

THE STATE OF NEW HAMPSHIRE HOUSING APPEALS BOARD



Governor Gallen State Office Park
Johnson Hall, 107 Pleasant Street
Concord, New Hampshire 03301
Telephone: (603) 271-1198
TTY/TDD Relay: (800) 735-2964
Visit us at <https://hab.nh.gov>

April 21, 2025

Senator James P. Gray, Chairman
Members of Senate Finance
Senate Finance Committee
107 North Main Street, Room 103
Concord, New Hampshire 03301

Re: Fiscal Year 2026/2027 Budget

Chairman Gray and Members of Senate Finance:

I am in receipt of your letter and enclosed summons dated March 31, 2025.

On behalf of the Housing Appeals Board ("HAB"), I am pleased to come before your committee to testify as to our agency's budget and contribution to the Granite State. The HAB appreciates the Legislature's obligation to oversee the budget process and the duties it must perform as it considers challenging issues and negotiates competing interests presented in this particular upcoming biennium.

The HAB was enacted in July of 2020, and it officially began accepting appeals in January of 2021 following completion of hiring necessary staff. In the following years, the HAB subsequently survived several attempts to repeal its statutory authority and eliminate it altogether. The HAB benefited from consistent support from those with a focus on and interest in matters of housing and land use. Notably, this support originated from both sides of the aisle in the public and private sectors, and it has led to a greater awareness and understanding of how the HAB plays a key role in addressing the issues that are, paradoxically, both symptoms of and contributing factors to the ongoing housing crisis in our State.

In April of 2025, the House passed an amendment to HB 2 that eliminates the HAB in order to achieve a purported cost savings for the New Hampshire citizenry. The intent of this amendment to HB 2 was preserved in HB 1-A, as amended by the House, whereby the four (4) personnel positions that comprise the entirety of our agency are abolished "60 days following the passage of this act..." (HB 1-A, p. 716).

Keeping in mind the foregoing, I come before this Senate Finance Committee tasked, in part, with addressing "significant and substantial budget issues" concerning our agency. Put bluntly, the HAB's significant and substantial budget issues for the upcoming biennium are single in count: we are repealed and have no budget, save for what is appropriated to pay termination wages and benefits. The HAB, contrary to the initial proposal of the House, hereby respectfully requests that this committee restore the HAB's budget as it was recommended by the Governor and retain our four (4) currently filled personnel positions.

To assist in your consideration of this request, the Housing Appeals Board submits the following information as attachments to this memorandum:

1. Table: Review of Fiscal Year 2024 Actuals and Fiscal Year 2025 Adjusted Authorized.
2. Office of the LBA 4/10/2025 "Compare House to Governor" Budget Report.
3. Table: Requested Changes to HB 1 and HB 2, as submitted to the LBA on 4/17/2025.
4. HAB Docket Statistics Breakdown.
5. Flowchart: HAB Appeal Proceedings Timeline.

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6. Comparison – HAB and Superior Court.
7. The General Court’s 2020 Findings in Support of Enacting RSA 679.
8. New Hampshire RSA 679 – HAB’s Enabling Statute.
9. Reappointment and Commissioning Documents for the three (3) HAB Board Members.
10. Letter in Support of the HAB from Gregory E. Michael, Esquire, dated April 15, 2025.
11. Chen, Brian. (2021). *New Hampshire’s Housing Appeals Board: A Surgical Approach to State Land-Use Intervention*. Manhattan Institute. <https://media4.manhattan-institute.org/sites/default/files/new-hampshires-housing-appeals-board-state-land-use-BC.pdf>.

Lastly, and with brevity in mind, I present these additional thoughts:

- The HAB operates within its statutory mandate on the principles of what we have come to refer to as the “3 E’s”: Efficiency – Expertise – Expense. All parties to an appeal before our board can expect to have their appeal matter adjudicated in an expeditious manner with reduced expenses in legal fees and to receive a comprehensive decision from a panel comprised of three administrative judges who possess varying and extensive backgrounds in the technical, legal, and practical disciplines that are required at every level of a land use and/or housing endeavor.
- In a time when there is a focus on transparency in government, the HAB is a model for other government agencies in its accessibility to the public, user-friendliness, and historical response times to 91-A and other record review requests. There are no automated phone answering systems to navigate through that may create barriers for appeal parties and citizens attempting to submit an inquiry or a request for assistance. Such communication, including written correspondence, is received and responded to directly by the board’s Clerk.
- When RSA 679 was enacted in 2020, the General Court published its findings in support of the HAB. It declared, in part, that citizens were often abandoning their legal right to appeal decisions of local land use boards because of the time and expense it would cost to pursue remedies through Superior Court. In 2024, the Legislature passed a “Land Use Review Docket” within the Superior Court that made an effort to mimic the HAB’s appeal timelines. However, the HAB was never intended to be replaced by a Superior Court docket; it was always meant to be an alternative appeal track to such avenue. Interestingly, the Land Use Review Docket has ultimately experienced similar issues that plagued the Court’s dockets prior to the HAB’s enactment – that high volumes of criminal cases take precedence over land use matters due to constitutional protections that ensure citizens involved in criminal matters have the right to a speedy trial.
- Finally, and in specific response to the House’s 2025 finding that the elimination of the HAB produces a cost savings: the reality of the situation suggests that the opposite is true. I will rest within the four corners of my hereto attached documents to support such position.

We at the Housing Appeals Board are resolved in our commitment to the valuable public service that this agency provides to New Hampshire in the fulfillment of its statutory mandate. We therefore request that you, Mr. Chairman, and your esteemed committee members would (1) restore our personnel positions abolished in HB 1 and (2) restore the funding for our budget as recommended by the Governor. Should this committee require any further information to aid in its deliberations, I will accommodate such inquiries without hesitation.

Respectfully,



Elizabeth M. Menard, Clerk
Housing Appeals Board

FY 2024 Actual Expenses		FY 2025 Adjusted Authorized
	\$ 451,085	\$ 584,410
Revenue	\$ 7,750	Increase of approx. 29.56% between FY24 and FY25

- In FY24, ~89% of HAB budget went toward Salary & Benefits (“S&B”).
- Adjusted authorized figures for FY25 show ~84% of funds allocated for S&B.
- These percentages remain approximately the same across FY26 and FY27, where ~89% and ~90% of funds, respectively, are appropriated for S&B.
- Remainder of funds allocated for discretionary and non-discretionary operational expenses.

FY 2026 Governor Approved		
	\$ 560,270	Decrease from FY25 by approx. 4.13% Governor Approved lower than HAB request.
FY 2027 Governor Approved		
	\$ 588,412	Increase from FY26 by approx. 5.02% Increase from FY25 by approx. 0.68% Governor Approved lower than HAB request.

- Budget differences in FY24 and FY25 resulted from salary step increases, reclassification of one (1) position and subsequent differential pay, changes in legal research and case management software, as well as an increase in funding for per diem payments to board members appointed by the New Hampshire Supreme Court on a temporary basis (see RSA 679:8) out of Class 050 due to vacancies on the board.

COMPARE HOUSE TO GOV

CATEGORY: 01 GENERAL GOVERNMENT
DEPARTMENT: 14 ADMINISTRATIVE SERVICES DEPT
AGENCY: 063 HOUSING APPEALS BOARD
ACTIVITY: 630010 HOUSING APPEALS BOARD
ORGANIZATION: 5584 NH HOUSING APPEALS BOARD

CLS	DESCRIPTION	FY2024 ACTUAL	FY2025 ADJ AUTH	FY2026			FY2027		
				GOV	HOUSE	DIFF	GOV	HOUSE	DIFF
010	Personal Services-Perm. Classi	60,055	48,927	65,092	16,273	-48,819	67,905	0	-67,905
011	Personal Services-Unclassified	195,778	255,365	264,178	171,092	-93,086	278,450	180,612	-97,838
017	FT Employees Special Payments	0	11,302	1	0	-1	1	0	-1
018	Overtime	0	500	1	0	-1	1	0	-1
020	Current Expenses	1,898	5,550	2,000	0	-2,000	2,000	0	-2,000
022	Rents-Leases Other Than State	530	1,500	500	0	-500	500	0	-500
026	Organizational Dues	0	250	1	0	-1	1	0	-1
027	Transfers To Oit	6,086	13,966	20,502	0	-20,502	20,093	0	-20,093
028	Transfers to Plant & Prop	16,297	19,092	14,396	0	-14,396	14,626	0	-14,626
030	Equipment New/Replacement	634	1,000	500	0	-500	600	0	-600
039	Telecommunications	3,185	3,500	2,916	0	-2,916	2,917	0	-2,917
049	Transfer to Other State Agenci	145	154	154	0	-154	154	0	-154
050	Personal Service-Temp/Appointe	6,300	10,653	10,000	0	-10,000	10,000	0	-10,000
057	Books, Periodicals, Subscripti	562	1,500	700	0	-700	700	0	-700
060	Benefits	145,340	186,038	171,200	101,887	-69,313	182,257	98,223	-84,034
062	Workers Compensation	581	797	823	0	-823	901	0	-901
065	Board Expenses	0	150	1	0	-1	1	0	-1
066	Employee training	0	2,000	500	0	-500	500	0	-500
070	In-State Travel Reimbursement	254	1,200	500	0	-500	500	0	-500
080	Out-Of State Travel	0	1	1	0	-1	1	0	-1
089	Transfer to DAS Maintenance Fu	0	965	1,064	0	-1,064	1,064	0	-1,064
103	Contracts for Op Services	13,440	20,000	5,240	0	-5,240	5,240	0	-5,240
TOTAL EXPENSES		451,085	584,410	560,270	289,252	-271,018	588,412	278,835	-309,577

ESTIMATED SOURCE OF FUNDS FOR NH HOUSING APPEALS BOARD									
009	Agency Income	8,250	0	0	0	0	0	0	0
	General Fund	442,835	584,410	560,270	289,252	-271,018	588,412	278,835	-309,577

COMPARE HOUSE TO GOV

CATEGORY: 01 **GENERAL GOVERNMENT**
DEPARTMENT: 14 **ADMINISTRATIVE SERVICES DEPT**
AGENCY: 063 **HOUSING APPEALS BOARD**
ACTIVITY: 630010 **HOUSING APPEALS BOARD**
ORGANIZATION: 5584 **NH HOUSING APPEALS BOARD**

CLS	DESCRIPTION	FY2024 ACTUAL	FY2025 ADJ AUTH	FY2026			FY2027		
				GOV	HOUSE	DIFF	GOV	HOUSE	DIFF
TOTAL FUNDS		451,085	584,410	560,270	289,252	-271,018	588,412	278,835	-309,577

Requested Changes to HB1 and HB2, as submitted to the LBA on April 17, 2025.

Department:	Housing Appeals Board						
Compare Page #	130-131						
Position Number:	FY 2026			FY 2027			
	House Budget	Change	Revised Budget	House Budget	Change	Revised Budget	
Accounting Unit:	01-14-063-630010-5584						
Class	010	\$ 16,273	\$ 48,819	\$ 65,092	\$ -	\$ 67,905	\$ 67,905
Class	011	\$ 171,092	\$ 93,086	\$ 264,178	\$ 180,612	\$ 97,838	\$ 278,450
Class	017	\$ -	\$ 1	\$ 1	\$ -	\$ 1	\$ 1
Class	018	\$ -	\$ 1	\$ 1	\$ -	\$ 1	\$ 1
Class	020	\$ -	\$ 2,000	\$ 2,000	\$ -	\$ 2,000	\$ 2,000
Class	022	\$ -	\$ 500	\$ 500	\$ -	\$ 500	\$ 500
Class	026	\$ -	\$ 1	\$ 1	\$ -	\$ 1	\$ 1
Class	027	\$ -	\$ 20,502	\$ 20,502	\$ -	\$ 20,093	\$ 20,093
Class	028	\$ -	\$ 14,396	\$ 14,396	\$ -	\$ 14,626	\$ 14,626
Class	030	\$ -	\$ 500	\$ 500	\$ -	\$ 600	\$ 600
Class	039	\$ -	\$ 2,916	\$ 2,916	\$ -	\$ 2,917	\$ 2,917
Class	049	\$ -	\$ 154	\$ 154	\$ -	\$ 154	\$ 154
Class	050	\$ -	\$ 10,000	\$ 10,000	\$ -	\$ 10,000	\$ 10,000
Class	057	\$ -	\$ 700	\$ 700	\$ -	\$ 700	\$ 700
Class	060	\$ 101,887	\$ 69,313	\$ 171,200	\$ 98,223	\$ 84,034	\$ 182,257
Class	062	\$ -	\$ 823	\$ 823	\$ -	\$ 901	\$ 901
Class	065	\$ -	\$ 1	\$ 1	\$ -	\$ 1	\$ 1
Class	066	\$ -	\$ 500	\$ 500	\$ -	\$ 500	\$ 500
Class	070	\$ -	\$ 500	\$ 500	\$ -	\$ 500	\$ 500
Class	080	\$ -	\$ 1	\$ 1	\$ -	\$ 1	\$ 1
Class	089	\$ -	\$ 1,064	\$ 1,064	\$ -	\$ 1,064	\$ 1,064
Class	103	\$ -	\$ 5,240	\$ 5,240	\$ -	\$ 5,240	\$ 5,240
	Total	\$ 289,252	\$ 271,018	\$ 560,270	\$ 278,835	\$ 309,577	\$ 588,412
Funding Source:	100% General Funds						

Reason: Restoration to Governor's Recommended Budget.

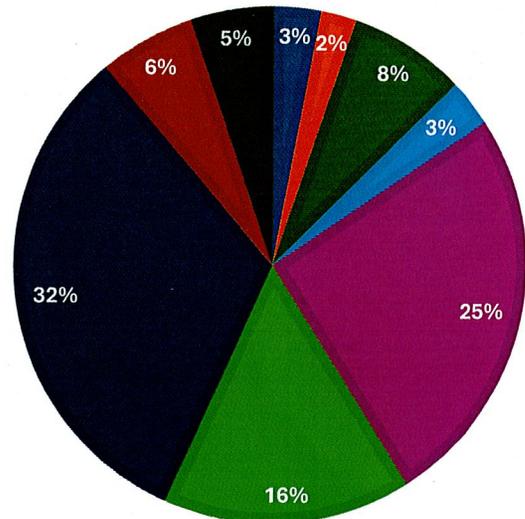
HAB Docket Statistics

- On average, from the date an appeal is filed to the date a final ruling is issued, the duration is approximately **5.33 months**. In early 2024, two of the three board member seats were vacant, which impacted appeal proceeding and decision timelines as the HAB awaited nominations and brought two new members up to speed once they were appointed and commissioned. *2024 averages are not included in this metric.*
- Since its inception, the HAB has issued **approximately 100 decisions**. Of these decisions, only 17 have been appealed to the New Hampshire Supreme Court. The Court declined to hear four (4) of those 17 and affirmed the HAB in every appeal except for two (2) cases – once in 2023, and once in 2024.
- Of the 134 appeals the HAB has received through April 21, 2025, **73.8%** of cases have involved an appeal of a **Zoning Board of Adjustment decision** while **23.1%** of cases have involved an appeal of a **Planning Board decision**.

HAB has received at least 134 appeals through April 21, 2025. The proceedings in these matters have impacted **approximately 2,741 units of housing**. *A calculation has not yet been done to determine the dollar value of these housing units.*

CASES BY COUNTY

■ Belknap ■ Carroll ■ Cheshire ■ Grafton ■ Hillsborough
■ Merrimack ■ Rockingham ■ Strafford ■ Sullivan



14% of petitioners before the HAB are **pro se** (unrepresented).



RSA 679 appeal filed with the HAB.

- Petitioner may file pro se, or be represented by a non-attorney agent, or by an attorney.

The HAB Clerk issues an Order of Notice to Defendant upon Town/City Clerk within 1-2 business days of receiving the appeal.

- This Notice is copied to the petitioner and orders the municipality to file its Appearance, Answer, and Certified Record with the HAB within 30 days of the date of the Notice.

If the moving party is not the applicant at the lower level, the HAB Clerk issues an Order of Notice to the automatic Intervenor (see RSA 679:5, IV) contemporaneously with the Notice being issued to the Defendant.

- This Notice is copied to all parties on appeal.

Within 5 days of filing its appeal with the HAB, the petitioner files its Certification of Service with the HAB.

- This affidavit must be duly notarized and satisfies what would otherwise be the Sheriff Service requirement at Superior Court.
- HAB offers a Certification of Service form on its website for parties to use at their discretion.

Upon receipt of the municipality's Appearance, Answer, and Certified Record filings, the HAB Clerk issues a scheduling Notice to the parties on appeal, docketing the matter for a Prehearing Conference and Hearing on the Merits for the soonest possible dates, and within 90 days of the date the appeal was filed (see RSA 679:6, III).

At the Prehearing Conference (see HAB Administrative Rule Hab 201.18), the HAB explores settlement, addresses any motions or other pending matters before the board, and prepares the matter for the Hearing on the Merits.

- The merits hearing is typically held within two (2) weeks of the Prehearing Conference.

The parties are required to file any optional Memorandum of Law and/or Requests for Findings and Rulings (limited to 15 total requests) no less than seven (7) days prior to the Hearing on the Merits.

Pursuant to RSA 679:6, IV, the HAB shall make a decision on the appeal within 60 days of the date of the Hearing on the Merits. The HAB Clerk issues the written decisions to the parties.

A party who wishes to challenge the HAB decision must file a rehearing motion consistent with RSA 679:15, and within 30 days of the date of the decision Order. If no rehearing motion is properly filed, the HAB Clerk closes the case.

Housing Appeals Board (RSA 679)

- ✓ Offers a three-member panel of administrative judges “who shall individually and collectively be learned and experienced in questions of land use law or housing development or both.” See RSA 679:1.
- ✓ Meaningful and comprehensive review of local land-use decisions.
- ✓ Decisions posted to HAB official State website.
- ✓ Lower filing fee than Superior Court and overall low cost structure with only four (4) employees.
- ✓ Moving party can file pro se, retain attorney representation, or be represented by non-attorney, such as an architect, professional engineer, or licensed land surveyor.
- ✓ Livestreaming of, and remote participation allowed in, proceedings with the utilization of Cisco Webex.
- ✓ Once appeal is filed, the clock starts running.
- ✓ Filings may be submitted by email to clerk@hab.nh.gov.
- ✓ Superior Court Sheriff Service process bypassed.
- ✓ Cases are handled and processed directly by the Clerk.
- ✓ Certified record filed by municipality within 30 days of receipt of appeal notice.
- ✓ Hearing on the merits within 90 days of filing.
- ✓ Decision rendered within 60 days of the merits hearing.
- ✓ Relaxes certain court procedural rules, such as strict rules of evidence.
- ✓ Concurrent, appellate jurisdiction with the Superior Court. HAB retains the power to award all remedies available to Superior Courts, including permission to develop proposed housing.
- ✓ Small government approach: adjudication of appeals based on review of certified record. Local officials’ findings are presumed *prima facie* lawful and reasonable.

Land Use Review Docket (Superior Court)

- × One judge reviews land use appeal matters; this judge does not have the opportunity to deliberate with another peer officer who brings a technical background, such as a professional engineer.
 - * While the judicial officer currently presiding over this docket brings legal experience in questions of land use and real estate law, there is no guarantee that a similarly qualified officer will replace him in instances of recusal or resignation.
- × Higher filing fee than the HAB.
- × High cost structure; one judge supported by a number of legal support personnel and administrative clerks.
- × Complicated online filing system presents challenges to users; deters potentially pro se petitioners.
- × Moving party must complete costly and time-consuming Sheriff Service process.
- × Appeal timeline clock does not immediately begin running from date of filing. Electronic filing system receives land use cases into general online receptacle that requires manual ticket submission to prompt a land use appeal filing to be transferred to the Hillsborough North Superior Court (Land Use Review Docket).
- × Increased cost to municipalities in legal fees.
- × Land use appeals take lower priority on the docket; judge must also hear criminal cases.

A Breakdown of Land Use Review Docket Data

The Housing Appeals Board was provided with a report from the Superior Court that showed certain limited Land Use Review Docket case data reflected within a date range of January 1, 2024 to April 3, 2025.

A review of this information will follow. The HAB notes that a comprehensive analysis of all data was not possible due to a few factors. What is published in this breakdown are figures that the HAB was able to produce by verifying accessible case data through several separate methods. Primarily, the HAB verified the presented information through use of the New Hampshire Judicial Branch's case portal system, Odyssey (<https://www.courts.nh.gov/news-and-media/case-access-portal-here>). The HAB further notes that, in cross-verifying data, it found that the information published in Odyssey was not always up to date.

The report is categorized as “Public” and titled “Case Index.” It lists 79 entries of land use appeal matters that were filed on or after January 1, 2024 through April 3, 2025 at the Land Use Review Docket.

- Of these 79 cases, 54 were identified as appeals of Zoning Board of Adjustment (“ZBA”) decisions; 25 were identified as appeals of Planning Board (“PB”) decisions.
- Of these 79 cases, seven (7) were filed by a pro se petitioner.
- Of these 79 cases, the HAB was able to verify data for 65 of them regarding whether the subject matter on appeal had a housing related component that may have been appealable to the HAB under RSA 679.
 - Of these 65 cases, 29 were found to have a subject matter component that could have fallen under the HAB’s jurisdiction.
 - Of these 29 cases, nine (9) were appeals of a PB decision; 20 were appeals of a ZBA decision.
 - Of these 29 cases, one (1) was filed by a pro se petitioner.

Analysis

- In the span of 15 months, the Land Use Review Docket received approximately 29 land use appeal filings with a housing component appealable under RSA 679 to the HAB. Even if the remaining 14 cases of the 79 filings that the HAB was unable to verify were also thusly appealable to the HAB, that bumps the total up to 43 cases in 15 months. This number is on track with the HAB’s metrics, where the HAB receives, on average, about 33 cases in the span of 12 months.
 - Additional considerations:
 1. Based on information obtained from a Press Release dated January 15, 2024 published by the Judicial Branch, the Superior Court dockets had approximately 70 pending *land use* cases at the end of 2023.
- **What does this tell us?** (1) It is unclear what percentage of the 70 pending 2023 land use cases had a housing component that would have made those cases candidates for appeal to the HAB; (2) if that number of pending land use cases (70) was the total received for all of 2023; and (3) if it was around the total received, that the number of land use appeal filings at the Superior Court has stayed relatively the same *even with* the creation of the Land Use Review Docket. Additionally, we know that housing appeal case filings at the HAB stayed relatively the same in 2024. It tells us that the HAB continues to offer a concurrent appeal avenue, as the General Court intended in 2020, that is still in demand by New Hampshire citizens and other interests.

259 Findings. The general court declares that:

- I. An adequate supply of housing that is affordable to a range of incomes is essential to New Hampshire's economic and community development goals.
- II. Access to an efficient and inexpensive legal appeals process is fundamental to protecting private property rights against unreasonable governmental regulation and processes.
- III. Individual homeowners who are denied local permits for additions or other simple modifications to their homes often abandon their legal right to appeal because of the time and expense involved in a superior court appeal.
- IV. Abutters and other parties with standing to appeal local land use decisions on housing developments often abandon their legal right to appeal because of the costs associated with court appeal.
- V. There are several factors that inhibit builders' ability to meet the demand for new housing in New Hampshire. Significant among these factors are local land use regulations and board practices that can arbitrarily thwart development or impose costly delays. These powers are delegated to municipalities by the state, and must be used in a manner that is consistent with state law.
- VI. Builders may appeal local land use decisions to the superior court, but such appeals are expensive and time consuming, often leading builder to either abandon their appeals or completely avoid seeking development permits.
- VII. The cost of litigating such matters in court is significant, and by establishing an alternative process, but without eliminating the option of court appeals, will help to reduce costs of litigation for all parties.
- VIII. It is appropriate and necessary to establish an alternative track for review of local decisions on housing and housing development without diminishing anyone's existing legal right to pursue a remedy in superior court and without affecting local control or changing the legal standards by which local decisions are adjudicated.

TITLE LXIV PLANNING AND ZONING

Chapter 679 HOUSING APPEALS BOARD

Section 679:1

679:1 Board Established. – There is hereby established a housing appeals board, hereinafter referred to as the board, which shall be composed of 3 members who shall individually and collectively be learned and experienced in questions of land use law or housing development or both. At least one member shall be an attorney licensed to practice law in the state of New Hampshire, and at least one member shall be either a professional engineer or land surveyor. The members of the board shall be full-time employees and shall not engage in any other employment, appointments, or duties during their terms that is in conflict with their duties as members of the board.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:2

[RSA 679:2 effective until January 1, 2025; see also RSA 679:2 set out below.]

679:2 Appointment; Term; Chair. – The members of the board shall be appointed by the supreme court and commissioned by the governor for a term of 5 years and until their successors are appointed and qualified; provided, however, that any vacancy on the board shall be filled for the unexpired term. The initial members of the board shall serve staggered terms of 3, 4, and 5 years. The supreme court shall designate one member as chair to serve in that capacity for the duration of his or her term.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:3

679:3 Removal. – Any member may be removed by the same authority for inefficiency, neglect of duty, or malfeasance in office; but, before removal, the member shall be furnished with a copy of the charges and have an opportunity to be heard in defense.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:4

679:4 Compensation. – Each member of the board shall receive the annual salary prescribed by RSA 94:1-a and reasonable expenses, including transportation, subject to the approval of the governor and council.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:5

679:5 Authority; Duties. –

I. It shall be the duty of the board and it shall have power and authority to hear and affirm, reverse, or modify, in

whole or in part, appeals of final decisions of municipal boards, committees, and commissions regarding questions of housing and housing development. This includes, but is not limited to:

- (a) Planning board decisions on subdivisions or site plans.
- (b) Board of adjustment decisions on variances, special exceptions, administrative appeals, and ordinance administration.
- (c) The use of innovative land use controls.
- (d) Growth management controls and interim growth management controls.
- (e) Decisions of historic district commissions, heritage commissions, and conservation commissions.
- (f) Other municipal permits and fees applicable to housing and housing developments.
- (g) Matters subject to the board's authority may include mixed-use combinations of residential and nonresidential uses. Such different uses may occur on separate properties, provided such properties are all part of a common scheme of development.

II. In exercising its authority under this chapter, the board shall have the power to award all remedies available to the superior courts in similar cases, including permission to develop the proposed housing.

III. Relative to RSA 674:58 through RSA 674:61, the board shall have the power and authority to hear and determine appeals of decisions of local land use boards regarding proposals for workforce housing, including but not limited to whether the municipality's land use ordinances and regulations provide a reasonable and realistic opportunity for the development of workforce housing; whether the local land use board has imposed conditions of approval that render the proposal economically unviable; and whether a denial by a local land use board was unreasonable or unlawful.

IV. After local remedies have been exhausted, appeals may be brought before the board by an applicant to the municipal board, committee, or commission, or by any other aggrieved or injured party who can demonstrate legal standing to appeal pursuant to RSA 677:4 or RSA 677:15. The municipality shall be a party to the action. If the applicant is not the party initiating the action before the board, then the applicant shall automatically be an intervenor. The board shall grant intervenor status to abutters and to any other aggrieved or injured party who can demonstrate legal standing to appeal pursuant to RSA 677:4 or RSA 677:15.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:6

679:6 Timing of Appeals and Board Proceedings. –

I. Appeals shall be filed with the board within 30 days of the final decision of a municipal board, committee, or commission. At the same time an appeal is filed with the board, the applicant shall notify the municipal board, committee, or commission of such appeal.

II. The municipal board, committee, or commission shall within 30 days of receipt of such notice submit to the board a certified record of its proceedings on the matter subject to the appeal.

III. The board shall hold a hearing on the merits within 90 days of its receipt of a notice of appeal.

IV. The board shall make a decision on an appeal within 60 days after conducting a hearing on the merits.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:7

679:7 Jurisdiction; Court Appeals. –

I. In matters within its authority the board shall have concurrent, appellate jurisdiction with the superior court. An election by any party to bring an action before the board shall be deemed a waiver of any right to bring an action in the superior court, but shall not abrogate any party's right to appeal decisions of the board to the supreme court; as such, the board shall retain jurisdiction of any matter originally brought before it. At any time during an appeal to the board, if the board determines that it does not have jurisdiction to hear the appeal, the appellant shall have 30 days to file an appeal with the superior court.

II. In an appeal of a local decision on housing or housing development, any claim that is within the board's authority under RSA 679:5 and that has previously been or is subsequently included in an appeal in superior court by another party to the decision or by any other aggrieved or injured party who can demonstrate legal

standing to appeal pursuant to RSA 677:4 or RSA 677:15 shall automatically be stayed by the court to provide the party with standing the opportunity to intervene in the matter before the board. If intervenor status is granted, the stay of the court action regarding those claims shall continue during the pendency of the appeal to the board. After the board has decided the appeal, the court shall dismiss the matter before it to the extent the matter has been resolved by the board. Any claim included in an appeal to superior court that is not within the board's authority shall not be subject to automatic stay by the court.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:8

679:8 Quorum; Disqualification; Temporary Members. –

- I. In all matters a majority of the board shall constitute a quorum to transact business.
- II. No member of the board shall represent a party or testify as an expert witness or render any professional service for any party or interest before the board, and any member having an interest in the subject matter shall be disqualified to act therein.
- III. If, in the event of a disqualification or temporary disability of a member or members of the board, it shall become necessary to do so, the board, subject to the approval of the supreme court, shall appoint such number of temporary board members as shall be necessary to meet the requirements herein imposed. Such temporary board members shall serve with respect to such matter until the same has been fully disposed of before the board.
- IV. Temporary board members shall have the same qualifications as regular board members in whose place they are acting.
- V. A temporary board member shall be compensated at the rate of \$75 for each day devoted to the work of the board and shall be reimbursed the necessary and reasonable expenses incurred by him or her in the performance of his or her duties.
- VI. In the event of a vacancy on the board, the appellant may elect to continue the proceedings while awaiting the appointment of a successor board member.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:9

679:9 Hearing Procedure; Standard of Review. –

- I. Appeals to the board shall be consistent with appeals to the superior court pursuant to RSA 677:4 through RSA 677:16. Appeals shall be on the certified record, and except in such cases as justice may warrant, in the sole discretion of the board, no additional evidence will be introduced. Consistent with the contested case provisions of RSA 541-A, the rules of evidence shall not strictly apply. In addition to the provisions of RSA 91-A, the board shall record the proceedings of any hearing before it and shall make such recording available to the public for inspection and recording from the date of the hearing to a date which is 15 working days after the board has made a final decision on the matter which is the subject of the hearing, or, if an appeal is made from such decision, the date upon which the matter has been finally adjudicated, whichever date is later.
- II. The board shall not reverse or modify a decision except for errors of law or if the board is persuaded by the balance of probabilities, on the evidence before it, that said decision is unreasonable.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:10

679:10 Representation by Nonattorneys. – Nonattorneys, including professional engineers, architects, and land surveyors, may represent any party before the board. Nothing in this section shall prevent the board from denying representation by any individual it deems to be improper, inappropriate, or unable to adequately represent the interests of the applicant to the municipal board, committee, or commission.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:11

679:11 Board Meetings. – The board's deliberative processes in adjudicatory proceedings held pursuant to RSA 541-A shall be exempt from the public meeting and notice provisions of RSA 91-A. Decisions and orders in adjudicatory proceedings shall be publicly available, but only after they have been reduced to writing, signed by a quorum of the board, and served upon the parties, and shall set forth the board's rulings of law and findings of fact in support of its decisions. Discussions and actions by the board concerning procedural, administrative, legal, and internal matters shall be exempt from the meeting and notice provisions of RSA 91-A:2.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:12

679:12 Rules and Regulations. – The board may adopt rules under RSA 541-A necessary for carrying out its functions including but not limited to rules of procedure to be followed in hearings conducted by it not inconsistent with the provisions of this chapter.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:13

679:13 Administration of Oaths, Subpoenas, Etc.; Fees. – The board shall have authority to administer oaths and to compel the attendance of witnesses to proceedings before it. The board shall have the power to subpoena and subpoena duces tecum. Witnesses compelled to appear shall be paid the same fee and mileage that are paid to witnesses in the superior court of the state. A subpoena or subpoena duces tecum of the board may be served by any person designated in the subpoena or subpoena duces tecum to serve it. Any testimony given by a person duly sworn shall be subject to the pains and penalties of perjury. All applications or petitions to the board for which no filing fee has been otherwise specified by statute shall be accompanied by a \$250 filing fee. Costs and attorney's fees may be taxed as in the superior court.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:14

679:14 Notice. – The board shall serve notice in writing of the time, place, and cause of any hearing upon all parties at least 20 days prior to the date of the hearing.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:15

679:15 Appeal. – Decisions of the board may be appealed to the supreme court by any party in accordance with the provisions of RSA 541 as from time to time amended.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:16

679:16 Enforcement of Decisions. – After a decision of the board becomes final, the board shall, at the request of any party, file a certified abstract thereof in the Merrimack county superior court. The clerk of said court shall forthwith enter judgment thereon and such judgment may be enforced as with any final judgment of

the superior court.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:17

679:17 Staff. – The board shall have such clerical, administrative, and technical staff as may be necessary within the limits of the appropriation made therefor.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:18

679:18 Office. – The board shall be provided with an office in Concord in which its records, documents, and books shall be kept, and with a suitable room in which it may hold hearings.

Source. 2019, 346:260, eff. July 1, 2020.

Section 679:19

679:19 Neglect to Comply With Board's Orders. – Neglect or failure on the part of any municipality to comply with such orders shall be deemed willful neglect of duty, and it shall be subject to the penalties and damages provided by law in such cases.

Source. 2019, 346:260, eff. July 1, 2020.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

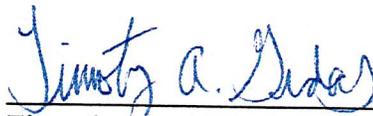
ORDER

In accordance with RSA 679:2, the Supreme Court appoints Attorney David J. Rogers as a member of the Housing Appeals Board to fill the position that became vacant upon Elizabeth R. Fischer's resignation from the Housing Appeals Board on December 31, 2023. Attorney Rogers shall serve the unexpired portion of Elizabeth R. Fischer's five-year term, beginning upon Attorney Rogers's commissioning by the Governor and expiring June 30, 2028.

The Supreme Court designates Attorney Rogers to serve as chair of the Housing Appeals Board for the duration of his term.

Issued: March 5, 2024

ATTEST:



Timothy A. Gudas, Clerk
Supreme Court of New Hampshire



**STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR**

CHRISTOPHER T. SUNUNU
Governor

March 18, 2024

Elizabeth M. Menard
Clerk, NH Housing Appeals Board
Johnson Hall, 107 Pleasant Street
Concord, NH 03301

Dear Ms. Menard,

It is my pleasure to commission David R. Rogers to the Housing Appeals Board in accordance with RSA 679:2 effective March 22, 2024 and for the term ending June 30, 2028.

Pursuant to RSA 15-A, appointees to boards and commissions must file a statement of financial interests in the Secretary of State's office. This process is done online. Access requires a username and password, which is provided to the appointee via email by the agency administrator associated with the position. Questions regarding this process may be directed to the Secretary of State's office at 15-Λ@sos.nh.gov.

If you have any other questions, my office will be happy to assist you. Please feel free to contact Tyler Cullen at 603-271-8797 or tyler.j.cullen@nh.gov.

Sincerely,

A handwritten signature in blue ink that reads "Chris T. Sununu".

Christopher T. Sununu
Governor

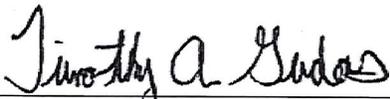
THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

ORDER

In accordance with RSA 679:2, the Supreme Court reappoints Edward L. Rogers, P.E., L.L.S., as a member of the Housing Appeals Board. Mr. Rogers is reappointed to serve a five-year term commencing July 1, 2024, and expiring June 30, 2029.

Issued: June 11, 2024

ATTEST:



Timothy A. Gudas, Clerk of Court
Supreme Court of New Hampshire



**STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR**

CHRISTOPHER T. SUNUNU
Governor

June 13, 2024

Elizabeth M. Menard
Clerk, NH Housing Appeals Board
Johnson Hall, 107 Pleasant Street
Concord, NH 03301

Dear Ms. Menard,

It is my pleasure to commission Edward L. Rogers to the Housing Appeals Board in accordance with RSA 679:2 effective July 1, 2024 and for the term ending June 30, 2029.

Pursuant to RSA 15-A, appointees to boards and commissions must file a statement of financial interests in the Secretary of State's office. This process is done online. Access requires a username and password, which is provided to the appointee via email by the agency administrator associated with the position. Questions regarding this process may be directed to the Secretary of State's office at 15-A@sos.nh.gov.

If you have any other questions, my office will be happy to assist you. Please feel free to contact Tyler Cullen at 603-271-8797 or tyler.j.cullen@nh.gov.

Sincerely,

A handwritten signature in blue ink that reads "Clitch T. Sununu".

Christopher T. Sununu
Governor

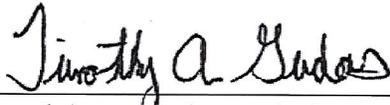
THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

ORDER

In accordance with RSA 679:2, the Supreme Court appoints Stephanie N. Verdile as a member of the Housing Appeals Board to fill the position that became vacant upon Michael A. Klass's resignation from the Housing Appeals Board on January 12, 2024. Stephanie N. Verdile shall serve the unexpired portion of Michael A. Klass's five-year term, beginning upon her commissioning by the Governor and expiring June 30, 2025.

Issued: April 3, 2024

ATTEST:



Timothy A. Gudas, Clerk
Supreme Court of New Hampshire



STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

CHRISTOPHER T. SUNUNU
Governor

April 16, 2024

Elizabeth M. Menard
Clerk, NH Housing Appeals Board
Johnson Hall, 107 Pleasant Street
Concord, NH 03301

Dear Ms. Menard,

It is my pleasure to commission Stephanie N. Verdile to the Housing Appeals Board in accordance with RSA 679:2 effective April 19, 2024 and for the term ending June 30, 2025.

Pursuant to RSA 15-A, appointees to boards and commissions must file a statement of financial interests in the Secretary of State's office. This process is done online. Access requires a username and password, which is provided to the appointee via email by the agency administrator associated with the position. Questions regarding this process may be directed to the Secretary of State's office at 15-A@sos.nh.gov.

If you have any other questions, my office will be happy to assist you. Please feel free to contact Tyler Cullen at 603-271-8797 or tyler.j.cullen@nh.gov.

Sincerely,

A handwritten signature in blue ink that reads "Christopher T. Sununu".

Christopher T. Sununu
Governor

Housing Appeals Board
Attachment No. 10
April 21, 2025

Gregory E. Michael, Esquire
18 Pebble Beach Drive
Bedford, New Hampshire 03110-6125

April 15, 2025

Senator James P. Gray, Chairman
Members of Senate Finance
Senate Finance Committee
107 North Main Street, Room 103
Concord, New Hampshire 03301

Chairman Gray and Members of Senate Finance:

Please accept this letter in opposition to HB2 which, if passed, would eliminate the Housing Appeals Board.

In 2020, the New Hampshire Legislature saw fit to establish a Housing Appeals Board (“HAB”) by enacting NH RSA 679, which provided the establishment of an appellate tribunal comprised of legal, engineering, and housing professionals. Under the Statute, the three-member Board is authorized to hear various appeals related to housing and has concurrent jurisdiction with the Superior Court as it relates to those cases.

As established, the Housing Appeals Board has three distinct advantages over the Superior Court and the recently created Superior Court Land Use Docket:

Speed and Efficiency: RSA 679 requires that all appeals filed with the Housing Appeals Board be heard within 90 days and orders issued within 60 days thereafter. There is no provision for extensions; therefore, in each case the Board must promptly act. I should point out that unlike Superior Court, when a petitioner or representative files their paperwork with the Clerk of the HAB Board, the clock starts running under the HAB statutory time guidelines. The Superior Court requirement to enter the pleadings, have Orders of Notice attached to the pleadings, have the pleadings then served by the Sheriff, and after service the petitioner entering served papers with the Superior Court, is by-passed as a process. The Superior Court’s entire procedure lengthens the process of getting a final decision. Thus, while the new Superior Court Land Use Docket mirrors some of the dates found in RSA 679, those dates are impacted by the Superior Court filing process, as well as the ability of a Judge to delay the hearing for other matters requiring a Superior Court Judge’s attention, such as criminal cases.

Expertise: The Superior Court Land Use Docket has a Judge experienced in dealing with land use matters. However, as the first lawyer/member and Chair of the Housing Appeals Board, I can attest to the fact that having an engineer or surveyor as a member of the Board, together with another individual with land use experience greatly assisted all HAB members in making sound and practical decisions. The Land Use Judge in Superior Court does not have the luxury of that type of input in any given case. Because of the statutory makeup of the Housing Appeals Board, any Applicant can be assured of careful analysis of the issues and a fair decision.

Costs and Expenses: Unlike the Superior Court, where the appealing party must use the services of the County Sheriff to serve a Land Use Petition, the Housing Appeals Board allows the petitioner to directly serve the other party and file a certification of service with the Board. As noted above, this saves significant time and expense to any petitioner. In addition, RSA 679 clearly allows petitioners' surveyor, engineer, or any other qualified person to assist or represent the petitioner. An attorney is not required. While an attorney is not specifically required in Superior Court, it is difficult for most people to navigate the Superior Court procedures without an attorney, which is an added expense.

It is easy to fall into the trap of attempting to correlate the number of cases heard by Housing Appeals Board with the cost of keeping the HAB. If one were to evaluate the cost of maintaining a court system with the number of cases that a particular Court heard, one would be hard-pressed to justify the existence of many Courts or Boards. Courts are not profit-making institutions but provide a necessary service to all citizens. That said, in the case of the Housing Appeals Board, I cannot emphasize enough the impact of speedy resolution of Land Use Cases. If a project is ultimately approved in a quick and efficient manner, a project that could greatly assist our State's housing shortage can move ahead without undue delay. In addition, if a project is properly denied, then a developer or different owner can "re-think" use of the land and possibly design another project which can move ahead expeditiously. As we all know, time is money. Thus, even a few Housing Appeals Board cases can have a significant impact on land development, leading to increased municipal taxes and additional housing in needed areas. To merely divide the cost of keeping the Housing Appeals Board by the number of cases it hears does not reflect the nature of the cases nor the impact they may have on our New Hampshire communities.

If I had any recommendation to the New Hampshire Legislature, it would be not to pass this proposed House Bill and, instead, to rename the HAB the "Land Use Appeals Board" and expand its jurisdiction to include both commercial and industrial cases. Those cases would then receive the benefit of the three critical items referenced above. This would allow an enhanced use of the current Housing Appeals Board resources and provide a welcome alternative for commercial and industrial projects needing quick resolution.

Respectfully submitted,



Gregory E. Michael, Esquire

GEM/pjm

NEW HAMPSHIRE'S HOUSING APPEALS BOARD: A Surgical Approach to State Land-Use Intervention

Housing Appeals Board
Attachment No. 11
April 21, 2025

Brian Chen



MI

About the Author



Brian Chen studies land use and state and local government. He focuses especially on the law, economics, and politics of the housing crisis. Chen graduated from Dartmouth College with an A.B. in Economics and will take his J.D. from the Yale Law School in 2021.

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Executive Summary

Amid worsening housing shortages, states across the country are considering how to reform land-use policy. For a promising model of how to achieve strong reform with relative ease, policymakers ought to look to New Hampshire. Its new Housing Appeals Board (HAB) provides efficient administrative review of local land-use decisions while respecting local autonomy.

HAB represents a light-touch, small-government approach to state land-use policy. The board cannot review legislative enactments such as zoning or subdivision regulations; local governments can choose to zone however they wish. However, HAB does have broad power to review the discretionary and individualized processes, allowing it to reverse arbitrary and abusive decisions. HAB provides a superior alternative to judicial review, as its structure and process allow for a quicker and cheaper resolution of conflicts than the courts.

Because the HAB model is relatively simple to operate once formed, it will be easier to implement and may prove more politically sustainable compared with more direct alternatives such as state-wide planning and widespread preemption. In this report, I will discuss the advantages of HAB's structure as well as the history of its passage, which will offer generalizable lessons about assembling a pro-housing coalition. Finally, I will suggest ways in which the HAB model could be further improved.

NEW HAMPSHIRE'S HOUSING APPEALS BOARD: A Surgical Approach to State Land-Use Intervention

Introduction: New Hampshire's Housing Appeals Board

Context

By any measure, the housing market in the Granite State is unhealthy. Commentators frequently note the state's alarmingly low vacancy rate for both rental and owner-occupied housing.¹ On the heels of an economic boom and a hot housing market, the rental vacancy rate dipped below 1% in 2019 and was just 1.8% in July 2020.² For comparison, a healthy rental market has a vacancy rate of approximately 5%, and the nationwide rental vacancy rate was 6.6% in July 2020.

Meanwhile, rents in New Hampshire continue to accelerate at a rate far above inflation. New Hampshire faces challenges on both the supply and demand sides of the housing equation. On the demand side, New Hampshire's quality of life, low taxes, and proximity to Boston are key. To this day, New Hampshire is the only state that lacks both a general income and sales tax. Even Democratic candidates for office in the state often take "The Pledge," promising not to impose any broad-based taxes. In the words of Governor Chris Sununu: "Southern New Hampshire is a tax-free suburb of Boston."³ The state also has good schools, minimal crime, and low unemployment. Consequently, New Hampshire has managed to attract many more residents than the other two states in northern New England: Vermont and Maine. Decades of inward migration have led to soaring housing demand that now contributes to the state's housing crisis.

On the supply side, New Hampshire faces the same problem as its New England neighbors: overly restrictive zoning. New Hampshire exemplifies the "homevoter" model of governance—one in which the influence of homeowners is especially large, which tends to favor measures that reduce the risk of adverse impacts to property values.⁴ Traditions of local control and public finance only exacerbate the problem; small jurisdiction sizes, town-meeting direct democracy, and a reliance on property taxation have much to commend them, but they also help create the perfect political conditions for restrictive zoning.

The Nuts and Bolts

Given New Hampshire's bias toward local control, any statewide land-use reform would need to strike a balance between local control and statewide interests. HAB does just that, by acting primarily as a procedural intervention without relying on heavy-handed state mandates. In doing so, it respects localism while attempting to address the state's housing crunch. While HAB cannot rewrite zoning ordinances or subdivision regulations, it has broad authority to "hear and affirm, reverse, or modify, in whole or in part" a host of individualized local board decisions. Moreover, HAB has the ability to deem denied permits and applications approved and thus is able to order local governments to allow projects to proceed.

As an example of what HAB would be able to hear, consider the case of William and Monique Tanner in Hancock, New Hampshire.⁵ They had hoped to convert their property, which is in a historic district, from a triplex to a sin-

gle-family home to retire to. As part of their plans, they wanted to rebuild the garage in the same location, which required a variance to setback requirements. The local zoning board denied the variance, despite the fact that keeping the garage in the same location would be more in line with surrounding properties and the historic district's existing character. This case, because it involves an individualized decision, represents the type of local government overreach that HAB could correct.

HAB's broad authority means that there is very little that local governments can dream up to evade its scope. HAB has the power to review traditional decisions, such as planning board decisions on subdivisions and site plans and zoning board decisions on variances, special exceptions, administrative appeals, and ordinance administration. But it can also review land-use controls related to growth management, historic preservation, conservation, and workforce housing (i.e., inclusionary or subsidized housing). The board's authority also extends to all other relevant permits and fees, matters related to mixed-use development, and the broadly defined "innovative land-use controls."

HAB—which is modeled on the state's Board of Tax and Land Appeals, which handles assessment disputes outside the judicial system—provides an administrative alternative to the judicial system. In land-use matters related to housing, it possesses concurrent jurisdiction with the New Hampshire Superior Court, and its decisions can be appealed to the New Hampshire Supreme Court, just as superior court cases can.⁶ But HAB is faster and less expensive than traditional judicial review. Timing is key in real-estate development, and delays can often kill projects. HAB is less formal than the court system and relaxes certain procedural rules, such as strict rules of evidence. The board has only three full-time members and operates on a slim budget of \$415,000. It also draws on nonlegal expertise: the first HAB consists of an attorney, a real-estate broker and a third party to be named later.⁷ Appellants can also choose to be represented by nonlawyer experts, including professional engineers, architects, or land surveyors.

In addition to its low cost structure, HAB works quickly. Appellants must file appeals within 30 days of receiving a final decision from the local government. The local government then has 30 days to respond and produce records of its proceedings. HAB then must hear the case within 90 days, and render a decision within 60 days of the hearing. The whole process, therefore, should take no longer than 180 days from receiving a final decision from the local government. By comparison, the judicial appeals process can often take several years.⁸

Because HAB only started taking cases in January 2021, we do not yet know how deferential it will be to local governments. Like those of many other states, New Hampshire's state courts are rather deferential to local governments. The standard for judicial review of discretionary land-use decisions presumes that local officials' findings of fact are "*prima facie* lawful and reasonable"—a high standard.⁹ It remains to be seen how HAB will implement this requirement, but it can overrule local governments for "errors of law or if ... persuaded by the balance of probabilities, on the evidence before it, that said decision is unreasonable," just as in superior court. Given the less legalistic nature of the board, it should have more leeway than the judicial system in challenging local governments' reasoning.

Procedural History

HAB was the result of a long and contentious process. In 2018, a bipartisan coalition led by Republican senator Bob Giuda introduced S.B. 557, which would establish a statewide board that would expedite review of local land-use decisions.¹⁰ Ultimately, the bill passed the state senate and was retained in the house. A renewed effort came in 2019 with a more aggressive bill, H.B. 104.¹¹ H.B. 104 died in committee almost instantly, but the original sponsors' version, S.B. 306, lived on. The primary difference between the two bills was the board's composition and selection.¹² Most notably, the House version, which was drafted without consulting the original sponsors, shifted responsibility for appointments from the Supreme Court to the Governor—which was likely to result in a more political HAB that is less deferential to local governments. Ultimately, the Senate passed their bill with the intention of incorporating it into the state budget. When it did so, the outcry was enormous.

Land-use politics does not cleave along partisan lines. Opponents of development run the gamut from exclusionary Republicans to anti-gentrification and environmentalist Democrats. HAB generated significant opposition from both the left and right ends of the political spectrum.¹³ Despite strong opposition to HAB, the issue was overshadowed by more contentious issues in the budget negotiations between Republican governor Sununu and the Democratic state legislature. The governor initially vetoed the proposed budget primarily because of differences over business taxes.¹⁴ In the compromise that eventually emerged, the senate version of the Housing Appeals Board survived.¹⁵

The creation of HAB shows the potential power of even a single enthusiastically pro-housing legislator. Senator Giuda continuously championed the bill through the

ordinary legislative and budgetary process, and it is much to his credit that it passed into law.¹⁶ It is also of note that HAB was passed by a Democratic legislature—with support from a Republican governor and the state’s business community—as part of a broader deal on the state budget.¹⁷ There may be something to using budget negotiations, or any complex process with other salient issues, to enact structural change. For example, North Carolina used its 2017 budget cycle to pass OPEB reform, eliminating retirement health insurance for future government employees and improving the state’s fiscal solvency.¹⁸ A complex budget negotiation provides opportunities for bargaining not seen in regular legislation, reducing the transaction costs of assembling a pro-housing coalition.

The dynamics that led to HAB’s passage underscore some of the political economy dynamics that are common with land-use policy. In particular, the governor’s and the business community’s support for HAB are to be expected. Theoretically, the governor is likely to be the most pro-housing elected official in a state.¹⁹ The governor represents and is elected by the entire state, which ensures that the governor is invested in the economic success of the state. The governor also must answer to constituencies beyond parochial homevoters, who are less dominant in higher-turnout statewide elections. One of these constituencies—business interests—is a major pro-housing constituency because higher housing costs increase labor costs. In the case of HAB, it may have been especially helpful that the primary issue with the budget was business taxes, ensuring that business interests were maximally engaged.

To ensure a broader coalition, HAB offered a significant win to advocates of “workforce housing”, which includes subsidized units but is broader. In addition to its broad role in reviewing a wide variety of individual land-use decisions, HAB takes on a narrower and more powerful role in handling appeals for workforce housing. The board has the authority to override zoning ordinances for subsidized housing development in what is known as a builder’s remedy. In this regard, HAB mirrors the appeals process for subsidized housing common in other northeastern states. This marriage of convenience between supporters of market-rate housing and subsidized housing is not unique to New Hampshire. When Minneapolis engaged in its citywide rezoning, a similar coalition formed to abolish single-family zoning—a much more radical move than New Hampshire’s HAB.²⁰

Predictably, when HAB became law, its opponents did not quit. They introduced numerous repeal bills.²¹ Workforce housing advocates proved an important

voice against its repeal, turning out in force at senate hearings to defend HAB.²² So far, legislative efforts to repeal HAB have been unavailing, and even if they did manage to pass, they would face Governor Sununu’s veto pen. HAB appears here to stay. Policymakers in other states interested in structural land-use reform would do well to engage the same constituencies in assembling a pro-housing coalition.

Analysis

Comprehensive Coverage

The key strength of HAB—and why it is likely to be effective—is its broad coverage of all individualized land-use decisions outside the traditional zoning and subdivision ordinances. In recent decades, additional tools such as planned unit developments (PUDs), aesthetic and architectural review, conservation, growth management, and historic preservation have proliferated. While these tools allow for more tailored policymaking, they also present additional veto points for neighbors to agitate against new development.

HAB does not curtail local governments’ discretionary land-use power, but it does create a meaningful safeguard against its abuse. In doing so, it preserves the benefits of discretion—namely, flexibility and tailoring—while preventing local governments from using unfettered discretion to unfairly stall development. More generally, this model of individualized review for individual land-use decisions serves as a check on the increasing complexity of land-use procedure.

HAB’s comprehensive authority is important because local governments can often find creative workarounds when faced with constraints on their authority, thereby contravening the spirit, if not the letter, of state policy. But because HAB covers all existing and future forms of discretionary land-use authority, local governments cannot evade HAB oversight via “innovative” land-use controls. Moreover, local governments cannot easily substitute other powers to evade HAB oversight. For example, they cannot replace discretionary processes with small-scale rezonings, which often require voter approval and are therefore difficult to achieve. And because even small-scale zoning changes are more visible than individualized decisions, the state can more easily preempt them. For example, New Hampshire preempts local government regulation of accessory dwelling units (ADUs), also known as “granny flats.”²³ Local governments that chafe at the state’s preemption

law have passed restrictions of questionable legality, such as preventing ADUs from being rented out.²⁴ HAB's coverage of fees is also key. A local government that disfavors development but that has its regulatory authority curtailed may instead resort to fees to tax new development. In these types of situations, HAB has the power to prevent local governments from acting illegally in a less cumbersome process than going to court.

Channeling Discretion with a Small-Government Approach

Even though HAB's power is broad, it is far from a state takeover of local land use. While HAB can support other state interventions, such as New Hampshire's ADU preemption law, it does not independently divest local governments of any power. This is a feature, not a bug, of HAB. In comparison with more radical state-level land-use reforms, local governments still retain broad discretion over individual land-use decisions. But most important, HAB does not impose any new limitations on local governments' lawmaking ability—namely, their zoning and subdivision ordinances.

Fundamentally, HAB's approach is one that respects localism. Local governments can still zone as restrictively as they wish but can no longer opaquely restrict development through ad hoc decisions. In response, local governments are likely to attempt to avoid HAB oversight by shifting away from individualized decisions and toward zoning amendments. But this response, if it does occur, would not mean that HAB has been rendered ineffective. Such a shift would reflect a healthier balance between discretionary decision-making and larger-scale zoning. Increased discretion in recent decades has caused zoning ordinances to be less reflective of a jurisdiction's actual disposition toward development.²⁵ If HAB does nothing but encourage greater transparency on the part of local governments—what legal scholars would refer to as information-forcing—it would still be a win. Legal certainty is an inherent good that minimizes information costs, allowing more efficient transactions and bargaining while reducing the amount of litigation.²⁶ By getting a better read on a local government's actual baseline of land-use restriction, developers can better decide which projects are worth attempting.

These are not the only benefits that HAB is likely to produce; the board's presence may also bring about a substantial reduction in the actual level of restrictiveness of local land-use regulations. One reason local governments prefer a wait-and-see, discretionary approach is to maximize negotiating leverage. By forcing developers to bargain over most everything,

local governments can more easily force concessions such as exactions and impact fees. By policing exactions, HAB prevents local governments from abusing their advantaged bargaining positions to arbitrarily escalate their demands. In this way, HAB is a “developer's approach” that smooths along the development process.

Moreover, discretionary processes are likely to result in more restrictive outcomes because they empower antidevelopment neighbors more than supporters of development. In recent years, scholars have become much less sanguine about individualized land-use decisions. In particular, they have noted that small-scale decisions tend to motivate immediate neighbors prone to NIMBYism more than the diffuse pro-housing coalition.²⁷ This is because neighbors bear most of any new development's negative externalities, such as congestion. On the other hand, supporters of development, such as renters and business interests, have relatively little stake in any individual project, even if they care about the size of the overall housing stock. The end result of this political economy problem is that NIMBYs are often the only voices in the room. This imbalance in motivation results in decisions being biased against development, even when the disposition of a jurisdiction's electorate is relatively pro-development.

Shifting control of land-use policy back toward more comprehensive zoning is likely to resolve some of this asymmetry. When addressing the overall size of the housing stock rather than individual projects, political participation will tend to be more pluralistic and thus more reflective of the actual costs and benefits of development (rather than considering only the costs). Thus, in addition to blocking local government abuses, HAB nudges local governments into making less restrictive land-use decisions without forcing them to do so. This balanced approach keeps with New Hampshire's localist traditions and avoids foisting new development onto communities that truly resist the idea. However, HAB should simultaneously help level a playing field slanted toward NIMBYs.

Another advantage of HAB is that it does not require a large state administrative bureaucracy to create and enforce land-use policy, in contrast with some other approaches. By using an individual appeals process, HAB does not intervene unless there is a real, live controversy. Ultimately, HAB is a relatively light-touch intervention that is quick, easy, and inexpensive to set up. While larger states will have more disputes than New Hampshire does, HAB's approach is scalable enough to be replicable across the country.

Better than the Courts

The substitution of an efficient administrative process for a cumbersome judicial one may be the most meaningful part of the HAB model. For decades, courts have promised to intervene when local governments overstep their bounds in land-use regulation; yet their efforts have consistently fallen flat.²⁸ Ultimately, the key problems with a judicial appeals process are cost, speed, and a lack of expertise. HAB resolves each of these issues in turn. HAB's more informal structure helps cut down on time and costs, making it likely that aggrieved developers and landowners will prefer to bring claims to HAB.

One reason that courts have struggled to effectively check local government power in context of land-use decisions is that land use is very difficult, requiring significant expertise and local knowledge. Here, HAB's innovative structure has much to commend it. Generalist judges are often poorly equipped to handle the fact-intensive work of interrogating the alleged rationales behind land-use decisions. Thus, courts tend to be deferential to local governments in the land-use context. Sometimes they are bound by formal doctrine, as is the case in New Hampshire, but they may simply feel uncomfortable deciding land-use issues.

Because HAB has nonlawyer subject-matter experts, it can provide more meaningful review of local land-use decisions. New Hampshire's move toward a quasi-legal review process is a tacit acknowledgment that land-use decisions are a fact-intensive, rather than law-intensive, process. By involving lawyers as well as nonlawyer land-use experts, HAB is able to question the proffered reasoning for local land-use decisions. And because its experts feel more comfortable challenging local governments' justifications, they should be more willing to act as well. The bottom line is that it should get cases right more often than courts do and be less prone to local government misdirection.

Comparison with Other State Approaches

It is worth comparing the New Hampshire HAB model with the three other approaches to land-use reform that have gained purchase: statewide planning, subsidized housing, and direct preemption. HAB possesses key advantages over all three approaches but also has the potential to supplement (limited) direct preemption.

Statewide Planning

In the statewide planning model of higher-level intervention, states mandate that local governments create comprehensive land-use plans, generally every seven to 10 years. The most relevant part of these comprehensive plans is the "housing element," which targets a number of new housing units to keep up with expected population growth. State agencies forecast expected population changes and must approve the comprehensive plans, including the housing element. Once passed, the comprehensive plans are supposed to bind local land-use regulations and decisions. This is a centralized approach where mandates come from the state, though local governments have flexibility in how they implement the mandate.

The statewide planning approach arises from an era when land-use planning was in vogue on the West Coast.²⁹ California, Washington, and Oregon are among its most prominent adopters. Interestingly, these planning regimes originated when growth control and management were the latest buzzwords in land use. But while statewide planning was traditionally used to limit development, these states—especially California—have attempted to repurpose the model to promote greater housing development.

For a variety of reasons, the statewide planning approach has not shown results thus far. The first reason is that states have not been willing to enforce their mandates on local government. Historically, the penalties for noncompliance with the housing element were minor to nonexistent. Recent legislation in California, however, may help give the housing element more teeth, by making it a binding and self-executing contract on the part of local governments. If the state fully realizes this vision, developers will be able to apply for permits under the authority of the housing element alone, notwithstanding a conflicting zoning ordinance. However, California is not quite there yet, and its housing laws are uniquely convoluted and opaque.

The second and more fundamental reason is the difficulty, if not impossibility, of centralized planning. Land-use decisions, in particular, require a significant amount of local knowledge. Setting the housing targets for local governments has proved to be an especially thorny task for state planners; metrics such as population growth projections, affordability, and job growth all have serious issues.

Statewide planning also invites regulatory capture, given that some coordination with local governments is necessary for state planners to determine realistic targets; therefore, local officials can influence the



process to set housing targets that are comically off the mark. Beverly Hills in 2018 famously exceeded its eight-year affordable housing target by a staggering 200%.³⁰ The target was *three* singular units. The town built nine.

Moreover, given the approach's complexity, statewide planning requires a large administrative apparatus that is infeasible in any state besides California—and it may be too much even for California. California has been at the game for decades and only now seems to be getting somewhere in fits and starts. Even in the northeastern states fond of large government—namely, every state besides New Hampshire—it is difficult to see how they would be able to develop the bureaucratic infrastructure needed.

Subsidized Housing

This approach is defined by its exclusive focus on state-level intervention for subsidized housing. The most notable adherents to this approach are New Jersey, Connecticut, Rhode Island, Massachusetts, and now, with HAB's establishment, New Hampshire.³¹ The approach pays no attention to the overall size of the housing stock in a jurisdiction but rather the fraction of the housing stock that is available as subsidized units, typically by deed restriction. Generally, states set targets for each jurisdiction at a uniform level, usually 10%, or use more convoluted jurisdiction-specific calculations.

Any jurisdiction meeting the state's subsidized housing target is immunized from state intervention in its land-use affairs. Any local government that fails to meet the state's target faces state override of its zoning ordinance for proposed developments with a substantial percentage of subsidized units, typically 20%–25%. Developers who propose such projects and are denied permission by the local government can appeal the decision to a state-level body that has the power to deem the project approved—the builder's remedy. Recall that HAB is New Hampshire's appellate body for subsidized (“workforce”) housing and possesses the builder's remedy in addition to its other roles.

These states' exclusive focus on subsidized housing is fundamentally misguided. If HAB only addressed subsidized housing, it would not be a promising model. Ultimately, subsidized housing is only a small fraction of the housing stock, and the number of units generated by such an approach hardly makes a dent in the Northeast's generally high housing costs. However, as discussed in the history of HAB's passage, advocates of subsidized housing can play an important role in a

coalition for new development of both market-rate and subsidized housing.

Direct Preemption

Direct preemption is probably the approach to state land-use reform gaining the most momentum today.³² In this approach, the state simply prevents local governments from zoning or regulating in a particular way. It is perhaps the simplest approach but also the least respectful of local autonomy. Direct preemption is not new, but it has historically focused on rather specific uses such as group homes, family day-care homes, and manufactured housing.³³ The new direct preemption is different in that it targets the general housing supply—the number of housing units and the forms of housing available. Thus far, states have mostly used preemption to chip away at single-family zoning. California, New Hampshire, Vermont, Oregon, and Washington require most local governments to allow ADUs in single-family zones. Oregon has since extended this concept further, banning single-family zoning altogether in most cities and requiring that they allow at least traditional duplexes.³⁴ In recent years, bills have been introduced in California to preempt not only single-family zoning but also a broader range of restrictive zoning around transit and job nodes. The efforts have met with fierce opposition and, so far, have not passed.³⁵

While preemption can loosen local zoning, the approach may be too blunderbuss. In addition to potentially resulting in suboptimal project siting, broad preemption may not work for many jurisdictions. For example, even broad preemption of single-family zoning would not do much in New York City, where very little residential land is zoned for detached single-family houses. At the other end of the spectrum, it would also be unlikely to do much in rural New England states like New Hampshire, where a major limit on development is the frequent lack of municipal water and sewer services.

An additional issue with direct preemption is that local governments often deploy their residual regulatory authority to resist state incursions. The history of California's ADU preemption laws provides a vivid example of local governments' creativity.³⁶ When local governments lose part of their zoning authority, they often resort to non-zoning land-use controls, including parking requirements, discretionary processes, and fees, to achieve the same end. Thus, for direct preemption to be successful, states must preempt wide swaths of local governmental regulatory authority, not just zoning—including authority that usually serves a legitimate end but has the potential for abuse. The blunt



nature and enforcement challenges of preemption should caution state policymakers against relying too heavily on it to boost housing production.

This is not to say that states should avoid all preemption. Direct preemption is perhaps best understood as a means of diversifying the housing stock. Single-family homes dominate the American housing landscape, and preemption can make more diverse housing forms—the “missing middle” between high-rises and detached homes—available. Limited preemption can be politically sustainable and have positive effects on the housing stock. ADU preemption, for example, does work. After several attempts, California’s ADU preemption law was able to start generating a meaningful number of accessory units; 20% of new housing units in Los Angeles are now ADUs.³⁷ Moreover, ADUs have minimal effect on the appearance and character of neighborhoods, limiting their perceived downsides compared with more general preemption. However, preemption should play only a modest role in state housing policy.

A key strength of HAB’s appeals process is that it complements this sort of limited preemption. Given

that local governments often use their residual authority to stall unwanted development despite preemption, HAB makes it more difficult for them to run around state law. In doing so, HAB may obviate the need for more extreme preemption laws and result in preemption regimes that are more respectful of local authority. While HAB cannot compensate for a poorly designed preemption law, the availability of an appeals structure should encourage states to lean toward more flexible preemption regimes. States choosing between additional preemption and better enforcement of existing preemption through a mechanism like HAB should try better enforcement first.

Conclusion and Next Steps

It remains to be seen how much success New Hampshire HAB will ultimately have in alleviating the state’s housing crisis. But its model of state land-use policy is conceptually promising. HAB is perhaps best understood as minimally invasive surgery to carve out a metastasizing cancer. The approach is ultimately respectful of local autonomy, allowing local

governments to adopt restrictive zoning codes if they so choose but no longer allowing them the discretion to maintain permissive zoning codes in theory while placing innumerable obstacles to new development in practice. It is fundamentally a small government and pro-localist approach to state land-use reform—one that is transferable to other states. In particular, other states in the Northeast with an appeals process for subsidized housing units could easily adapt their infrastructure to create a HAB-like body.

Still, New Hampshire and other states should consider potential improvements to the HAB model. States should put additional distance between HAB and the judicial process. Moving the appointments process from the judicial branch to the governor, as one version of the HAB bill did, would be helpful. Currently, by law, the state supreme court appoints a board consisting of at least one attorney and at least one professional engineer or land surveyor to staggered five-year terms. Members of the public are invited to apply online, and the justices select the members of HAB. It would make sense to shift this power to the state executive, given that the governor is more likely to understand the housing needs of the state and be able to balance competing interests. Relaxing HAB's deference to local governments—while instituting more deferential

judicial review of HAB—would further strengthen its prerogatives. The legislature can, and should, clarify these standards of review to give HAB sufficient leeway to operate.

However, instituting gubernatorial appointment may not be practical in the short term. Proponents of HAB vigorously cited its nonpartisan judicial appointment process in supporting the bill, and creating the perception that the body is partisan could destabilize the coalition supporting it. Still, New Hampshire's relatively unpolarized politics should make it easier to move in this direction. In other states that attempt to emulate the HAB model, proponents should consider whether a judicial selection process is necessary to assemble a coalition and should opt for gubernatorial selection if politically viable.

HAB is not a panacea for all the housing market's ills, but it is a strong start. As a procedural, rather than substantive, reform, HAB should be easier to implement and more politically sustainable than more ambitious proposals. At the same time, it has the potential to deliver meaningful results. Any state that is considering how to begin to address land-use reform would be wise to look to New Hampshire for inspiration.

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