Twenty Important Reasons to Vote Against SB400:

By Joseph Garruba

Jm002@garruba.com

603-685-3394

April 4,2022

Purpose

I am writing this review as a concerned resident and contributor to local government. I have spent the last five years immersed in local planning matters and zoning cases, and I trained with the Office of Strategic Initiatives for Planning Board members. Additionally, I have presented many arguments at local Zoning Board of Appeals (ZBA) and at Planning Board meetings. As an outgrowth of these experiences, I recognize the disadvantage that local residents have when opposing well-funded, legally represented developers at local boards. I am not an expert by profession, but my experience provides important insight into Bill SB400. I have reviewed the proposed language of this bill and find significant problems with many of the provisions. Note the twenty specific, problematic items that I have pointed out with marked-up language and my own explanation of the problems related to the specific change. I cannot overemphasize the problems that this bill presents to local town boards and residents. Please review each item below and carefully consider your vote on this bill.

Table of Contents

1. Training: Amend RSA 673:3-a

SB400 Proposed Language

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 RSA 673:3-a is repealed and reenacted to read as follows:

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

Analysis

The training aspect of this bill distracts from the many other more significant problems it presents. Training of local officials is already available and is not costly. Consider the following points related to training:

a. How will the training be reviewed to ensure that the rights of citizens and municipalities are not being underplayed in favor of development interests like the New Hampshire Housing Finance Authority? I completed the current OSI training for planning board members, and I found a bias in the information presented in favor of development and urbanization.
b. What is the reason to develop tests? The tests are not mandatory. It seems that the likely beneficiary of this provision is developer's land-use lawyers who will use a board's lack of testing as an argument to overturn denials of large development projects.
c. Have any of you taken a test after you were elected to be a state representative? What purpose would such a test serve? Testing will certainly discourage volunteerism. The legislature should be promoting local municipal volunteers, this bill will do the opposite.

2. Fixing the Fees Associated with Development: Amend RSA 673:16

SB400 Proposed Language

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

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

Analysis

I believe that this section is an unreasonable addition. How would special engineering reports be addressed? It is not possible to have a set fee because each property and parcel is unique. The true scope of necessary studies and reports only becomes apparent after the process has been reviewed and discussed by the public. For a large, complex development, this can take many months. In addition, engineering studies and reports vary widely in scope and cost, depending on each project. What is the intent of this paragraph? What problem is it trying to solve? It may be that developers are concerned about the uncertainty of costs. However, those uncertainties are necessary to ensure that all projects receive the correct amount of attention, in other words commensurate with their scope and unique to the land that is to be developed.

3. Allowing Workforce Housing the Same Density Benefits as Housing for Older Persons: Amend RSA 674:21, II

SB400 Proposed Language

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

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

Analysis

This section overrides local zoning ordinances, which usually allow Housing for Older Persons at much greater density than single family homes. Town residents allow this exception because of reduced demands on a number of town resources, including water and schools. Town residents carefully considered the fiscal and environmental impacts of allowing retirement homes at these high densities when they voted to include retirement communities in their ordinances. Workforce housing developments are much more demanding and must be addressed separately as they are now. Municipal budgets are based on the expected demands of Housing for Older Persons. It is understood that most local taxes are allotted to schools. Retirement communities do not increase those costs nearly as much as workforce housing developments. This bill seeks to override town restrictions and impose tremendous costs on town residents. The result will likely be huge budget gaps and the unreasonable loss of local authority. For these reasons, I strongly urge that you vote against this bill.

4. Requiring the Production of Workforce Housing: Amend RSA 674:21, IV(a)

SB400 Proposed Language

(a) "Inclusionary zoning" means land use control regulations which ***require a property owner to produce, as part of a development which meets certain characteristics, housing units which are affordable to persons or families of low and moderate income or*** provide a voluntary incentive or benefit to a property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low and moderate income. Inclusionary zoning includes, but is not limited to, density bonuses,

Analysis

This is a **fundamental** change. Here the definition of Inclusionary zoning is being amended to allow regulations which **require** a property owner to produce low-income housing. In my opinion, this is one of the most consequential of the proposed changes. Local ordinances based on this clause would likely be unconstitutional, since requiring a land owner to produce price-controlled housing represents forcible taking of land. How could this be justified? Here again I am asking elected officials to vote against this bill. It is not reasonable to endorse the language as written, in that it could result in a serious violation of the rights of land owners.

5. Requiring That Zoning Ordinances Enable the Planning Board to Waive Local Requirements: Amend RSA 674:21, IV(a)

SB400 Proposed Language

growth control exemptions, and a streamlined application process. ***Inclusionary zoning ordinances shall include standards that do not reduce the economic viability of developments in comparison to developments that do not require housing affordability. Such ordinances shall also enable the planning board to waive or modify in individual cases any standards that are demonstrated by an applicant to render a development economically infeasible.***

Analysis

This section forces towns to provide for waivers of their local zoning ordinances. Why would representatives of towns in this state consider degrading local zoning authority? If passed, local planning board waivers are much easier to obtain than Zoning Board Variances, which must meet a higher legal bar. When it comes to inclusionary zoning (high-density development), planning boards would be at a large disadvantage to deny these applications. The reason is that planning boards would no longer be legally supported in denying claims for noncompliance with town-wide standards. Examples are the requirements for underground utilities or rural buffer zones, which many towns have chosen to enact to protect their natural environment or rural character. Other such local ordinances may require 100-foot wetland buffers. Consider a requirement for sidewalks or underground storm water drains. Any developer could claim these are financial burdens to meet. Why should the state weaken the authority of local planning boards to manage land development, which is the very purpose of those boards? Do members of the state legislature feel that the state is in a better position to decide these matters from Concord? Please do not allow developers to control the requirements of development, forcing homogenization of the entire state. The preservation of local planning board authority is vitally important, and as such, I recommend that you vote against this bill.

6. Providing for Automatic Reversal of Land Use Boards: Amend RSA 676:3, I

SB400 Proposed Language

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

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

Analysis

This section provides for the reversal of local planning decisions at the Housing Appeals Board or Superior Court. This bill would allow local denials to be overturned on the subjective determination of process technicalities. Why would members of the legislature support **automatic reversal** of local land-use boards for subjective technicalities? Lastly, because of the active, citizen participation that New Hampshire has traditionally fostered, we must preserve local authority over land-use boards in our own towns. Reducing the authority of local land-use boards cannot serve the interests of those they represent. Therefore, I request that each member vote against this bill

7. Add a Time Limit to Zoning Board Actions: Amend RSA 674:33

SB400 Proposed Language

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

VIII. Upon receipt of any application for action pursuant to this section, the zoning board of adjustment shall begin formal consideration and shall approve or disapprove such application within 90 days of the date of receipt, provided that the applicant may waive this requirement and consent to such extension as may be mutually agreeable. If a zoning board of adjustment determines that it lacks sufficient information to make a final decision on an application, the board may, in its discretion, deny the application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request for relief.

Analysis

Here the bill imposes a new time deadline on a ZBA where none existed before. Strict time deadlines are not appropriate or fair, since the size and scope of development proposals varies widely. Ninety days might be reasonable for an application to develop a single house lot, but frequently applications are presented for fifty or more units at a time. These applications often include complicated engineering challenges, such as roads, bridges, and storm water systems. A zoning board should have a sufficient period to thoroughly review and adjudicate applications. Developers may claim that this cost and uncertainty is a burden, but local zoning boards must have time to make informed and careful decisions. If this bill becomes law, the quality of local zoning board decisions will predictably suffer. How could rushing decisions at zoning boards result is better decisions? Who would such a change benefit? It seems developers would benefit at the expense of current residents.

Strict time limits may be unconstitutional under the equal protections clause of the U.S. Constitution. All development applications are unique in size, scope, and characteristics of the land to be developed. Why should the developer of one hundred units receive only ninety days of scrutiny of their application when the developer of one unit receives the same? At a minimum, these time limits should be based on the number of housing units produced, since a one hundred-unit development involves a much more intense engineering review in view of its greater impact on the town.

8. Definition of Workforce Housing: Amend RSA 674:58, IV

SB400 Proposed language

IV. "Workforce housing" means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce housing" also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, ***or are subject to age restrictions,*** shall not constitute workforce housing for the purposes of this subdivision.

Analysis

New housing, which may be sold at higher prices, causes availability of housing at all price ranges as residents trade up. The state certainly does not need to provide **new** housing at these price-protected levels. Southern New Hampshire is currently experiencing a building boom, and there is no reason to incentivize housing at one-hundred percent of the median income. Please vote against this bill. The state's role is not to pit one generation against another in the housing market.

9. Imposing Time Limits on Planning Board Procedures: Amend RSA 676:4, I(c)

SB400 Proposed Language

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

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

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

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

(f) [~~The planning board may apply to the selectmen or city council for an extension not to exceed an additional 90 days before acting to approve or disapprove an application.~~] The applicant may waive the

Analysis

As with ZBA restrictions, this section of the bill removes the ability of planning boards and select boards to extend the duration of development proposal review. Once again, the strict time deadlines are not appropriate or fair. The size and scope of development proposals varies widely. As previously stated, applications for large residential developments are often much more complicated than applications for a few homes. As such, they commensurately require more time and have larger impacts on the municipalities they are sited in. They include complicated engineering challenges, such as roads and bridges, as well as storm

water systems. It is reasonable and fair to allow the planning board enough time to review and adjudicate these applications accordingly. Developers claim this cost and uncertainty is a burden, but it is justified to allow local planning boards to make informed and carefully considered decisions. If this bill becomes law, the quality of local planning board decisions will be compromised. How could a strict time limit result in better decisions?

These strict time limits for planning boards and select boards, as discussed previously regarding the ZBA, may be unconstitutional under the equal protections clause of the U.S. constitution. All development applications are unique in size, scope and land being developed; more complex or less complex projects should receive commensurate attention. This is not the case if the same time period for review and approval is allotted for each.

As with ZBA time restraints, the new provision for planning boards and select boards will allow developers to bring the same project back to planning boards repeatedly. This is an unreasonable encumbrance on the abutters and town residents, who will be burdened with fighting developments multiple times. This provision is also sure to bog down local planning board agendas with repeat cases. Again, we see a benefit to developers at the expense of town residents and another blow to local zoning board authority. Please do not allow this bill to become law.

Currently, once an application is heard and denied at the planning board, it cannot be brought up again, based on the New Hampshire Supreme Court decision in Fisher vs City of Dover. The language of SB400 will allow developers to resubmit the same project back to the planning board after a denial. This is an unreasonable drain on abutters and town residents who must resort to fighting the same development multiple times. This provision is also sure to overload local planning board agendas with repeat cases. Again, this presents a significant benefit to developers at the expense of town residents and local zoning boards. Please do not allow this bill to become law.

10. Removing the Courts Ability to Uphold Local Zoning Ordinance: Amend RSA 676:4, I(c)

SB400 Proposed Language

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

Analysis

Removing the court's authority to review compliance with zoning ordinances that town residents have enacted, shows blatant disregard for the democratic process. Why prevent the court from confirming or denying a proposal that meets an ordinance that voters have approved? Please vote against this bill to protect the power of local citizens to pass local zoning ordinances within all of our towns.

11. Directing the Superior and Supreme Courts Calendar: Amend RSA 677:15, IV-V

SB400 Proposed Language

10 Planning and Zoning; Rehearing and Appeal Procedures; Court Review. Amend RSA 677:15,

IV-V to read as follows:

IV. [~~The court shall give any hearing under this section priority on the court calendar~~.]

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

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

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

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

Analysis

Why should developers have an expedited path through the courts? There are many important cases to be heard. Housing development is low on the list of priorities, compared to crime and other matters, and I hold that the latter should have higher priority. I hope members of the state legislature can see that dictating the court's schedule is unwise at least. Please vote no on SB400.

12. Imposing Costs on Abutters to Access the Judicial System: Amend RSA 677

SB400 Proposed Language

12 New Subdivision; Fee Shifting and Posting of Bond. Amend RSA 677 by inserting after 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.

Analysis

A bond would be required to access justice in the courts. The spoils of development will always provide sufficient profits to provide for such a bond. However, abutters and town residents cannot easily afford such costs and cannot count on density bonuses to defray costs of fighting a development. Do you think it is right to force an abutter to put up a bond just to appeal a decision that may have been wrongly decided? What problem is this trying to solve? This seems to be a means that will allow moneyed-development interests preferential treatment over middle-class abutters. As residents, we are all abutters. Do you think this is fair? Do you want to degrade your own access to the court system? Please vote against this bill. You might be an abutter whose access to the courts is diminished by it.

13. Different Standard of Justice for Developers verses Planning Boards: Amend RSA 677

SB400 Proposed Language

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.

Analysis

This language applies a different standard of justice to developers than to planning boards. Notice that developers are free of the consideration of **gross negligence**. It seems that the intent of this language is to provide a lever that lawyers will use against planning boards. Here again, why would you consider reducing the authority of your local planning board? Have you seen problems with their decisions? Have you seen them issuing decisions that are grossly negligent? Please act to defend local zoning authority and vote no on this bill.

14. Defining “Public Use” as private land development: Amend RSA 162-K:2, IX

SB400 Proposed Language

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.

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

> (h) Lease all or portions of basements, ground and second floors of the public buildings constructed in the district; [~~and~~]
>
> (i) Negotiate the sale or lease of property for private development if the development is consistent with the development program for the district[.] **; and**
>
> **(j) Acquire, construct, reconstruct, improve, alter, extend, operate, maintain or promote residential developments aimed at increasing the available housing stock within the municipality.**

Analysis

Item (5) redefines the construction of **private houses as public use!!!** I have avoided hyperbole in responding to each change of SB400, but the term crony capitalism seems to fit this well. Will you allow this to become the law of the land? Do you think tax breaks should be provided to private developers? How will the administration of this redistribution of taxes be fairly controlled? Has anyone justified why such drastic changes are needed. I cannot understand how the state tax breaks for private developers can be fair to residents of towns and municipalities, who have paid taxes. Please vote against this bill to prevent state government from underwriting redistribution of wealth to private developers of high-density housing!

15. Extending the duration of tax breaks to private developers: Amend RSA 79-E:5, II

SB400 Proposed Language

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

Analysis

Here again the bill provides more tax breaks to urbanize towns by adding high-density housing. Historic towns deserve preservation, not urbanization. Allowing the duration of tax breaks to be extended increases redistribution of taxation in a way that unfairly promotes urbanization in New Hampshire. Why should a project creating new residential units be exempt from taxes due to renovation? Why should this cost be permitted to be borne by long time existing residents for periods of up to eight years? There is no cause to promote urbanization. Housing projects should pay their fair share of taxes. They certainly bring more costs for school services and public safety. What would justify such a lucrative tax break for developers? Justice must be a consideration. It seems the language of SB400 here again discards justice in favor of subsidies to developers Please vote this bill as inexpedient to legislate in order to defend small towns in New Hampshire!

16. Office of Planning and Development to develop a certification program: Amend RSA 12-0

SB400 Proposed Language

16 New Subdivision; New Hampshire Housing Champion Certification. Amend RSA 12-O by inserting after section 64 the following new subdivision:

New Hampshire Housing Champion Certification 12-O:65 New Hampshire Housing Champion Certification.

I. The office of planning and development shall develop a New Hampshire housing champion certification program for all qualifying municipalities. The office of planning and development shall adopt rules to establish qualifications and procedures for a municipality to earn the New Hampshire housing champion certification. The procedure for a municipality to earn the New Hampshire housing champion certification shall be based on a scoring system.

Analysis

Why would such authority be delegated to unelected bureaucrats? The legislature's role is to write the laws. Allowing unelected officials at Office of Planning and Development to decide on how millions of dollars of tax breaks will be apportioned is irresponsible. Why should the legislature delegate its authority? This proposal is primed for corruption. If the legislature feels such a system is necessary, it should propose and enact one as a statute. In that way, at least the process would be conducted by elected officials accountable to the people. Please vote against this bill, if only to preserve your own authority as elected state representatives. It is your duty to determine the distribution of taxation, not the unelected Office of Planning and Development.

17. What preferential treatment will be afforded for urbanizing? Amend RSA 12-O

SB400 Proposed Language

II. The New Hampshire housing champion certification program shall be voluntary. Each municipality shall have the option, in its sole discretion, to apply to the office of planning and development to receive the New Hampshire housing champion certification. In exchange for housing champion certification, a municipality shall receive preferential access to state resources including, but not limited to, discretionary state infrastructure funds, as available.

Analysis

Why should the Office of Planning and Development be put in charge of determining preferential access to state resources? How could this be fair to rural towns that choose not to urbanize? The language of this bill sets up a resource allocation battle between rural towns and cities. Is that what you wish to promote? Shouldn't all of the state have equal access to state resources? Please vote against this bill to preserve unity of the state's rural towns and cities.

18. Complying with the law is not enough to get access to state funds: Amend RSA 12-O

SB400 Proposed Language

III. Qualifications to receive the New Hampshire housing champion certification shall include, but are not limited to:

(a) Adoption of such land use regulations and ordinances which the office of strategic initiatives determines to be necessary to promote the development of workforce housing, as that term is defined in RSA 674:58, and other types of housing necessary for the economic development of the state. In this paragraph, "land use regulations and ordinances" shall include, but are not limited to, innovative land use controls described in RSA 674:21.

Analysis

Here again, the bill grants the office of Planning and Development the power to determine a municipality's access to its justly deserved tax revenue. The language even allows the Office of Planning and Development to determine that a municipality must go above and beyond the requirements of the Workforce Housing law in order to receive preferential treatment and tax breaks. What justifies giving this authority to the Office of Planning and Development? Why not clearly spell out the requirement in the bill? Allowing the requirements to be open-ended like this will allow the "goal posts" to be changed perpetually in the future. In addition, it will be set by the unelected members of the Office of Planning and Development. Do you think that is good legislation? Should not the power to distribute taxes be exercised only by elected officials accountable to the voters? This is a fundamental principle of our government. Please vote against this bill to protect the fundamental tenets of our state government.

19. Training required in order to obtain certification: Amend RSA 12-O

SB400 Proposed Language

III. Qualifications to receive the New Hampshire housing champion certification shall include, but are not limited to:

...

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

Analysis

Requiring training from the Office of Planning and Development or New Hampshire Municipal Association in order to access state funding is inappropriate. Requiring training of land-use board members will further serve to concentrate undue power and influence in the OPD, since housing champion status will favor lax regulation of high-density development. This will be a blow to the integrity and autonomy of state and local governments. Please vote against this bill in order to preserve the integrity of and authority of government and to prevent the conflict-of-interest it would promote.

20. An unelected board without dominated by special interest Amend RSA 12-O

SB400 Proposed Language

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

The advisory board shall consist of:

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

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

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

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

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

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

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

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

(1) The New Hampshire Municipal Association.

(2) The New Hampshire Association of Regional Planning Commissions.

(3) Housing Action New Hampshire.

(4) Clean Energy New Hampshire.

(5) The Home Builders and Remodelers Association of New Hampshire.

(6) The New Hampshire Association of Realtors.

(7) The New Hampshire Planners Association.

(8) Plan New Hampshire

Analysis

Here the bill initiates a completely unelected board greatly insulated from the voters of the state. Do you think this will be a fair way to distribute your tax dollars? The authority to make decisions related to the distribution of taxes should reside in the elected state legislature. Why would you consider voting this authority to the likes of Home Builders associations, Realtors and New Hampshire Housing Finance Authority? Here again, I can only describe this as the legalization of crony capitalism. Do you want your voting record to show that you support this? Please vote against this bill to protect fair government in New Hampshire.

Conclusion

SB400 is a seriously flawed bill. It is nearly identical to the 2021 HB586, which seems to be brought back word for word. The language was written prior to the pandemic. As we have seen, there have been significant forces leading to development in New Hampshire as a result of the pandemic. Southern New Hampshire is currently experiencing a building boom. Development throughout the state has intensified. This development naturally leads to more housing in all price ranges as residents trade up. The wording of this bill is not adapted to the current situation we face in New Hampshire, and it does not represent the New Hampshire principle of participatory local government.

As I have pointed out, the above SB400 reduces the authority of local planning Boards, zoning boards, and select boards. In every case, the changes are beneficial to developers at the expense of local residents, abutters, and municipal officials. New Hampshire's strength is the participatory nature of local residents who work to better their towns. Removing local authority will disincentivize involvement and will serve to homogenize towns throughout the state. This can only be considered a negative. Weakening local governments will irrevocably change New Hampshire government for the worse.

Placing authority in unelected boards and agencies at the state level is the opposite of representative government and will only serve to promote corruption and abuse. It is important that tax distribution concerns remain the authority of the state legislature.

SB400 codifies the redistribution of taxation from rural to urban communities because urban or urbanizing ones will most likely get the "Housing Champion" designation. This type of wealth redistribution is not just and will serve to promote a division between cities and rural towns

Please consider the efforts of local residents to shape their own towns, this model has worked well for New Hampshire for many years. Please vote against this inappropriate, holdover omnibus housing bill and, thereby, protect New Hampshire and its residents.