

HB 1595-FN – AS AMENDED BY THE HOUSE

12Feb2014... 0207h

2014 SESSION

14-2842
05/03

HOUSE BILL ***1595-FN***

AN ACT establishing a condominium dispute resolution board.

SPONSORS: Rep. K. Williams, Hills 4; Rep. LeBrun, Hills 32; Rep. Almy, Graf 13;
Sen. Cataldo, Dist 6

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill establishes a condominium dispute resolution board.

This bill is a request of the committee to study laws relating to condominium and homeowners' associations established in RSA 356-B:70.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT establishing a condominium dispute resolution board.

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

1 1 New Subdivision; New Hampshire Condominium Dispute Resolution Board. Amend RSA 356-
2 B by inserting after section 70 the following new subdivision:

3 Condominium Dispute Resolution Board

4 356-B:71 Board Established; Members; Terms; Chairperson.

5 I. There is hereby created a condominium dispute resolution board consisting of 9 members.
6 The members of the board shall be:

7 (a) Three members, appointed by the governor, who are resident owners of
8 condominiums in New Hampshire and from 3 different senate districts. Members appointed under
9 this subparagraph shall not be members of their respective condominium board.

10 (b) Two members appointed by the governor, who are members of a condominium
11 association board in New Hampshire, and from 2 different senate districts, from a list of 3 persons
12 nominated by the New England chapter of the Community Associations Institute.

13 (c) One member appointed by the governor, who represents a condominium association
14 management company, from a list of 3 persons nominated by the New England chapter of the
15 Community Associations Institute.

16 (d) One member of the New Hampshire Bar Association, appointed by the president of
17 the association.

18 (e) Two members of the house of representatives, appointed by the speaker of the house
19 of representatives.

20 II. No more than 3 members of the board may be involved professionally and/or financially in
21 the condominium industry.

22 III. Nonlegislative members of the board shall serve 3-year terms and until a successor is
23 appointed, except that the initial appointments shall be staggered: 2 members shall be appointed to
24 one-year terms, 2 members shall be appointed to 2-year terms, and 3 members shall be appointed to
25 3-year terms. Legislative members shall serve a term coterminous with their term in office.

26 IV. The chairperson shall be chosen from among the members at the initial organizational
27 meeting and shall serve at the pleasure of the members of the board.

28 V. If there is a vacancy on the board, the provisions of RSA 21:33-a and 21:34 shall apply to
29 all members.

30 VI. If any member of the board misses 3 consecutive meetings, without cause, the board

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1 shall inform the appointing authority in writing and the appointing authority shall appoint a new
2 member to the board within 60 days from the receipt of the written notification.

3 VII. The board shall hold meetings every 90 days and may meet more frequently as deemed
4 necessary by the board.

5 356-B:72 Quorum, Disqualification of Members; Compensation.

6 I. A majority of the board shall constitute a quorum to conduct hearings, and a vote of at
7 least 4 members present and voting in favor shall be required to adopt and approve any matter
8 under consideration.

9 II. As a board member, one may disqualify oneself relative to any matter before the board, or
10 if the board votes that any member has or may have a conflict of interest in any matter before the
11 board, that member shall be disqualified to sit as a board member on the particular matter. The
12 board may hear the matter if it has a quorum. If the board does not have a quorum, the governor
13 shall appoint an additional public member to hear the particular matter pending before the board.

14 III. The legislative members of the board shall receive legislative mileage. The remaining
15 members shall receive mileage at the state employee rate.

16 356-B:73 Jurisdiction; Procedure.

17 I. The board shall hear and determine matters involving condominium association actions
18 and condominium unit owner complaints related to: failure to follow association declaration and
19 bylaws; failure to follow proper voting procedures as defined in RSA 356-B:39; any other actions not
20 in compliance with condominium instruments or the laws of the state of New Hampshire. Any
21 matters relating to time share interests shall not be under the jurisdiction of the board.

22 II. Nothing in this subdivision shall preclude the right of the board to use the services of a
23 mediator to resolve a dispute.

24 III.(a) Any condominium unit owner may petition the board by filing a complaint with the
25 board and paying a \$250 filing fee which shall be used to defray the costs of the board. Prior to filing
26 a complaint, petitioner must provide 10 days notice to the opposite party of intent to file. After
27 review of the claim and a decision by the board that the matter has merit and is not frivolous, the
28 board shall schedule a hearing. If the board finds the claim to be frivolous or without merit, it shall
29 dismiss the complaint and explain in writing to the petitioner its reasons for dismissing the
30 complaint.

31 (b) The board shall serve notice, in writing, of the time and place of the hearing upon all
32 appropriate parties at least 20 days prior to the date of the hearing. Both parties to the complaint
33 may be represented by counsel.

34 (c) All hearings held by the board shall be held pursuant to RSA 541-A:31 through
35 RSA 541-A:36 unless such proceedings are specifically inconsistent with the provisions of this
36 subdivision. All hearings of the board shall be subject to the provisions of RSA 91-A. The board
37 shall not be bound by common law or statutory rules of evidence but may admit all testimony having

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1 a reasonable probative value. It may exclude evidence which, in the opinion of the board, is
2 immaterial, irrelevant, or unduly repetitious.

3 356-B:74 Decisions; Judicial Review and Enforcement.

4 I. When the board makes its decision, an order shall be made in writing and shall include
5 findings of facts. The findings of facts shall be accompanied by a concise and explicit statement of
6 the underlying facts supporting the findings. The parties shall be notified by mail of any decision or
7 order.

8 II. A decision of the board may be appealed, by either party, by requesting a rehearing and
9 appeal pursuant to RSA 541.

10 III. If no timely appeal is taken pursuant to paragraph II, the decision of the board shall
11 become final.

12 356-B:75 Meetings and Records. The board shall hold meetings in Concord, New Hampshire or
13 in any other location deemed appropriate by the board. The records of the board shall be maintained
14 at the office of the joint board of licensure and certification.

15 356-B:76 Administrative and Business Processing Functions. All administrative, clerical, and
16 business processing functions of the board shall be provided by the joint board of licensure and
17 certification, established in RSA 310-A:1.

18 356-B:77 Notification and Cooperation Required. The board shall notify the consumer protection
19 and antitrust bureau, department of justice, that the board may accept and act on written
20 complaints properly forwarded to it by such bureau relative to condominium association actions and
21 condominium unit owner complaints.

22 356-B:78 Rulemaking. The board, with the approval of the bureau chief of the consumer
23 protection and antitrust bureau, shall adopt rules under RSA 541-A relative to the administration of
24 this subdivision.

25 356-B:79 Annual Report. The board shall submit to the governor, not later than March 31 of
26 each year, a report of its activities during the preceding calendar year. The report shall include, but
27 need not be limited to, the number of complaints received, by category according to RSA 356-B:73,
28 and the number and percent of complaints accepted and rejected. The report may also include
29 recommendations for improvements, including rule or statutory changes.

30 2 Effective Date. This act shall take effect 60 days after its passage.

HB 1595-FN FISCAL NOTE

AN ACT establishing a condominium dispute resolution board.

FISCAL IMPACT:

The Joint Board of Licensure and Certification states this bill, as amended by the House (Amendment #2014-0207h), may increase state expenditures by \$65,850 in FY 2015, \$68,151 in FY 2016, \$71,414 in FY 2017, and \$75,829 in FY 2018, and may increase state revenue by an indeterminable amount in FY 2015 and each year thereafter. The Department of Justice and the Judicial Branch state the bill may increase state expenditures by an indeterminable amount in FY 2015 and each year thereafter. There will be no impact on county and local revenue and expenditures.

METHODOLOGY:

The Joint Board of Licensure and Certification states this bill establishes a condominium dispute resolution board, which will accept complaints, hold hearings, and issue decisions regarding condominium association actions. Per proposed RSA 356-B:76, the Joint Board is responsible for providing all administrative, clerical, and business processing functions of the proposed board. Under the terms of the bill, individuals filing a complaint with the board will be required to pay a \$250 fee to help defray costs, however the Joint Board is unable to estimate how many complaints will be filed or how much revenue will be received. The Joint Board states it has no information regarding the workload that may be generated by the proposed board. However, since there are several thousand condominium associations in the state, the Joint Board assumes it will need to establish a full-time paralegal position to support the board. In addition, the proposed board will consist of nine members who will receive mileage at the approved federal rate. The Joint Board estimates the bill will result in the following additional expenditures beginning in FY 2015:

	FY 2015	FY 2016	FY 2017	FY 2018
Expenditures:				
Paralegal (LG 16, with annual steps)	\$32,523	\$34,210	\$35,596	\$37,003
Benefits	\$23,827	\$25,291	\$26,768	\$28,326
Current expenses	\$2,500	\$3,000	\$3,000	\$4,000
Board member travel	\$1,750	\$1,500	\$1,600	\$1,750
Other (equipment, transfers to DOIT, etc.)	\$5,250	\$4,150	\$4,450	\$4,750

Total	\$65,850	\$68,151	\$71,414	\$75,829
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The Department of Justice states the proposed board will have the authority to promulgate rules, which must be approved by the Department's Consumer Protection Bureau. The Department assumes that it will be required to provide legal counsel to the board, and estimates that it will need to hire part-time counsel at a rate of \$135 per hour, including benefits, for 500 hours per year. Total costs for this position will therefore equal \$67,500. These responsibilities will also require two hours per week on the part of a legal secretary, which the Department states it may be able to absorb within its current budget. If not, the Department anticipates contracting out at a rate of \$16.65 per hour, including benefits, which will total \$1,732 per year.

The Judicial Branch states the fiscal impact to the Branch resides in proposed RSA 356-B:74, II and III, which provide, respectively, for appeals to the superior court in accordance with RSA 677 and, if no appeal is taken, for filing the decision of the proposed board with the superior court. The Branch has no information on how many appeals will be filed in the superior court as a result of the bill. The Branch does, however, have information on the projected cost of such appeals. Appeals are classified as complex equity cases, and are projected to cost \$668.25 per case in FY 2015, and \$683.30 per case in FY 2016. Regarding the filing of board decisions with the superior court and the entry by the court of judgment thereon, such cases are classified as routine equity cases and are projected to cost \$234.43 in FY 2015, and \$239.53 in FY 2016. These numbers do not consider the cost of any appeals that may be undertaken following trial. All costs are estimated based on case weight information from the Branch's last needs assessment completed in 2005.