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HB 1661 (SB 400) – Community Toolbox Bill

SB 400-FN - AS AMENDED BY THE SENATE	HB 1661 – VERSION ADOPTED BY BOTH BODIES
1 Local Land Use Boards; Training. RSA 673:3-a is repealed and reenacted to read as follows: 673:3-a Training. 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 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, which may be 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.	§70 – no change
2 New Paragraph; Local Land Use Boards; Staff; Finance. 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.	§71 – no change
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.	§72 – first sentence, changes “shall” to “may”; second sentence is unchanged.
4 Local Land Use Planning and Regulator Powers; Innovative Land Use Controls. Amend RSA 674:21, IV(a) to read as follows:	Deleted.



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<p>(a) "Inclusionary zoning" means land use control regulations which <i>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</i> 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, growth control exemptions, and a streamlined application process. <i>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.</i></p>	
<p>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. <i>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.</i> If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.</p>	§73 – unchanged.
<p>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 and the applicant does not consent to an extension, 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.</p>	§74 – unchanged.
<p>7 Workforce Housing: Definition. Amend RSA 674:58, IV to read as follows:</p>	Deleted.



<p>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.</p>	
<p>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). In the case of a determination by the board that the application is a development of regional impact requiring notice in accordance with RSA 36:57, III, the board shall have an additional 30 days to act to approve, conditionally approve, as provided in subparagraph (i), or disapprove. 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 and the applicant does not consent to an extension pursuant to subparagraph (f), 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.</p>	<p>§75 – unchanged.</p>



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<p>(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.</p>	
<p>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 requirement for planning board action within the time periods specified in subparagraph (c) and consent to such extension as may be mutually agreeable.</p>	§76 – unchanged.
<p>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.</p>	Deleted.
<p>11 Planning and Zoning; Rehearing and Appeal Procedures; Priority. RSA 677:5 is repealed and reenacted to read as follows:</p>	Deleted.



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<p>677:5 Priority. 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.</p>	
<p>12 New Subdivision; Fee Shifting and Posting of Bond. Amend RSA 677 by inserting after section 19 the following new subdivision:</p> <p style="text-align: center;">Fee Shifting and Posting of Bond</p> <p>677:20 Fee Shifting and Posting of Bond.</p> <p>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.</p> <p>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.</p>	<p>§77 – unchanged.</p>
<p>13 Municipal Economic Development and Revitalization Districts; Definition of Public Use. Amend RSA 162-K:2, IX-a to read as follows:</p> <p>IX-a. "Public use" means:</p> <p>(a)(1) The possession, occupation, and enjoyment of real property by the general public or governmental entities[;].</p> <p>(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[;].</p> <p>(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].</p> <p>(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.</p>	<p>§78 – requirement added to seek local legislative body approval:</p> <p><i>“(5) If separately adopted by the city or town by the procedure described in RSA 162-K:1, 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</i></p>



<p><i>(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.</i></p> <p>(b) Except as provided in subparagraphs (a)(2), and (4), <i>and (5)</i> 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.</p>	<p><i>from private development or private commercial enterprise. The municipality shall not acquire property for this purpose through the powers of eminent domain.”</i></p>
<p>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:</p> <p>(h) Lease all or portions of basements, ground and second floors of the public buildings constructed in the district; and</p> <p>(i) Negotiate the sale or lease of property for private development if the development is consistent with the development program for the district[-]; <i>and</i></p> <p><i>(j) Acquire, construct, reconstruct, improve, alter, extend, operate, maintain or promote residential developments aimed at increasing the available housing stock within the municipality.</i></p>	<p>§79 – adds language echoing new adoption requirement in §78.</p>
<p>15 Community Revitalization Tax Relief; Duration of Tax Relief Period. Amend RSA 79-E:5, II to read as follows:</p> <p>II. The governing body may, in its discretion, add up to an additional [2] <i>4</i> years of tax relief for a project that results in new residential units and up to [4] <i>an additional 8</i> years for a project that includes [affordable] housing <i>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.</i></p>	<p>Deleted.</p>
<p>16 New Subdivision; New Hampshire Housing Champion Certification. Amend RSA 12-O by inserting after section 64 the following new subdivision:</p> <p style="text-align: center;">New Hampshire Housing Champion Certification</p> <p>12-O:65 New Hampshire Housing Champion Certification.</p> <p>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.</p>	<p>Deleted.</p>



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.

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 planning and development 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.

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

(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.

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

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

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.



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<p>(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.</p> <p>(c) The commissioner of the department of business and economic affairs, or designee.</p> <p>(d) The executive director of the business finance authority, or designee.</p> <p>(e) The executive director of the New Hampshire housing finance authority, or designee.</p> <p>(f) The executive director of the community development finance authority, or designee.</p> <p>(g) The executive director of the state commission for human rights, or designee.</p> <p>(h) One member appointed by each of the following entities:</p> <p>(1) The New Hampshire Municipal Association.</p> <p>(2) The New Hampshire Association of Regional Planning Commissions.</p> <p>(3) Housing Action New Hampshire.</p> <p>(4) Clean Energy New Hampshire.</p> <p>(5) The Home Builders and Remodelers Association of New Hampshire.</p> <p>(6) The New Hampshire Association of Realtors.</p> <p>(7) The New Hampshire Planners Association.</p> <p>(8) Plan New Hampshire.</p> <p>VI. Members of the advisory board shall serve without compensation, except that legislative members of the board shall receive mileage at the legislative rate when attending to the duties of the board.</p> <p>VII. The office of planning and development shall adopt rules pursuant to RSA 541-A to implement the provisions of this section no later than July 1, 2023. During the rulemaking process, the office of planning and development shall consult with relevant state agencies and entities that administer the programs and funds identified under paragraph II to ensure the rules for the New Hampshire housing champion certification program are not in conflict with the rules of these state agencies and entities.</p> <p>VIII. Each year the office of planning and development shall develop a report which describes all actions taken related to the operation of the housing champion certification program and assesses the overall impact of the housing champion certification program, including an assessment of the additional housing units produced in the state as a result of the program's operation and incentives. The report required by this paragraph shall be submitted to the governor, the speaker of the house of representatives, and the president of the senate on or before November 1 of each year, beginning in 2022, and upon such submission, the report shall be posted online on the website of the office of planning and development.</p>	
	Effective dates: all sections effective 60 days after Governor's signature, except §75, which will take effect 1/1/2023.

