

CITY CLERK'S OFFICE
CITY COUNCIL REFERRAL SLIP

TO: The Planning & Legal Departments

DATE: January 16, 2019

The attached document was received for City Council consideration.

The following action is required:

- Prepare a report together with related documents, if applicable, such as an ordinance, a resolution or an agreement and submit to the City Clerk's Office for inclusion in the City Council's _____ agenda.
- You are the only department or committee this communication was referred to.
- Along with your department, this item was referred to the following departments:

The Planning & Legal Departments

Please feel free to contact the City Clerk's Office if you have any questions.

HB 104-FN - AS INTRODUCED

2019 SESSION

19-0011
04/06

HOUSE BILL 104-FN

AN ACT establishing a housing appeals board within the attorney general's office.

SPONSORS: Rep. L. Ober, Hills. 37; Rep. Leishman, Hills. 24; Sen. Carson, Dist 14

COMMITTEE: Judiciary

ANALYSIS

This bill establishes a housing appeals board in the attorney general's office to hear appeals of final decisions of municipal boards, committees, and commissions regarding questions of housing and housing development.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

19-0011
04/06

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT establishing a housing appeals board within the attorney general's office.

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

1 New Subdivision; Department of Justice; Housing Appeals Board. Amend RSA 21-M by inserting after chapter section 19 the following new subdivision:

Housing Appeals Board

21-M:20 Board Established; Membership.

I. There is hereby established in the attorney general's office a housing appeals board, hereinafter referred to as the board, which shall be composed of 3 members who shall individually and collectively be learned and experienced in questions of land use law or housing development or both. At least one member shall be an attorney licensed to practice law in the state of New Hampshire, one member shall be a retired judge, and at least one member shall be a professional engineer. The members of the board shall be part-time employees, working no more than 20 hours per week. Board members shall not engage in any other employment, appointments, or duties during their terms that would conflict with their duties as members of the board.

II. The members of the board shall be appointed by the governor, with the advice and consent of the executive council, for a term of 3 years and until their successors are appointed and qualified. Any vacancy on the board shall be filled for the unexpired term in the same manner as the original appointment. The initial members of the board shall serve staggered terms. The governor shall designate one member as chairperson to serve in that capacity for the duration of his or her term.

III. A member of the board may be removed by the same authority for inefficiency, neglect of duty, or malfeasance in office. Before removal, the member shall be furnished with a copy of the charges and have an opportunity to be

heard in his or her defense.

IV. Compensation for each member of the board shall be consistent with established personnel policies for the job title and determined after examination of the job description.

21-M:21 Quorum; Disqualification; Temporary Members.

I. A majority of board members shall constitute a quorum to transact business.

II. No member of the board shall represent a party or testify as an expert witness or render any professional service for any party or interest before the board, and a board member who has an interest in any matter before it shall recuse himself or herself from acting in that matter.

III. In the event of a recusal or temporary disability of a member of the board, the chairperson of the board shall, subject to the approval of the governor, appoint a temporary board member as may be necessary to act on the appeal.

A temporary board member shall serve with respect to such matter until the same has been fully disposed of before the board.

IV. A temporary board member shall meet the qualification requirements established in RSA 21-M:20 for the board member in whose place they are acting.

V. A temporary board member shall be compensated at the same rate as a regular member.

VI. In the event of a vacancy on the board, the board shall stay the proceedings while awaiting the appointment of a temporary board member.

21-M:22 Staff; Office. The attorney general shall share administrative staff with the board. The attorney general shall provide the board with an office in the attorney general's office in Concord in which all board records, documents, and books shall be kept, and which shall have a room suitable for holding hearings.

21-M:23 Concurrent Jurisdiction.

I. In matters within its authority, the board shall have concurrent, appellate jurisdiction with the superior court. A petitioner who elects to bring an action before the board shall waive his or her right to bring such action in the superior court. The board shall retain jurisdiction of any matter originally brought before it.

II. The board shall not accept an appeal if the same or a similar case is pending before the superior court.

21-M:24 Authority; Duties.

I. The board shall 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 and housing development only after all local appeals have been completed. The board shall not hear or act on any petition for modification of fees. Disputes over fees shall be resolved in the superior court.

II. The board's authority shall include:

(a) Planning board decisions on subdivision 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, such as project phasing, and including the issuance of conditional use permits.

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

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

(f) Matters relating to 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.

(g) 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 nonviable; and whether a denial by a local land use board was unreasonable or unlawful.

(h) Any other municipal permit applicable to housing and housing developments.

III. The board may award appropriate remedies available to the superior courts in similar cases, including permission to develop the proposed housing.

IV. Appeals may be brought before the board by an petitioner to the municipal board, committee, commission, or abutter. The municipality shall be a party to the action. The board shall grant intervenor status to abutters and to any other aggrieved or injured party who can demonstrate legal standing to appeal pursuant to RSA 677:4 or RSA

677:15, as may be appropriate. In determining matters before it, the board may institute its own investigation, or hold hearings, conduct site visits, or take such other action as it shall deem necessary.

21-M:25 Filing Fee; Timing of Appeals and Board Proceedings.

I. The petitioner, upon payment of a \$500 filing fee, may file an appeal with the board.

II. The board shall not accept an appeal until all available appeals at the local level have been completed. An appeal shall be filed with the board within 30 days of the final decision of a municipal board, committee, or commission. At the same time an appeal is filed with the board, the petitioner shall notify the municipal board, committee, or commission of such appeal. The petitioner shall pay all costs associated with such notification.

III. The municipal board, committee, or commission shall, within 60 days of receipt of such notice, submit to the board a certified record of its proceedings on the matter subject to the appeal.

IV. The board shall accept appeals on a first-come, first-served basis and shall not accept a new appeal until the existing appeal has been resolved. The board shall serve notice in writing of the time, place, and cause of any hearing upon all parties at least 20 working days prior to the date of the hearing. The board shall hold a hearing within 90 working days of accepting an appeal.

V. The board shall render a decision on an appeal and notify the parties of the decision within 60 working days after conducting a hearing.

21-M:26 Hearing Procedure. The board shall be bound by the strict rules of evidence adhered to in the superior courts in this state. The board may introduce into evidence any information obtained through its own investigation or an external investigation. The board shall record the proceedings of any hearing before it and shall make such recording available to the public for inspection.

21-M:27 Representation by Nonattorneys. Nonattorneys, including professional engineers, architects, and land surveyors, may represent petitioners before the board. Nothing in this section shall prevent the board from denying representation by any individual it deems to be improper, inappropriate, or unable to adequately represent the interests of the petitioner to the board.

21-M:28 Board Meetings. The board's deliberative process in adjudicatory proceedings held pursuant to RSA 541-A shall not be exempt from the public meeting and notice provisions of RSA 91-A. Decisions and orders in adjudicatory proceedings shall be publicly available, but only after they have been reduced to writing, signed by a quorum of the board, and served upon the parties. The decision shall set forth the board's rulings of law and findings of fact in support of its decision. Discussions and actions by the board concerning procedural, administrative, legal, and internal matters shall be exempt from the meeting and notice provisions of RSA 91-A:2.

21-M:29 Administration of Oaths, Subpoenas. The board shall have the power to subpoena witnesses and administer oaths in any proceeding before it, and to compel the production of any books, papers, or other memoranda or documents by 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 filing fee. Costs and attorney's fees may be taxed as in the superior court.

21-M:30 Enforcement of Decisions. The board shall, at the request of any party, file a certified abstract of a final decision in the Merrimack county superior court. The superior court clerk shall enter judgment thereon and such judgment may be enforced in the same manner as any final judgment of the superior court.

21-M:31 Penalty for Noncompliance. Failure on the part of any municipality or municipal employee to comply with such orders shall constitute willful neglect of duty, and it shall be subject to the penalties and damages provided by law in such cases.

2 New Subparagraph; Access to Governmental Records and Meetings; Exemptions. Amend RSA 91-A:5 by inserting after subparagraph X the following new subparagraph:

XI. Discussions and actions by the housing appeals board established in RSA 21-M:20 concerning procedural, administrative, legal, and internal matters.

3 Effective Date. This act shall take effect July 1, 2021.

LBAO

19-0011
11/26/18

**HB 104-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT establishing a housing appeals board within the attorney general's office.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	Indeterminable Increase	Indeterminable Increase
Expenditures	\$0	\$0	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

LOCAL:

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

METHODOLOGY:

This bill establishes a housing appeals board in the attorney general's office to hear appeals of final decisions of municipal boards, committees and commissions regarding questions of housing and housing development.

The Department of Justice indicates it would share administrative support staff and provide the board with an office to hold hearings and keep the board records, documents and books. The Department anticipates that passage of the bill would increase demand for administrative staff support. The Department assumes it would hire an additional legal assistant at a cost of \$69,000 in FY 2022 and \$72,000 in FY 2023. The Department assumes the board members would not be employees of the Department and the fee revenue would not be collected by the Department. Therefore, the additional expenditures for the part-time salaries and benefits for board members and the revenue from fees are cannot be determined at this time.

The New Hampshire Municipal Association assumes the cost for a municipality to defend an appeal before the appeals board would likely be comparable to that of defending an appeal in the superior court. The appeals board would have an expedited process and the Association assumes this may increase in the number of appeals.

The file to appeal to the Board would be \$500 whereas the current fee to file an action in the superior court is \$225. Considering these factors, the Association is not able to estimate the effect on municipal expenditures. There would be no impact on municipal revenue.

The Judicial Branch indicates there could be savings to the Branch to the extent citizens choose not to file appeals in the superior court. The Branch states such an appeal would be classified as a complex equity case in the superior court. The cost to the Branch of a complex equity case is estimated to be \$783 in FY 2020 and \$788 in FY 2021. A potential cost to the Branch could come from appeals to the Supreme Court from the Housing Appeals Board. It is not clear from the bill if appeals of the Housing Appeals Board are appealable to the Supreme Court as of right. Appeals could be filed by petition for writ of certiorari. The Judicial Branch has no information on how many appeals may arise from the proposed bill.

AGENCIES CONTACTED:

Department of Justice, New Hampshire Municipal Association and Judicial Branch

