

Sen. Bradley, Dist 3  
Sen. Perkins Kwoka, Dist 21  
May 4, 2022  
2022-1960s  
10/04

Floor Amendment to HB 1661-FN-LOCAL

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

2

3 AN ACT relative to regional career technical education agreements, relative to an  
4 appropriation for preliminary work for a new legislative parking garage, and relative  
5 to training and procedures for zoning and planning boards and financial investments  
6 and incentives for affordable housing development.  
7

8 Amend the bill by replacing all after section 6 with the following:

9

10 7 Local Land Use Boards; Training. RSA 673:3-a is repealed and reenacted to read as follows:

11 673:3-a Training. Any member of a zoning board of adjustment or planning board may complete  
12 training offered by the office of planning and development or another organization that provides  
13 similar training covering the processes, procedures, regulations, and statutes related to the board on  
14 which the member serves. The office of planning and development shall develop standard self-  
15 training materials and corresponding tests for zoning boards of adjustment and planning boards  
16 which shall be provided to members free of charge. The office of planning and development may  
17 provide other types of training, which may be designed in a variety of formats including, but not  
18 limited to, web-based, distance learning, or traditional classroom style. For purposes of this section,  
19 the term "member" includes regular and alternate members of zoning boards of adjustment and  
20 planning boards.

21 8 New Paragraph; Local Land Use Boards; Staff; Finance. Amend RSA 673:16 by inserting after  
22 paragraph II the following new paragraph:

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

29 9 New Paragraph; Local Land Use Planning and Regulatory Powers; Zoning. Amend RSA  
30 674:17 by inserting after paragraph III the following new paragraph:

31 IV. If a municipality allows an increased density, reduced lot size, expedited approval, or  
32 other dimensional or procedural incentive under this section for the development of housing for older

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1 persons, as defined and regulated pursuant to RSA 354-A:15, VIII, it shall allow the same incentive  
2 for the development of workforce housing as defined in RSA 674:58, IV. Beginning July 1, 2023,  
3 incentives established for housing for older persons shall be deemed applicable to workforce housing  
4 development, regardless of whether a local land use ordinance or regulation specifically provides for  
5 their application to workforce housing development.

6 10 Planning and Zoning; Administrative and Enforcement Procedures; Issuance of Decision.  
7 Amend RSA 676:3, I to read as follows:

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

18 11 New Paragraph; Powers of Zoning Board of Adjustment. Amend RSA 674:33 by inserting  
19 after paragraph VII the following new paragraph:

20 VIII. Upon receipt of any application for action pursuant to this section, the zoning board of  
21 adjustment shall begin formal consideration and shall approve or disapprove such application within  
22 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to  
23 such extension as may be mutually agreeable. If a zoning board of adjustment determines that it  
24 lacks sufficient information to make a final decision on an application and the applicant does not  
25 consent to an extension, the board may, in its discretion, deny the application without prejudice, in  
26 which case the applicant may submit a new application for the same or substantially similar request  
27 for relief.

28 12 Workforce Housing; Definition. Amend RSA 674:58, IV to read as follows:

29 IV. "Workforce housing" means housing which is intended for sale and which is affordable to  
30 a household with an income of no more than 100 percent of the median income for a 4-person  
31 household for the metropolitan area or county in which the housing is located as published annually  
32 by the United States Department of Housing and Urban Development. "Workforce housing" also  
33 means rental housing which is affordable to a household with an income of no more than 60 percent  
34 of the median income for a 3-person household for the metropolitan area or county in which the  
35 housing is located as published annually by the United States Department of Housing and Urban  
36 Development. Housing developments that exclude minor children from more than 20 percent of the  
37 units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, ***or are***

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1 **subject to age restrictions**, shall not constitute workforce housing for the purposes of this  
2 subdivision.

3 13 Planning Board; Board's Procedures on Plats. Amend RSA 676:4, I(c) to read as follows:

4 (c)(1) The board shall, at the next regular meeting or within 30 days following the  
5 delivery of the application, for which notice can be given in accordance with the requirements of  
6 subparagraph (b), determine if a submitted application is complete according to the board's  
7 regulation and shall vote upon its acceptance. Upon determination by the board that a submitted  
8 application is incomplete according to the board's regulations, the board shall notify the applicant of  
9 the determination in accordance with RSA 676:3, which shall describe the information, procedure, or  
10 other requirement necessary for the application to be complete. Upon determination by the board  
11 that a submitted application is complete according to the board's regulations, the board shall begin  
12 formal consideration and shall act to approve, conditionally approve as provided in subparagraph (i),  
13 or disapprove within 65 days, subject to extension or waiver as provided in subparagraph (f). In the  
14 case of a determination by the board that the application is a development of regional impact  
15 requiring notice in accordance with RSA 36:57, III, the board shall have an additional 30 days to act  
16 to approve, conditionally approve, as provided in subparagraph (i), or disapprove. ~~Upon failure of~~  
17 ~~the board to approve, conditionally approve, or disapprove the application, the selectmen or city~~  
18 ~~council shall, upon request of the applicant, immediately issue an order directing the board to act on~~  
19 ~~the application within 30 days.] **If the board determines that it lacks sufficient information to**  
20 **make a final decision on an application and the applicant does not consent to an extension**  
21 **pursuant to subparagraph (f), the board may, in its discretion, deny the application**  
22 **without prejudice, in which case the applicant may resubmit the same or a substantially**  
23 **similar application.** If the planning board does not act on the application within that ~~[30-day]~~ **65-**  
24 **day** time period, then ~~[within 40 days of the issuance of the order,]~~ the selectmen or city council  
25 shall certify on the applicant's application that the plat is approved pursuant to this paragraph~~;~~  
26 ~~unless within those 40 days the selectmen or city council has identified in writing some specific~~  
27 ~~subdivision regulation or zoning or other ordinance provision with which the application does not~~  
28 ~~comply]. Such a certification, citing this paragraph, shall constitute final approval for all purposes~~  
29 including filing and recording under RSA 674:37 and 676:18, and court review under RSA 677:15.~~

30 (2) Failure of the selectmen or city council to ~~[issue an order to the planning board~~  
31 ~~under subparagraph (1), or to]~~ certify approval of the plat upon the planning board's failure to  
32 ~~[comply with the order,]~~ **act within the required time period** shall constitute grounds for the  
33 superior court, upon petition of the applicant, to issue an order approving the application ~~[if the~~  
34 ~~court determines that the proposal complies with existing subdivision regulations and zoning or~~  
35 ~~other ordinances]. **The superior court shall act upon such a petition within 30 days.** If the~~  
36 court determines that the failure of the selectmen or the city council to act was not justified, the

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1 court may order the municipality to pay the applicant's reasonable costs, including attorney's fees,  
2 incurred in securing such order.

3 14 Planning Board; Board's Procedures on Plats. Amend RSA 676:4, I(f) to read as follows:

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

8 15 Planning and Zoning; Rehearing and Appeal Procedures; Court Review. Amend RSA 677:15,  
9 IV-V to read as follows:

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

19 V. The court may reverse or affirm, wholly or partly, or may modify the decision brought up  
20 for review when there is an error of law or when the court is persuaded by the balance of  
21 probabilities, on the evidence before it, that said decision is unreasonable. Costs shall not be allowed  
22 against the municipality unless it shall appear to the court that the planning board acted in bad  
23 faith or with malice in making the decision appealed from.

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

27 16 Planning and Zoning; Rehearing and Appeal Procedures; Priority. RSA 677:5 is repealed and  
28 reenacted to read as follows:

29 677:5 Priority. Whenever an appeal to the superior court is initiated under RSA 677:4, the court  
30 shall give the appeal priority on its calendar. Within 10 days of the certified record being filed with  
31 the court, the court shall schedule a hearing to be held within 90 days unless extended by agreement  
32 of all parties or by motion. The appellant shall file an opening brief 60 days before the hearing. The  
33 appellee shall file a response brief 30 days before the hearing. The appellant may file a reply brief  
34 15 days before the hearing. The court shall issue a decision within 60 days after the hearing, unless  
35 the court has received an extension from the chief justice of the superior court.

36 17 New Subdivision; Fee Shifting and Posting of Bond. Amend RSA 677 by inserting after  
37 section 19 the following new subdivision:

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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.

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

IX-a. "Public use" means:

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

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

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

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

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

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

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1           19 Municipal Economic Development and Revitalization Districts; District Establishment and  
2 Development Programs; Authority to Acquire, Construct, and Promote Residential Development and  
3 Housing Stock. Amend RSA 162-K:6, III(h) and (i) to read as follows:

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

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

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

11           20 Community Revitalization Tax Relief; Duration of Tax Relief Period. Amend RSA 79-E:5, II  
12 to read as follows:

13                   II. The governing body may, in its discretion, add up to an additional [2] **4** years of tax relief  
14 for a project that results in new residential units and up to [4] **an additional 8** years for a project  
15 that includes ~~[affordable]~~ housing **that meets the definition of workforce housing in RSA**  
16 **674:58, IV, and up to additional 8 years for a project that includes residential units located**  
17 **on the second story or higher of a building.**

18           21 Effective Date.

19                   I. Sections 1-5 of this act shall take effect July 1, 2022.

20                   II. Section 7-12, 14, and 17-20 of this act shall take effect 60 days after its passage.

21                   III. Sections 13, 15, and 16 of this act shall take effect January 1, 2023.

22                   IV. The remainder of this act shall take effect upon its passage.

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AMENDED ANALYSIS

This bill requires sending district schools and career and technical education (CTE) centers to enter into an agreement to include scheduling, access, transportation, and credits for CTE students. The bill also makes an appropriation for preliminary design, engineering, and site work for a new legislative parking garage and for costs for relocating the department of justice and makes changes to the training and procedures for zoning and planning boards offered by the office of planning and development. Finally, this bill creates incentives and establishes requirements for workforce housing and affordable housing development.