or with malice in making the decision appealed from.

3 ***VI. Whenever an appeal to the supreme court is initiated after superior court***  
4 ***review, the supreme court shall give the appeal priority on its calendar and shall issue a***  
5 ***final decision within 90 days of the date upon which oral argument has been conducted.***

6 11 Planning and Zoning; Rehearing and Appeal Procedures; Priority. RSA 677:5 is repealed and  
7 reenacted to read as follows:

8 677:5 Priority. Whenever an appeal to the superior court is initiated under RSA 677:4, the court  
9 shall give the appeal priority on its calendar. Within 10 days of the certified record being filed with  
10 the court, the court shall schedule a hearing to be held within 90 days unless extended by agreement  
11 of all parties or by motion. The appellant shall file an opening brief 60 days before the hearing. The  
12 appellee shall file a response brief 30 days before the hearing. The appellant may file a reply brief  
13 15 days before the hearing. The court shall issue a decision within 60 days after the hearing, unless  
14 the court has received an extension from the chief justice of the superior court.

15 12 New Subdivision; Fee Shifting and Posting of Bond. Amend RSA 677 by inserting after  
16 section 19 the following new subdivision:

17 Fee Shifting and Posting of Bond

18 677:20 Fee Shifting and Posting of Bond.

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

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

31 13 Municipal Economic Development and Revitalization Districts; Definition of Public Use.  
32 Amend RSA 162-K:2, IX-a to read as follows:

33 IX-a. "Public use" means:

34 (a)(1) The possession, occupation, and enjoyment of real property by the general public  
35 or governmental entities[;].

36 (2) The acquisition of any interest in real property necessary to the function of a  
37 public or private utility or common carrier either through deed of sale or lease[;].

1 (3) The acquisition of real property to remove structures beyond repair, public  
2 nuisances, structures unfit for human habitation or use, and abandoned property when such  
3 structures or property constitute a menace to health and safety~~[-and]~~ .

4 (4) Private use that occupies an incidental area within a public use; provided, that  
5 no real property shall be condemned solely for the purpose of facilitating such incidental private use.

6 (5) ***The acquisition of real property to construct housing units which meet***  
7 ***the definition of workforce housing contained in RSA 674:58, IV, whether or not such***  
8 ***construction results from private development or private commercial enterprise. The***  
9 ***municipality shall not acquire property for this purpose through the powers of eminent***  
10 ***domain.***

11 (b) Except as provided in subparagraphs (a)(2), ~~and~~ (4), **and (5)** of this paragraph,  
12 public use shall not include the public benefits resulting from private economic development and  
13 private commercial enterprise, including increased tax revenues and increased employment  
14 opportunities.

15 14 Municipal Economic Development and Revitalization Districts; District Establishment and  
16 Development Programs; Authority to Acquire, Construct, and Promote Residential Development and  
17 Housing Stock. Amend RSA 162-K:6, III(h) and (i) to read as follows:

18 (h) Lease all or portions of basements, ground and second floors of the public buildings  
19 constructed in the district; ~~and~~

20 (i) Negotiate the sale or lease of property for private development if the development is  
21 consistent with the development program for the district~~[-]~~ ; **and**

22 (j) ***Acquire, construct, reconstruct, improve, alter, extend, operate, maintain or***  
23 ***promote residential developments aimed at increasing the available housing stock within***  
24 ***the municipality.***

25 15 Community Revitalization Tax Relief; Duration of Tax Relief Period. Amend RSA 79-E:5, II  
26 to read as follows:

27 II. The governing body may, in its discretion, add up to an additional [2] **4** years of tax relief  
28 for a project that results in new residential units and up to [4] **an additional 8** years for a project  
29 that includes ~~[affordable]~~ housing ***that meets the definition of workforce housing in RSA***  
30 ***674:58, IV, and up to additional 8 years for a project that includes residential units located***  
31 ***on the second story or higher of a building.***

32 16 Powers of City Councils; Bylaws and Ordinances; Limitations Added. Amend RSA 47:17, XV  
33 to read as follows:

34 XV. Miscellaneous. Relative to the grade of streets, and the grade and width of sidewalks;  
35 to the laying out and regulating public squares and walks, commons, and other public grounds,  
36 public lights, and lamps; to trees planted for shade, ornament, convenience, or use, and the fruit of  
37 the same; to trespasses committed on public buildings and other public property, and in private

1 yards and gardens; in relation to cemeteries, public burial grounds, the burial of the dead, and the  
2 returning and keeping records thereof, and bills of mortality, and the duties of physicians, sextons  
3 and others in relation thereto; relative to public wells, cisterns, pumps, conduits, and reservoirs; the  
4 places of military parade and rendezvous, and the marching of military companies with music in the  
5 streets of the city; relative to precautions against fire; relative to oaths and bonds of city officers, and  
6 penalties upon those elected to such offices refusing to serve; and relative to licensing and regulating  
7 butchers, petty grocers, or hucksters, peddlers, hawkers, and common victualers; dealers in and  
8 keepers of shops for the purchase, sale or barter of junk, old metals or second-hand articles, and  
9 pawnbrokers; under such limitations and restrictions as to them shall appear necessary. They may  
10 make any other bylaws and regulations ~~[which may seem for the well being of the city]~~ **for the**  
11 **abatement of nuisances that interfere with the use or enjoyment of property**; but no bylaw or  
12 ordinance shall be repugnant to the constitution or laws of the state; and such bylaws and  
13 ordinances shall take effect and be in force from the time therein limited without the sanction or  
14 confirmation of any other authority whatever.

15 17 Local Health Officers; Regulations on Public Health. Amend RSA 147:1, I to read as follows:

16 I. The health officers of towns may make regulations for the prevention and removal of  
17 nuisances~~[, and such other regulations relating to the public health as in their judgment the health~~  
18 ~~and safety of the people require]~~ **such as garbage, insects, unsanitary living conditions, septic,**  
19 **rodents, and safe drinking water inspections**, which shall take effect when approved by the  
20 selectmen, recorded by the town clerk, and published in some newspaper printed in the town, or  
21 when copies thereof have been posted in 2 or more public places in the town.

22 18 New Sections; Municipal Budget Law; School District Budget Caps. Amend RSA 32 by  
23 inserting after section 5-c the following new sections:

24 32:5-d School District Budget Cap. Upon adoption under RSA 32:5-e, the following shall apply:

25 I. In a school district that has adopted this section, the total amount raised and  
26 appropriated for the fiscal year, as shown on the budget certified by the school board or the budget  
27 committee and posted with the warrant for the annual meeting pursuant to RSA 32:5, shall not  
28 exceed a specified dollar amount times the average daily membership of the school district as of  
29 October 1 of the year immediately preceding the proposed budget year as reported to the department  
30 of revenue administration plus an amount for an annual increase for inflation.

31 II. The annual increase for inflation shall be either a fixed percentage, including zero, or an  
32 inflation index published by the U.S. Bureau of Labor Statistics.

33 III. The legislative body may override the budget cap by the usual procedures applicable to  
34 annual school meetings of the legislative body, provided that when a proposed appropriation will  
35 cause the total amount raised and appropriated to exceed the budget cap or the total amount already  
36 raised and appropriated has exceeded the budget cap, voting on the appropriation question shall be  
37 by ballot, but the question shall not be placed on the official ballot used to elect officers, except in the

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1 case of a legislative body that uses an official ballot form of meeting under RSA 40:13 or under a  
2 charter adopted pursuant to RSA 49-D. If a 3/5 majority, or the supermajority as determined under  
3 a charter pursuant to RSA 49-D, of those voting on the question vote "yes," the appropriation is  
4 approved. Only votes in the affirmative or negative shall be included in the calculation of the 3/5  
5 majority or the supermajority as determined under a charter pursuant to RSA 49-D.

6 IV.(a) For warrant articles proposing bonds, notes, or other multi-year expenditures, only  
7 the first-year estimated costs shall be used in counting appropriations for the budget cap.

8 (b) When using the official ballot form of meeting under RSA 40:13, if the warrant  
9 article for the operating budget results in appropriations exceeding the budget cap and receives less  
10 than 3/5 majority "yes" vote, the adopted operating budget shall be reduced by appropriations  
11 already raised to remain compliant with the budget cap.

12 (c)(1) School districts that have adopted the school administrative unit (SAU) alternative  
13 budget procedure under RSA 194-C:9-b shall place the warrant article for the SAU budget at the  
14 beginning of school district warrant, immediately after any warrant articles proposing bonds or  
15 notes.

16 (2) For school districts using a traditional meeting and when the outcome of the SAU  
17 budget vote is pending on balloting from the other school districts, the higher of the school district's  
18 assigned portion of the proposed SAU budget or the school district's assigned portion of the adjusted  
19 SAU budget shall be assumed as raised and appropriated for the purpose of determining when the  
20 override provisions under paragraph III apply.

21 32:5-e Adoption of School District Budget Cap.

22 I. The provisions of RSA 32:5-d may be adopted by any school district in the state whose  
23 legislative body raises and appropriates funds through an annual meeting. A 3/5 majority of those  
24 voting on the question shall be required to adopt the provisions of RSA 32:5-d. Only votes in the  
25 affirmative or negative shall be included in the calculation of the 3/5 majority.

26 II. The question shall be placed on the warrant of the annual or special meeting by the  
27 school board or by petition under the procedures set out in RSA 197:2 or 197:6.

28 III. A public hearing shall be held by the school board on the question at least 15 days, but  
29 not more than 30 days, before the question is to be voted on. In multi-town school districts, a public  
30 hearing shall be held in each town embraced by the district, none of which shall be held on the same  
31 day. Notice of the hearing shall be posted in at least 2 public places in the district and at least 2  
32 public places in each town of multi-town districts, and published in a newspaper of general  
33 circulation at least 7 days prior to the date of the hearing.

34 IV. The wording of the question shall be: "Shall we adopt the provisions of RSA 32:5-d, and  
35 implement a budget cap whereby the school board (or budget committee) shall not submit a  
36 recommended budget that is higher than \_\_\_ dollars times the average daily membership of the  
37 school district as of October 1 of the year immediately preceding the proposed budget year plus a \_\_\_

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1 annual increase for inflation. Requires a 3/5ths majority of the school district." Alternatively, if an  
2 inflation index is used, the wording of the question shall be: "Shall we adopt the provisions of RSA  
3 32:5-d, and implement a budget cap whereby the school board (or budget committee) shall not  
4 submit a recommended budget that is higher than \_\_\_ dollars times the average daily membership of  
5 the school district as of October 1 of the year immediately preceding the proposed budget year plus  
6 an annual increase for inflation using (the index) published by the U.S. Bureau of Labor Statistics as  
7 of January 1. Requires a 3/5ths majority of the school district."

8 V. Voting on the question shall be by ballot, but the question shall not be placed on the  
9 official ballot used to elect officers, except in the case of a legislative body that uses an official ballot  
10 form of meeting under RSA 40:13 or under a charter adopted pursuant to RSA 49-D. Polls shall  
11 remain open and ballots shall be accepted by the moderator for a period of not less than one hour  
12 following the completion of discussion on the question. If a 3/5 majority of those voting on the  
13 question vote "yes," RSA 32:5-d shall apply within the school district beginning with the following  
14 fiscal year and for all subsequent years until it is rescinded as provided in paragraph VI.

15 VI. Any school district which has adopted RSA 32:5-d may consider rescinding its action in  
16 the manner described in paragraphs I through V. The wording of the question shall be: "Shall we  
17 rescind the provisions of RSA 32:5-d, known as the school district budget cap, as adopted by the  
18 (school district) on (date of adoption), so that there will no longer be a school district budget cap limit  
19 on the amount raised and appropriated?" A 3/5 majority of those voting on the question shall be  
20 required to rescind the provisions of this section, except in the case of repeal by charter enactment  
21 under RSA 49-D. Only votes in the affirmative or negative shall be included in the calculation of the  
22 3/5 majority.

23 19 Effective Date.

24 I. Sections 8, 10, and 11 of this act shall take effect January 1, 2023.

25 II. The remainder of this act shall take effect 60 days after its passage.



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2022-1848h

AMENDED ANALYSIS

This bill:

I. Makes changes to the training and procedures for zoning and planning boards offered by the office of planning and development.

II. Creates incentives and establishes requirements for workforce housing and affordable housing development.

III. Limits the general authority of city councils to make bylaws and ordinances to the abatement of nuisances that interfere with the use or enjoyment of property.

IV. Limits the authority of local health officers in making bylaws or ordinances relating to public health matters.

V. Establishes the requirements for and procedure for the adoption of a school district budget cap.