

SB 400-FN - AS INTRODUCED

2022 SESSION

22-2888

08/10

SENATE BILL **400-FN**

AN ACT relative to training and procedures for zoning and planning boards and relative to financial investments and incentives for affordable housing development.

SPONSORS: Sen. Bradley, Dist 3; Sen. Whitley, Dist 15; Sen. Hennessey, Dist 1; Sen. D'Allesandro, Dist 20; Sen. Watters, Dist 4; Sen. Perkins Kwoka, Dist 21; Sen. Rosenwald, Dist 13; Sen. Avar, Dist 12; Sen. Cavanaugh, Dist 16; Sen. Sherman, Dist 24; Sen. Prentiss, Dist 5; Sen. Soucy, Dist 18; Sen. Kahn, Dist 10; Rep. DiLorenzo, Rock. 17; Rep. Umberger, Carr. 2; Rep. Alexander Jr., Hills. 6; Rep. Sweeney, Rock. 8; Rep. Porter, Hills. 1

COMMITTEE: Election Law and Municipal Affairs

ANALYSIS

This bill makes changes to the training and procedures for zoning and planning boards offered by the office of planning and development. This bill creates incentives and establishes requirements for workforce housing and affordable housing development. The bill also revises the time frames for planning board consideration of applications, and establishes the New Hampshire housing champion certification program.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to training and procedures for zoning and planning boards and relative to financial investments and incentives for affordable housing development.

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

1 1 Local Land Use Boards; Training. RSA 673:3-a is repealed and reenacted to read as follows:

2 673:3-a Training. Any member of a zoning board of adjustment or planning board may complete
3 training offered by the office of planning and development or another organization that provides
4 similar training covering the processes, procedures, regulations, and statutes related to the board on
5 which the member serves. The office of planning and development shall develop standard self-
6 training materials and corresponding tests for zoning boards of adjustment and planning boards
7 which shall be provided to members free of charge. The office of planning and development may
8 provide other types of training, which may be designed in a variety of formats including, but not
9 limited to, web-based, distance learning, or traditional classroom style. For purposes of this section,
10 the term "member" includes regular and alternate members of zoning boards of adjustment and
11 planning boards.

12 2 New Paragraph; Local Land Use Boards; Staff; Finance. Amend RSA 673:16 by inserting after
13 paragraph II the following new paragraph:

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

20 3 New Paragraph; Local Land Use Planning and Regulatory Powers; Zoning. Amend RSA
21 674:17 by inserting after paragraph III the following new paragraph:

22 IV. If a municipality allows an increased density, reduced lot size, expedited approval, or
23 other dimensional or procedural incentive under this section for the development of housing for older
24 persons, as defined and regulated pursuant to RSA 354-A:15, VIII, it shall allow the same incentive
25 for the development of workforce housing as defined in RSA 674:58, IV. Beginning July 1, 2023,
26 incentives established for housing for older persons shall be deemed applicable to workforce housing
27 development, regardless of whether a local land use ordinance or regulation specifically provides for
28 their application to workforce housing development.

29 4 Local Land Use Planning and Regulator Powers; Innovative Land Use Controls. Amend RSA
30 674:21, IV(a) to read as follows:

1 (a) "Inclusionary zoning" means land use control regulations which *require a property*
2 *owner to produce, as part of a development which meets certain characteristics, housing*
3 *units which are affordable to persons or families of low and moderate income or* provide a
4 voluntary incentive or benefit to a property owner in order to induce the property owner to produce
5 housing units which are affordable to persons or families of low and moderate income. Inclusionary
6 zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined
7 application process. *Inclusionary zoning ordinances shall include standards that do not*
8 *reduce the economic viability of developments in comparison to developments that do not*
9 *require housing affordability. Such ordinances shall also enable the planning board to*
10 *waive or modify in individual cases any standards that are demonstrated by an applicant*
11 *to render a development economically infeasible.*

12 5 Planning and Zoning; Administrative and Enforcement Procedures; Issuance of Decision.
13 Amend RSA 676:3, I to read as follows:

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

24 6 New Paragraph; Powers of Zoning Board of Adjustment. Amend RSA 674:33 by inserting after
25 paragraph VII the following new paragraph:

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

34 7 Workforce Housing: Definition. Amend RSA 674:58, IV to read as follows:

35 IV. "Workforce housing" means housing which is intended for sale and which is affordable to
36 a household with an income of no more than 100 percent of the median income for a 4-person
37 household for the metropolitan area or county in which the housing is located as published annually

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

9 8 Planning Board; Board's Procedures on Plats. Amend RSA 676:4, I(c) to read as follows:

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

36 (2) Failure of the selectmen or city council to ~~[issue an order to the planning board~~
37 ~~under subparagraph (1), or to]~~ certify approval of the plat upon the planning board's failure to

1 ~~[comply with the order,]~~ **act within the required time period** shall constitute grounds for the
2 superior court, upon petition of the applicant, to issue an order approving the application ~~[if the~~
3 ~~court determines that the proposal complies with existing subdivision regulations and zoning or~~
4 ~~other ordinances].~~ **The superior court shall act upon such a petition within 30 days.** If the
5 court determines that the failure of the selectmen or the city council to act was not justified, the
6 court may order the municipality to pay the applicant's reasonable costs, including attorney's fees,
7 incurred in securing such order.

8 9 Planning Board; Board's Procedures on Plats. Amend RSA 676:4, I(f) to read as follows:

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

13 10 Planning and Zoning; Rehearing and Appeal Procedures; Court Review. Amend RSA 677:15,
14 IV-V to read as follows:

15 IV. ~~[The court shall give any hearing under this section priority on the court calendar.]~~
16 **Whenever an appeal to the superior court is initiated under this section, the court shall**
17 **give the appeal priority on its calendar and shall issue a final decision within 120 days of**
18 **the date upon which a certiorari order was delivered to the planning board pursuant to**
19 **paragraph II. If the court stays an appeal pursuant to subparagraph I(b), then it shall**
20 **issue a decision within 120 days of final resolution of all matters before the board of**
21 **adjustment.**

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

27 VI. **Whenever an appeal to the supreme court is initiated after superior court**
28 **review, the court shall give the appeal priority on its calendar and shall issue a final**
29 **decision within 90 days of the date upon which a certiorari order was delivered to the**
30 **planning board.**

31 11 Planning and Zoning; Rehearing and Appeal Procedures; Priority. RSA 677:5 is repealed and
32 reenacted to read as follows:

33 677:5 Priority. Whenever an appeal to the superior court is initiated under RSA 677:4, the court
34 shall give the appeal priority on its calendar and shall issue a final decision with 120 days of the
35 date upon which the petition was served on the zoning board of adjustment or local legislative body.

36 12 New Subdivision; Fee Shifting and Posting of Bond. Amend RSA 677 by inserting after
37 section 19 the following new subdivision:

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.

13 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.

1 development of the state. In this paragraph, "land use regulations and ordinances" shall include,
2 but are not limited to, innovative land use controls described in RSA 674:21.

3 (b) Adoption of financial tools that incentivize the development of workforce housing,
4 including adoption of the community revitalization tax relief incentive program under RSA 79-E and
5 establishment of municipal economic development and revitalization districts under RSA 162-K.

6 (c) Training of planning board and zoning board of adjustment members using training
7 materials and programs, including online materials and programs, provided by the office of planning
8 and development pursuant to RSA 673:3-a; or training materials and programs, including online
9 materials and programs, provided by the New Hampshire Municipal Association, that cover the
10 processes, procedures, regulations, and statutes related to the board on which the member serves; or
11 any other training materials and programs, including online materials and programs, approved by
12 the office of planning and development, that cover the processes, procedures, regulations, and
13 statutes related to the board on which the member serves.

14 (d) Adoption of energy efficiency residential building standards, pursuant to RSA 674:51,
15 or adoption of an energy efficiency and clean energy district, pursuant to RSA 53-F.

16 IV. A New Hampshire housing champion certification shall be valid for 3 years from the
17 date such certification is awarded. A municipality may renew its housing champion certification for
18 subsequent 3-year periods. The office of planning and development shall include in the criteria for
19 renewal performance metrics including, but not limited to, the qualifications listed in paragraph III,
20 total housing production, and production of workforce housing in a municipality during the period
21 since a municipality last received New Hampshire housing champion certification.

22 V. There is hereby established the New Hampshire housing champion certification program
23 advisory board. The advisory board shall review and approve proposed rules, and any amendments
24 thereto, used by the office of planning and development to administer the housing champion
25 certification program and shall advise the office regarding ongoing program administration. The
26 advisory board shall consist of:

27 (a) One member of the senate, appointed by the senate president.

28 (b) Two members of the house of representatives, at least one of whom shall be a
29 member of the municipal and county government committee, appointed by the speaker of the house
30 of representatives.

31 (c) The commissioner of the department of business and economic affairs, or designee.

32 (d) The executive director of the business finance authority, or designee.

33 (e) The executive director of the New Hampshire housing finance authority, or designee.

34 (f) The executive director of the community development finance authority, or designee.

35 (g) The executive director of the state commission for human rights, or designee.

36 (h) One member appointed by each of the following entities:

37 (1) The New Hampshire Municipal Association.

SB 400-FN - AS INTRODUCED
- Page 8 -

- 1 (2) The New Hampshire Association of Regional Planning Commissions.
- 2 (3) Housing Action New Hampshire.
- 3 (4) Clean Energy New Hampshire.
- 4 (5) The Home Builders and Remodelers Association of New Hampshire.
- 5 (6) The New Hampshire Association of Realtors.
- 6 (7) The New Hampshire Planners Association.
- 7 (8) Plan New Hampshire.

8 VI. Members of the advisory board shall serve without compensation, except that legislative
9 members of the board shall receive mileage at the legislative rate when attending to the duties of the
10 board.

11 VII. The office of planning and development shall adopt rules pursuant to RSA 541-A to
12 implement the provisions of this section no later than July 1, 2023. During the rulemaking process,
13 the office of planning and development shall consult with relevant state agencies and entities that
14 administer the programs and funds identified under paragraph II to ensure the rules for the New
15 Hampshire housing champion certification program are not in conflict with the rules of these state
16 agencies and entities.

17 VIII. Each year the office of planning and development shall develop a report which
18 describes all actions taken related to the operation of the housing champion certification program
19 and assesses the overall impact of the housing champion certification program, including an
20 assessment of the additional housing units produced in the state as a result of the program's
21 operation and incentives. The report required by this paragraph shall be submitted to the governor,
22 the speaker of the house of representatives, and the president of the senate on or before November 1
23 of each year, beginning in 2022, and upon such submission, the report shall be posted online on the
24 website of the office of planning and development.

25 17 Effective Date. This act shall take effect 60 days after its passage.

**SB 400-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to training and procedures for zoning and planning boards and relative to financial investments and incentives for affordable housing development.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

LOCAL:

Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable

METHODOLOGY:

This bill does the following:

- Amends the existing voluntary training provisions applicable to new planning or zoning board members by allowing all planning and zoning board members to receive training from the Department of Business and Economic Affairs, Office of Planning and Development (OPD) free of charge. OPD training may be designed in a variety of formats, including web-based, distance learning or traditional classroom style.
- Modifies the appeals process for zoning decisions and process for fees for posting of bonds.
- Makes numerous changes to enhance the availability of workforce and available housing, including:
 - o Authorizes municipalities to establish municipal economic development and revitalization districts under RSA 162-K, also known as TIF (Tax Increment Financing), to construct workforce housing or generally increase the available housing stock.
 - o Extends the maximum duration of the community revitalization tax relief incentive period under RSA 79-E for certain housing projects, based on type of project.

- o Establishes a voluntary housing champion certification program for qualifying municipalities to promote the development of workforce housing and other types of housing necessary for the economic development of the state. Certification is valid for 3 years and may be renewed for another 3 year period. The program is to be administered by the OPD. Municipalities would be eligible for preferential access to state resources such as discretionary state infrastructure funds.

The OPD indicates the requirements related to free training for planning and zoning board members could be interpreted broadly for the provision of course materials and reasonable access to training and tests statewide, resulting in an indeterminable fiscal impact on the agency's expenditures.

The OPD also states the proposed housing champion certification program for municipalities is to be administered by the office, but the uncertain nature of a voluntary program and its cyclical nature makes it difficult to reliably anticipate associated staffing needs. The additional responsibilities involved in adopting rules, establishing program qualifications, consulting with relevant state agencies and entities to avoid conflicts and providing an annual report and overall program impact and assessment of additional housing units produced is beyond the office's current scope of work, necessitating an indeterminable increase in state expenditures to fulfill these requirements.

The New Hampshire Municipal Association (NHMA) indicates municipalities may utilize the provisions of RSA 162-K and RSA 79-E and may experience a shift in property tax revenues, without necessarily increasing or decreasing such revenues. Results would vary on a town by town basis. A municipality that qualifies as a housing champion may receive additional revenues associated with state infrastructure funding awards, but such amounts are unknown. NHMA also states other provisions of the bill may negatively impact municipal expenditures, but due to the unknown number or extent of such occurrences, such impact is indeterminable. These provisions relate to the posting of a bond if a municipality appeals a land use board decision if ordered by a court, and the awarding of attorney fees if a land use board decision is reversed on appeal and such board acted with gross negligence, in bad faith or with malice. Municipal revenue may increase if a land use board decision is upheld on appeal and the appealing party acted in bad faith or with malice and attorney fees are awarded. Due to the unknown frequency of such an event the fiscal impact on municipal revenue is indeterminable. The other provisions of the bill are unlikely to affect municipal revenue or expenditures.

The Department of Revenue Administration indicates that a municipality that adopts RSA 162-K may experience an indeterminable revenue and expenditure impact based on the details of

such tax increment financing and project expenses. A municipality that adopts RSA 79-E and grants tax relief under the expanded duration periods will experience a redistribution of the overall tax burden but no drop in total revenue. The Department cannot project any impact on municipal expenditures associated with the changes to this provision.

The Judicial Branch states there are a number of existing laws, in addition to Constitutional requirements, that require expedited review or have deadlines by which a decision is required. Adding additional cases with compressed time frames may necessitate additional resources to fulfill these requirements. Changes implemented effective 60 days after passage rather than the traditional January 1st of the following year pursuant to RSA 14:9-a will affect the Branch's ability to make changes collectively from all legislation. This may result in duplicative efforts and expenditures for training of judges and staff, updating databases, modifying forms and changes to the e-filing system. The overall impact on expenditures is indeterminable.

It is assumed the fiscal impact would not occur until FY 2023.

AGENCIES CONTACTED:

Department of Business and Economic Affairs, Department of Revenue Administration, New Hampshire Municipal Association, and Judicial Branch