

HB 1651-FN - AS INTRODUCED

2024 SESSION

24-2750

10/05

HOUSE BILL ***1651-FN***

AN ACT relative to combining the board of tax and land appeals and the housing appeals board.

SPONSORS: Rep. D. McGuire, Merr. 14; Rep. Leishman, Hills. 33

COMMITTEE: Judiciary

ANALYSIS

This bill moves the housing appeals board to combine with the board of tax and land appeals as a new land appeals board.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

In the Year of Our Lord Two Thousand Twenty Four

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

~~[BOARD OF TAX AND]~~ LAND APPEALS **BOARD**

71-B:9 Administration of Oaths, Subpoenas, Etc.; Fees. The board shall have authority to administer oaths and to compel the attendance of witnesses to proceedings before it. The board shall have the power to subpoena and subpoena duces tecum. Witnesses compelled to appear shall be paid the same fee and mileage that are paid to witnesses in the superior court of the state. A subpoena or subpoena duces tecum of the board may be served by any person designated in the subpoena or subpoena duces tecum to serve it. Any testimony given by a person duly sworn shall be subject to the pains and penalties of perjury. All applications or petitions to the board for which no filing fee

has been otherwise specified by statute shall be accompanied by a [~~\$65~~] **\$250** filing fee. Costs and attorney's fees may be taxed as in the superior court.

5 Land Appeals Board; Orders. Amend RSA 71-B:21 to read as follows:

71-B:21 Neglect to Comply With Board's Orders. Neglect or failure on the part of any selectman or assessor, ***or any municipal official*** to comply with such orders shall be deemed wilful neglect of duty, and he shall be subject to the penalties provided by law in such cases.

6 New Subdivision; Housing Appeals. Amend RSA 71-B by inserting after section 22 the following new subdivision:

Housing Appeals

71-B:23 Authority; Duties.

I. It shall be the duty of the board and it shall have power and authority to hear and affirm, reverse, or modify, in whole or in part, appeals of final decisions of municipal boards, committees, and commissions regarding questions of housing, housing development, and planning and zoning. This includes, but is not limited to:

(a) Planning board decisions on subdivisions or site plans.

(b) Board of adjustment decisions on variances, special exceptions, administrative appeals, and ordinance administration.

(c) The use of innovative land use controls.

(d) Growth management controls and interim growth management controls.

(e) Decisions of historic district commissions, heritage commissions, and conservation commissions.

(f) Other municipal permits and fees applicable to housing and housing developments.

(g) Matters subject to the board's authority may include mixed-use combinations of residential and nonresidential uses. Such different uses may occur on separate properties, provided such properties are all part of a common scheme of development.

II. In exercising its authority under this subdivision, the board shall have the power to award all remedies available to the superior courts in similar cases, including permission to develop the proposed housing.

III. Relative to RSA 674:58 through RSA 674:61, the board shall have the power and authority to hear and determine appeals of decisions of local land use boards regarding proposals for workforce housing, including but not limited to whether the municipality's land use ordinances and regulations provide a reasonable and realistic opportunity for the development of workforce housing; whether the local land use board has imposed conditions of approval that render the proposal economically unviable; and whether a denial by a local land use board was unreasonable or unlawful.

IV. After local remedies have been exhausted, appeals may be brought before the board by an applicant to the municipal board, committee, or commission, or by any other aggrieved or injured

1 party who can demonstrate legal standing to appeal pursuant to RSA 677:4 or RSA 677:15. The
2 municipality shall be a party to the action. If the applicant is not the party initiating the action
3 before the board, then the applicant shall automatically be an intervenor. The board shall grant
4 intervenor status to abutters and to any other aggrieved or injured party who can demonstrate legal
5 standing to appeal pursuant to RSA 677:4 or RSA 677:15.

6 71-B:24 Timing of Housing Appeals and Board Proceedings.

7 I. Appeals under this subdivision shall be filed with the board within 30 days of the final
8 decision of a municipal board, committee, or commission. At the same time an appeal is filed with
9 the board, the applicant shall notify the municipal board, committee, or commission of such appeal.

10 II. The municipal board, committee, or commission shall within 30 days of receipt of such
11 notice submit to the board a certified record of its proceedings on the matter subject to the appeal.

12 III. The board shall hold a hearing on the merits within 90 days of its receipt of a notice of
13 appeal.

14 IV. The board shall make a decision on an appeal within 60 days after conducting a hearing
15 on the merits.

16 71-B:25 Housing Development; Jurisdiction; Court Appeals.

17 I. In matters within its authority the board shall have concurrent, appellate jurisdiction
18 with the superior court. An election by any party to bring an action before the board shall be deemed
19 a waiver of any right to bring an action in the superior court, but shall not abrogate any party's right
20 to appeal decisions of the board to the supreme court; as such, the board shall retain jurisdiction of
21 any matter originally brought before it. At any time during an appeal to the board, if the board
22 determines that it does not have jurisdiction to hear the appeal, the appellant shall have 30 days to
23 file an appeal with the superior court.

24 II. In an appeal of a local decision on housing or housing development, any claim that is
25 within the board's authority under RSA 679:5 and that has previously been or is subsequently
26 included in an appeal in superior court by another party to the decision or by any other aggrieved or
27 injured party who can demonstrate legal standing to appeal pursuant to RSA 677:4 or RSA 677:15
28 shall automatically be stayed by the court to provide the party with standing the opportunity to
29 intervene in the matter before the board. If intervenor status is granted, the stay of the court action
30 regarding those claims shall continue during the pendency of the appeal to the board. After the
31 board has decided the appeal, the court shall dismiss the matter before it to the extent the matter
32 has been resolved by the board. Any claim included in an appeal to superior court that is not within
33 the board's authority shall not be subject to automatic stay by the court.

34 71-B:26 Hearing Procedure for Housing Matters; Standard of Review.

35 I. Appeals on housing and housing development matters to the board shall be consistent
36 with appeals to the superior court pursuant to RSA 677:4 through RSA 677:16. Appeals shall be on
37 the certified record, and except in such cases as justice may warrant, in the sole discretion of the

board, no additional evidence will be introduced. Consistent with the contested case provisions of RSA 541-A, the rules of evidence shall not strictly apply. In addition to the provisions of RSA 91-A, the board shall record the proceedings of any hearing before it and shall make such recording available to the public for inspection and recording from the date of the hearing to a date which is 15 working days after the board has made a final decision on the matter which is the subject of the hearing, or, if an appeal is made from such decision, the date upon which the matter has been finally adjudicated, whichever date is later.

II. The board shall not reverse or modify a decision except for errors of law or if the board is persuaded by the balance of probabilities, on the evidence before it, that said decision is unreasonable.

7 Name Change; Board of Tax and Land Appeals to Land Appeals Board. Amend the following RSA provisions by replacing the term "board of tax and land appeals" with "land appeals board": 21-G:6-b; 21-J:3; 21-J:9-a; 21-J:9-c; 21-J:11; 21-J:14-g; 21-J:28-b; 51:7, II; 71-B:1; 72:1-d; 72:8-d; 72:23; 72:23-c; 72:23-d; 72:23-e; 72:23-f; 72:23-g; 72:23-i; 72:23-j; 72:23-k; 72:34-a; 72:38-a; 72-B:13; 75:14; 75:15; 75:16; 75:17; 75:18; 76:1-a; 76:13; 76:15-aa; 76:16; 76:16-a; 76:16-e; 76:17-a; 76:17-b; 76:17-c; 76:21; 77:35; 78:19; 78-A:5; 78-A:13; 79:8; 79-A:2; 79-A:9; 79-A:10; 79-A:11; 79-A:12; 79-A:13; 79-A:14; 79-B:5; 79-C:5; 79-D:5; 79-E:4; 79-F:3; 79-F:6; 79-F:7; 79-F:8; 79-G:3; 79-G:5; 79-G:6; 79-H:3; 79-H:5; 79-H:6; 81:5; 82:17; 82:18; 82:22; 112:2; 162-A:24; 162-C:6; 162-I:15; 198:60; 227-M:13; 228:60-a; 231:32; 498-A:2; 498-A:4.

8 Reference Change; Superior Court; Land Use Review Docket. Amend RSA 491:7-b, V to read as follows:

V. Subject to the provisions of this section, all appeals to superior court filed pursuant to RSA 677 and all proceedings for such appeals, shall be assigned to the land use review docket, including motion practice, discovery, injunctive relief, alternative dispute resolution, and hearing on the merits. Nothing in this section shall affect the concurrent jurisdiction of the ~~[housing appeals board]~~ **land appeals board** to hear appeals within its jurisdiction brought pursuant to ~~[RSA 679]~~ **RSA 71-B**.

9 Repeal. RSA 679, relative to housing appeals board, is repealed.

10 State Officers; Salaries. Amend RSA 94:1-a, I(b) by deleting the following:

DD Housing appeals board member

DD Housing appeals board chair

11 Application. In order to provide for the orderly transfer of the housing appeals board to the land appeals board, the supreme court may adjust the terms of appointed to the land appeals board, giving consideration to the remaining terms of current board members. The combined land appeals board shall have flexibility to combine offices and adjust staff and administrative duties provided that the land appeals board under RSA 71-B shall be fully operational not later than January 1, 2025.

1 12 Effective Date. This act shall take effect upon its passage.

HB 1651-FN- FISCAL NOTE
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AN ACT relative to combining the board of tax and land appeals and the housing appeals board.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	Indeterminable (\$0 to \$10,000)	Indeterminable (\$0 to \$10,000)	Indeterminable (\$0 to \$10,000)
<i>Revenue Fund(s)</i>	General Fund Various Agency Funds			
Expenditures	\$0	Indeterminable Decrease (\$81,000+)	Indeterminable Decrease (\$81,000+)	Indeterminable Decrease (\$81,000+)
<i>Funding Source(s)</i>	General Fund Fuel Inventory Maintenance Fund			
Appropriations	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ No

METHODOLOGY:

This bill merges the housing appeals board with the board of tax and land appeals as a new land appeals board as well as increases the filing fee from \$65 to \$250.

The Board of Tax and Land Appeals states this bill aims to merge the Housing Appeals Board (HAB) and the Board of Tax and Land Appeals (BTLA) into a single entity called the "Land Appeals Board." Estimating the impact on state revenues is uncertain since the number of potential appeals remains unknown, but an estimated range of \$0 to \$10,000 was considered (based on an assumption of 40 appeals per year with a \$250 filing fee).

Additionally, the impact on state expenditures would involve the cost of processing and deciding any future appeals, as well as additional staffing and operational costs required by the boards being combined.

Members of both the BTLA and HAB hold commissions at the unclassified salary level of DD, but at different steps. The consolidation of these boards would require at least one to two

additional full-time staff members because the current BTLA team is unable to handle the workload from the HAB. The potential operational cost reductions due to this legislation remain uncertain, but significant decreases are unlikely. It's probable that a major portion of the current HAB operating budget would effectively transfer to the existing BTLA budget. To calculate a fiscal impact, the BTLA used the HAB's current FY 2024 budget (\$517,800) and removed the salary of one board member (\$81,000) estimating the new BTLA's budget, to be known as the Land Appeals Board budget, increasing by at least \$400,000 in each fiscal year starting in FY 2025. However, this increase would be offset by the removal of the HAB's current budget of \$517,800 resulting in a decrease to State General Fund expenditures of an estimated \$81,000+ for FY 2025 and forward.

The Housing Appeals Board states this bill would reduce the HAB's board members by one, forming a Land Appeals Board with five members (compared to the BTLA's existing three). This reduction could lead to an indeterminable but likely nominal decrease in state salary expenditures, considering criteria in RSA 94:2, II. However, the bill doesn't address the transition of classified staff from HAB, and a portion of HAB's budget might transfer to the BTLA budget resulting in an indeterminable fiscal impact.

AGENCIES CONTACTED:

Board of Tax and Land Appeal and Housing Appeals Board