

**Appendix A**  
**SB 21 Commission Report, 2001**



# **Reducing Regulatory Barriers to Workforce Housing in New Hampshire**

**REPORT OF THE LEGISLATIVE COMMISSION  
ESTABLISHED BY CHAPTER 262 OF THE LAWS OF 2001**

**NOVEMBER 1, 2002**

*“Decisions that may be in the interest of any one community, when repeated across an entire region or throughout the State, can and do produce results contrary to the welfare of the State... It is imperative that the Legislature take immediate steps to ensure that zoning and planning procedures at the local level, as well as the state policies and regulations that influence them, change to promote the development of workforce housing, not impede it.”*

# Reducing Regulatory Barriers to Workforce Housing in New Hampshire

REPORT OF THE LEGISLATIVE COMMISSION  
ESTABLISHED BY CHAPTER 262 OF THE LAWS OF 2001

NOVEMBER 1, 2002

## EXECUTIVE SUMMARY

New Hampshire's strong economic growth over the last decade created many benefits for most of our communities and citizens, but it also generated a demand for housing that the marketplace has been unable to meet. The results are rising home purchase prices, record low vacancy rates and higher rents – a housing market that presents a significant affordability challenge for many of our citizens, a barrier to labor force development and a grave challenge to our state's continued economic growth and vitality.

The inability of the marketplace to respond to the housing shortage has also resulted in an unprecedented level of homelessness for New Hampshire's lower level wage earners and other low income families.

This Commission believes that a balanced supply of housing, and especially an adequate supply of workforce housing,<sup>1</sup> serves a statewide public interest and is a compelling public policy goal.

This Commission was created “to develop and recommend legislation aimed at reducing regulatory barriers to the creation of affordable housing and encouraging the development thereof...” After carefully examining the many complex issues involved, the Commission has concluded that local land use regulations and the municipal regulatory process have had a significant role in preventing or deterring the private sector from responding to the shortage of workforce housing. ***It is imperative that the Legislature take immediate steps to ensure that zoning and planning procedures at the local level, as well as the state policies and regulations that influence them, change to promote the development of workforce housing, not impede it.***

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<sup>1</sup> For purposes of this report, “workforce housing” means a housing unit that is affordable to a household with an income of 80% or less of the median income of the region in which it is located, adjusted for household size. “Balanced housing” means a sufficient quantity and variety of housing types at prices or rents affordable to the entire range of household incomes in the community.

## RECOMMENDATIONS

To effectively address this problem, the Commission has found a compelling need for the following Legislative action:

- ***Implement the 1991 ruling of the New Hampshire Supreme Court in Britton v Chester***, which requires that municipalities provide reasonable opportunities for the creation of workforce housing, and reaffirm that this obligation extends not only to addressing the local need for such housing but to providing for a share of the regional need as well.
- ***Create a selective mechanism for expediting relief from municipal actions***, under criteria established by the Legislature, which deny, impede or significantly delay qualified proposals for workforce housing. Establishment of an expedited relief process is vital to the effective implementation of both existing law and the recommendations included here – and it is unlikely that any real change will occur without the relief provided by this mechanism.
- ***Direct technical assistance to assist communities to carry out their responsibilities*** to offer opportunities for the creation of workforce housing.
- ***Create a study commission to identify and review state agency rules and regulatory policies*** that affect the cost of housing development or limit such development. The goals of the commission should be
  - (1) to identify ways of reducing their adverse impact on housing development or cost; and,
  - (2) to recommend specific legislation and regulatory changes.

The study commission should include legislators, representatives of regulatory agencies, housing advocates, municipal and planning interests, home building industry representatives, and representatives from business generally.

***We must also dispel the myths surrounding workforce housing, to change the perception that multifamily rental housing negatively impacts local budgets, property values and the quality of life more than other forms of residential development.*** This report recommends ways to begin to do this.

## PROCEDURAL HISTORY

This Commission was established by Chapter 262 of the Laws of 2001, effective July 13, 2001, to examine the role that regulatory barriers to residential housing development plays in the statewide housing crisis and to make recommendations for remedial legislation to the 2002 Session. The Commission was initially chaired by Senator Beverly Hollingworth and subsequently by Senator Sylvia Larsen. Commission members representing a wide variety of perspectives, were appointed by the Governor, the President of the Senate, the Speaker of the House, or designated in the bill itself. The Commission met eleven times between September, 2001 and October, 2002 and, in addition to individual testimony, heard testimony from the New Hampshire Municipal Association, the Business and Industry Association of New Hampshire, the New Hampshire Housing Finance Authority, the New Hampshire Home Builders Association, the Seacoast Housing Partnership and the New Hampshire Association of Realtors. The final report was adopted on October 30, 2002 and has been filed with the Clerks of the Senate and House and delivered to the Governor's Office.

## FINDINGS

- Over a decade ago, the New Hampshire Supreme Court ruled, in Britton v. Chester, 134 N.H. 492 (1991) that municipalities have an obligation to afford reasonable opportunities for the development of workforce housing and that this obligation extends to a share of regional as well as local need for such housing. Yet significant regulatory barriers remain.
- New Hampshire currently lacks an adequate and balanced supply of housing to meet the needs of our population. This shortage is especially acute with regard to “workforce housing” – housing which is affordable to families earning 80% or less of median income.
- Our housing crisis is a product of our economic success during the last decade. Unless we allow our housing markets to keep pace with our economic growth, we will kill the economic engine we are relying on to continue that success in this decade.
- While many factors impact the State's housing supply, including increases in the population, the price of land and labor, and a shortage of contractors, it is the regulatory obstacles at both the State and local levels that are uniquely within the Legislature's power to mitigate.
- The power to restrict the use of private property in the larger public interest is exclusively a State power that is delegated, in part, to New Hampshire's cities and towns. These restrictions<sup>2</sup> are necessary to protect important public interests, but they – as well as the permitting process itself – add to the cost of development and can even prevent it from occurring.

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<sup>2</sup> As used through out this report, the term "local land use regulations" refers to the totality of local regulations enacted pursuant to the grant of legislative powers delegated to municipalities by RSA Chapter 674, including zoning ordinances, subdivision regulations, site plan review regulations, growth management regulations, and impact fee ordinances.

## REDUCING REGULATORY BARRIERS TO WORKFORCE HOUSING IN NEW HAMPSHIRE

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- The statutory delegation necessarily gives cities and towns wide discretion in adapting state law to local circumstances but in doing so can produce results beyond the expectation or intent of the Legislature.
- In exercising these delegated powers, every community not only has a duty to help house our State's growing population but also the right to know that neighboring communities are working toward the same goal.
- Decisions that may be in the interest of any one community, when repeated across an entire region or throughout the State, can and do produce results contrary to the welfare of the State.
- Individual communities, each acting in its own economic self-interest, have disconnected the State's local housing markets from the rest of our economy and created an artificial scarcity that has driven prices beyond the reach of a large and increasing number of working families.
- Although balanced housing benefits the State as a whole, the benefit to individual communities is often much less clear while the costs are immediate and apparent. For example, it is often argued at local planning board hearings that the creation of new housing imposes a fiscal burden upon the community because of the local cost to educate additional children, but that same new housing could also provide reasonable living opportunities for people providing services locally, such as firefighters, police officers, teachers, and shop owners. Despite widely-differing testimony about local practices and motivations in implementing delegated zoning power,<sup>3</sup> Commission members agreed that the perceived disparity between costs and benefits significantly influences the way our cities and towns respond when workforce housing is proposed for their community and requires a response at the state level.

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<sup>3</sup> There is a widespread perception within the housing and business communities that local zoning and planning powers are often used as vehicles for preventing development of residential, and especially workforce housing. While acknowledging the challenge that residential development poses for communities, they charge that the devices for discouraging housing development are well known and widely used. They point to zoning that eliminates most (or all) feasible sites for multifamily or manufactured housing; requirements that exceed state standards without a corresponding justification; subdivision and site plan review regulations that, when superimposed on the zoning ordinance, render properly zoned sites infeasible for affordable housing; selectively imposed impact fees; development moratoria unsupported by actual growth rates; and "social engineering" that excludes average working families from communities where requirements for minimum lot size, frontage and even building size artificially raise the final price of a home. They also point to the practice of dragging-out the decision making process, particularly site plan review, until the cost of additional reports required by the planning board and the cost of delay render the project no longer feasible, sending a message to potential future developers as well – and to the irony that the high price of land that some communities explain makes affordable development impractical is itself, in part, the product of exclusionary practices.

Local officials respond that what appears to be purposeful behavior to discourage residential development is often nothing more than the conscientious exercise of their duties under RSA 674:1. Mitigating the many adverse impacts they are obligated to consider before allowing a development to become a permanent part of their community unavoidably introduces costs and delay into the development process and the more intensive the proposed use (as with multifamily development) the greater the scrutiny the proposal will face. They point out that communities are also expressly permitted to make regulations to preserve their "character." While opponents may object to the outcome of such decisions, these efforts are entirely lawful and appropriate in a state struggling to preserve its rural character.

- Local officials – who are often volunteers – are caught between a “rock and a hard place” as they try to responsibly carry out their statutory duties which include consideration of housing needs beyond their own municipal borders and, at the same time, accommodate the concerns of their constituents about the impact of growth on their community. Public hearings on development proposals typically draw mostly opponents of the proposed development; and, regardless of how representative they may be of the larger community, their opposition is typically very vocal and well publicized and influences the outcome of local decision-making.
- To enlist local support for workforce housing we must demolish the myths that feed local opposition. Multifamily rental housing typically has no greater negative effect on local budgets, property values and the quality of life than other forms of residential development yet this type of workforce housing is often strongly resisted.
- We must also eliminate unnecessary delay in the local permitting process. Regulatory practices that are used principally to introduce delay (or the threat of delay) into the development process for the purpose of discouraging residential development are neither an appropriate nor a legal substitute for the careful planning required by Law.
- State regulatory policies and practices and related activities that may have an indirect but significant impact on land use (i.e. environmental and transportation policy) also have an effect on the amount and cost of housing produced by the private market. Therefore, it is equally important that such state regulatory actions be balanced so that they also support the goal of an adequate and balanced supply of housing without compromising legitimate environmental, health and safety concerns.
- Although it is not within the scope of the Commission’s statutory mandate, no strategy for dealing with our housing shortage can be successful that does not deal with the perception that every new housing development that brings school-age children is an assault on the school budget. The belief that residential development should pay its own way – especially the false belief that workforce housing burdens school budgets even more than other forms of housing – by turning children into economic liabilities significantly reinforces the unwillingness of communities to accommodate residential development and especially workforce housing. This accounts for the greater community willingness to accept over-55 or 62 housing communities. While this concession may address the “affordable housing” needs of one segment of the population, the housing requirements of working families with children remain inadequately addressed.
- Responding effectively to this challenge requires the Legislature, and each Legislator, to assume responsibility for acting in their constitutional role as caretaker for the State of New Hampshire as a whole and not simply as representatives of the individual cities and towns that elected them. The current imbalance in our local housing markets demonstrates that an “everyone for himself” strategy will only create more problems.

- A number of other issues not part of this study have contributed to this problem. The lack of workforce housing will not be resolved easily or by any single action or by action at any single level of government. It requires state and local governments to work cooperatively, and in concert with the private sector to address the many and varied roots of the problem. The complexity of this problem should not discourage the Legislature from taking the initial steps required to tackle the problem.
- While there is no “silver bullet” to end this crisis, there are a number of concrete, well-defined responses within the power of the Legislature to make that will substantially diminish the obstacles currently faced by workforce housing. These responses are detailed in our Recommendations.
- Restoring balance to New Hampshire’s local housing markets does not have to put at risk either our environment or our quality of life. Indeed, the danger lies in the other direction: failing to act will have serious consequences not only for those working families and seniors who are struggling in our current housing market but for our State’s economy and our collective future as well.

## **ADDITIONAL RECOMMENDATIONS**

The Commission’s recommendations are intended to begin to restore balance and flexibility to the State’s housing markets by addressing the complex factors that have given rise to this problem. Although some of these recommended actions may be controversial and many will require further discussion and analysis, the Commission believes that it is vital that the Legislature act now to address this critical challenge.

In addition to the recommendations contained in the Executive Summary, the Legislature should also consider the following action which the Commission believes will result in expanding workforce housing options.

- ***Direct the New Hampshire Housing Finance Authority and the Office of State Planning to***
  - (1) ***analyze the impact of residential development***, especially of workforce housing, and actively disseminate this information to local decision-makers and the general public with the goal of establishing the broadest possible common understanding of the true costs and benefits to individual communities; ***and***,
  - (2) ***establish a uniform methodology for the development of the regional housing needs assessment*** required by RSA 36:47, II;
- ***Link allocation of State and Federal discretionary resources*** (i.e., community development tax credits, land conservation funds and infrastructure improvement funds) ***to municipal performance in reducing barriers*** to workforce housing development;

- ***Give priority to workforce housing in allocating State funding for water, sewer and other infrastructure*** needed to support housing development;
- ***Provide direct financial incentives*** to encourage communities to meet regional workforce housing needs;
- ***Encourage the Department of Resources and Economic Development and other state agencies*** involved in promoting the state's economic development – and specifically the expansion of employment opportunities – to integrate such activities with efforts to ensure the availability of adequate housing to support job growth; and,
- ***Further expand the authority of cities and towns to explore innovative land use techniques*** under RSA 674:21 to deliver workforce housing in the quantities and diverse forms required by our economy.

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**SENATOR SYLVIA LARSEN, CHAIR**  
***For the Commission***

## COMMISSION TO STUDY THE CREATION OF AFFORDABLE HOUSING

<i>The Honorable Sylvia Larsen, Commission Chair (2002)</i>	<i>Member, New Hampshire State Senate</i>	<i>Appointed by Senate President</i>
<i>The Honorable Beverly Hollingworth, Commission Chair (2001)</i>	<i>Member, New Hampshire State Senate</i>	<i>Appointed by Senate President</i>
<i>The Honorable Theodore Gatsas</i>	<i>Member, New Hampshire State Senate</i>	<i>Appointed by Senate President</i>
<i>The Honorable Christine Konys</i>	<i>Member, New Hampshire House of Representatives</i>	<i>Appointed by Speaker of the House</i>
<i>The Honorable Joan Schulze</i>	<i>Member, New Hampshire House of Representatives</i>	<i>Appointed by Speaker of the House</i>
<i>Kenneth Ortmann</i>	<i>Director, Rochester Planning &amp; Development Department, Public Member</i>	<i>Appointed by Governor</i>
<i>Marge Webster</i>	<i>Director of Development, Tri-County Community Action, Public Member</i>	<i>Appointed by Governor</i>
<i>Elliott Berry</i>	<i>NH Legal Assistance, Public Member</i>	<i>Appointed by Governor</i>
<i>William Klubben</i>	<i>Representing the Executive Director, NH Municipal Association</i>	
<i>Steve Lewis</i>	<i>Representing the Executive Director, Homebuilders and Remodelers Association of NH</i>	
<i>Ben Frost</i>	<i>Representing the Executive Director, Office of State Planning</i>	
<i>Dean Christon</i>	<i>Representing the Executive Director, NH Housing Finance Authority</i>	
<i>Kathy Corey Fox</i>	<i>Representing the Executive Director, NH Association of Realtors</i>	
<i>Phil Smith</i>	<i>Salem Board of Selectmen</i>	<i>Appointed by Senate President</i>
<i>Anne Rugg</i>	<i>Representing The Housing Partnership (community-based, non-profit housing developer)</i>	<i>Appointed by Governor</i>
<i>Mark Tay</i>	<i>Representing the President, NH Manufactured Housing Association</i>	
<i>Michael LaFontaine</i>	<i>Representing the President, NH Community Loan Fund</i>	
<i>Gene Gayda</i>	<i>Representing the NH Property Owners Association</i>	
<i>Paul Newman</i>	<i>Representing the Mayor of the City of Nashua/Nashua Planning Department</i>	<i>Appointed by Senate President</i>
<i>JoAnn Maynard</i>	<i>Representing the Commissioner, NH Department of Health &amp; Human Services</i>	
<i>Tom Dowling</i>	<i>Keene Chamber of Commerce</i>	<i>Appointed by Governor</i>

CHAPTER 262  
SB 21 - FINAL VERSION

2001 SESSION

01-0869  
05/09

SENATE BILL     **21**

AN ACT           establishing a commission to develop recommendations for legislation to reduce regulatory barriers to and possible incentives for the creation of affordable housing in order to encourage the development of such housing

SPONSORS:       Sen. Hollingworth, Dist 23; Sen. McCarley, Dist 6; Sen. Larsen, Dist 15; Rep. Konys, Hills 33

COMMITTEE:      Executive Departments and Administration

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ANALYSIS

This bill establishes a commission to develop recommendations for legislation to reduce regulatory barriers to the creation of affordable housing.

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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.

**CHAPTER 262**  
**SB 21 - FINAL VERSION**

01-0869  
05/09

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand One*

AN ACT            establishing a commission to develop recommendations for legislation to reduce regulatory barriers to and possible incentives for the creation of affordable housing in order to encourage the development of such housing.

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

262:1 Declaration of Purpose. The general court has recently recognized that an acute shortage of housing affordable to a large number of working households, individuals with disabilities, and families with members with disabilities in this state is approaching crisis proportions and that for households on fixed or low incomes, the shortage of affordable housing, with the resulting increase in housing costs, presents an immediate threat of homelessness. The general court has also found that this situation threatens to undermine the state's capacity for economic growth by limiting the ability of employers to attract and retain workers. The general court has further found that local land use ordinances and other government regulations may create barriers to a response by the market to the demand for affordable housing. The general court now finds that it is necessary to act to encourage the private and non-profit sectors to address the critical shortage of affordable housing by reducing unnecessary regulatory barriers and encouraging the development of such housing. The commission established by this act is intended to recommend legislation that can accomplish this important goal without compromising the legitimate environmental, health, and safety concerns of local communities.

262:2 Commission Established. There is established a commission to develop and recommend legislation aimed at reducing regulatory barriers to the creation of affordable housing, and encouraging the development thereof, including possible incentives to build such housing, in order to maintain safe, healthy, and diverse communities for all residents of New Hampshire.

262:3 Membership.

- I. The members of the commission shall be as follows:
- (a) Two members of the senate, appointed by the senate president
  - (b) Two members of the house of representatives, appointed by the speaker of the house of representatives.
  - (c) Three public members, appointed by the governor
  - (d) The executive director of the New Hampshire Municipal Association, or designee
  - (e) The executive director of the Home Builders and Remodelers Association of New Hampshire, or designee
  - (f) The director of the office of state planning, or designee.
  - (g) The executive director of the New Hampshire housing finance authority, or designee
  - (h) The executive director of the New Hampshire Association of Realtors, or designee
  - (i) The chair of a town board of selectmen, appointed by the senate president.
  - (j) The executive director of a community-based, non-profit housing developer, appointed by the governor.
  - (k) The president of the New Hampshire Manufactured Housing Association, or designee
  - (l) A professional planner from a regional planning commission, appointed by the speaker of the house.
  - (m) The president of the New Hampshire community loan fund, or designee.

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- (n) The president of the New Hampshire Property Owners Association, or designee
- (o) The mayor of a city or designee, appointed by the senate president.
- (p) The commissioner of the department of health and human services, or designee.
- (q) The director of the Granite State Independent Living Foundation, or designee.
- (r) A president of a local chamber of commerce, or designee, appointed by the governor.

II. The legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the committee.

262:4 Duties. The commission shall:

I. Identify unnecessary local and state regulatory policies and practices which create barriers to the production of affordable housing; and

II. Recommend state legislation and local policy changes which will encourage the creation of affordable housing, including possible incentives to build such housing, in order to maintain the health, safety, and diversity of local communities and residents of the state.

262:5 Chairperson; Quorum. The members of the commission shall elect a chair from among themselves. The first meeting shall be called by the first-named member of the senate within 45 days of the effective date of this act. Nine members of the committee shall constitute a quorum.

262:6 Report. The commission shall reports its findings and recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2001.

262:7 Effective Date. This act shall take effect upon its passage.

(Approved: July 13, 2001)  
(Effective Date: July 13, 2001)

CHAPTER 50  
SB 411 - FINAL VERSION

2002 SESSION

02-3144  
04/01

SENATE BILL 411

AN ACT extending the reporting dates of certain study committees.

SPONSORS: Sen. Hollingworth, Dist 23

COMMITTEE: Internal Affairs

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ANALYSIS

This bill extends the reporting dates of certain study committees from November 1, 2001 to November 1, 2002.

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

**CHAPTER 50**  
**SB 411 - FINAL VERSION**

02-3144  
04/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Two*

AN ACT extending the reporting dates of certain study committees.

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

50:1 Affordable Housing Commission; Reporting Date Extended. Amend 2001, 262:6 to read as follows:

262:6 Report. The commission shall reports its findings and recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, [~~2001~~] **2002**.

50:2 Juvenile Shelter Care Facilities Commission; Reporting Date Extended. Amend 2001, 97:6 to read as follows:

97:6 Report. The commission shall report its findings, which shall include any reports from any independent consultants, and any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, [~~2001~~] **2002**.

50:3 Temporary Assistance to Needy Families and Postsecondary Education Study Committee; Reporting Date Extended. Amend 2000, 122:6 to read as follows:

122:6 Report. The commission shall file an interim report of its findings no later than November 1, 2000, and shall file a final report, including any recommendations for proposed legislation, to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, [~~2001~~] **2002**.

50:4 Effective Date. This act shall take effect upon its passage.

(Approved: April 26, 2002)  
(Effective Date: April 26, 2002)