Bill as Introduced

HB 446 – AS INTRODUCED

2003 SESSION

03-0646
08/09

HOUSE BILL ***446***

AN ACT relative to building permits.

SPONSORS: Rep. Bickford, Straf 68

COMMITTEE: Municipal and County Government

ANALYSIS

This bill eliminates the requirement that the building inspector withhold a building permit application if the application was filed after the first legal notice of a proposed change in the building code.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 446 – AS INTRODUCED

03-0646
08/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to building permits.

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

1 Repeal. RSA 676:12, relative to withholding building permits, is repealed.

2 Effective Date. This act shall take effect 60 days after its passage.

Amendments

Municipal and County Government
March 6, 2003
2003-0507h
08/03

Not Used

Amendment to HB 446

Amend the bill by replacing section 1 with the following:

1 Building Permits. RSA 676:12 is repealed and reenacted to read as follows:

676:12 Building Permits to be Withheld in Certain Cases.

I. The building inspector shall not issue any building permit within the 120 days prior to the annual town or village district meeting if:

(a) Application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7; and

(b) The proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit.

II. After final action has been taken on the proposed changes in the building code or zoning ordinance, the building inspector shall issue or refuse to issue a permit which has been held in abeyance under this section pursuant to a final action under this section.

III. The provisions of paragraph I shall not be applicable in a city or in a county in which there are located unincorporated towns or unorganized places unless the governing body of the city or the county votes by majority vote to be subject to the provisions of such paragraph.

IV. The building inspector may be authorized by the local legislative body to issue a temporary occupancy permit not to exceed 30 days, which may be extended at the discretion of the building inspector.

V. No building permit shall be denied on the grounds of uncompleted streets or utilities when the construction of such streets or utilities has been secured to the municipality by a bond or other security approved by the planning board pursuant to RSA 674:36, III or RSA 674:44, IV; provided, however, that on land which is part of a subdivision plat or site plan, no building shall be used or occupied prior to the completion of required streets and utilities, except upon such terms as the planning board may have authorized as part of its decision approving the plat or site plan.

VI. The provisions of paragraph I shall not apply to any plat or application which has been formally accepted by the planning board pursuant to RSA 676:4, I(b) prior to the first legal notice of a proposed change in a building code or zoning ordinance or any amendment thereto. No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application formally accepted by the planning board pursuant to RSA 676:4, I(b) so long as said plat or application was accepted prior to the first legal notice of said change or amendment.

2003-0507h

AMENDED ANALYSIS

This bill limits the requirement that the building inspector withhold a building permit application to the first legal notice of proposed changes in the building code or zoning ordinance or 120 days, whichever is shorter.

Municipal and County Government
March 6, 2003
2003-0585h
08/09

Amendment to HB 446

Amend the bill by replacing section 1 with the following:

1 Building Permits. RSA 676:12 is repealed and reenacted to read as follows:

676:12 Building Permits to be Withheld in Certain Cases.

I. The building inspector shall not issue any building permit within the 120 days prior to the annual or special town or village district meeting if:

(a) Application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7; and

(b) The proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit.

II. After final action has been taken on the proposed changes in the building code or zoning ordinance, the building inspector shall issue or refuse to issue a permit which has been held in abeyance under this section pursuant to a final action under this section.

III. The provisions of paragraph I shall not be applicable in a city or in a county in which there are located unincorporated towns or unorganized places unless the governing body of the city or the county votes by majority vote to be subject to the provisions of such paragraph.

IV. The building inspector may be authorized by the local legislative body to issue a temporary occupancy permit not to exceed 30 days, which may be extended at the discretion of the building inspector.

V. No building permit shall be denied on the grounds of uncompleted streets or utilities when the construction of such streets or utilities has been secured to the municipality by a bond or other security approved by the planning board pursuant to RSA 674:36, III or RSA 674:44, IV; provided, however, that on land which is part of a subdivision plat or site plan, no building shall be used or occupied prior to the completion of required streets and utilities, except upon such terms as the planning board may have authorized as part of its decision approving the plat or site plan.

VI. The provisions of paragraph I shall not apply to any plat or application which has been formally accepted by the planning board pursuant to RSA 676:4, I(b) prior to the first legal notice of a proposed change in a building code or zoning ordinance or any amendment thereto. No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application formally accepted by the planning board pursuant to RSA 676:4, I(b) so long as said plat or application was accepted prior to the first legal notice of said change or amendment.

2003-0585h

AMENDED ANALYSIS

This bill limits the requirement that the building inspector withhold a building permit application to the first legal notice of proposed changes in the building code or zoning ordinance or 120 days, whichever is shorter.

Hearing Minutes

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

PUBLIC HEARING ON HB 446

BILL TITLE: relative to building permits.

DATE: February 10, 2003

LOB ROOM: 301 **Time Public Hearing Called to Order:** 11:55 AM

Time Adjourned: 12:20 PM

(please circle if present)

Committee Members: Reps. Patten, Brundige, Lockwood, Twombly, Boyce, Dumaine, Stohl, Noyes, Buhlman, Doyle, C. Dunne, Dupuis, Gillick, Gould, M. Pappas, N. Johnson, M. Cooney, Davidson, Osborne, Schmidt and Theberge.

Bill Sponsors: Rep. Bickford, Straf 68

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Bickford, Dist 68
Introducing bill at request of selectmen. Feels present law can be abused and used to prohibit illegally.

John Mammone, Selectman, Middleton
Planning board holds a public hearing and their decision becomes law until legislative body makes final decision.

Ben Frost, NH OSP
Opposes this bill. The present law codifies common law. It gives predictability and prevents a "race to the town hall door." This bill would thwart good planning. There is a judicial remedy for unreasonable use of zoning regulations.

Gary Bernier, New Hampshire Municipal Association
This legislation would encourage non-conforming uses. Developers would rush to get permits between the posting and the vote of the town. Opposes the bill.

Respectfully submitted,

Priscilla P. Lockwood

Priscilla P. Lockwood, Clerk
Municipal and County Government

Testimony

File HB 446

OFFICE OF STATE PLANNING
STATE OF NEW HAMPSHIRE
2½ BEACON STREET - CONCORD 03301-4497
TELEPHONE: 603-271-2155
FAX: 603-271-1728

February 10, 2003

Hon. Betsey Patten, Chair
House Municipal and County Government Committee
Legislative Office Building, Room 301
Concord, NH 03301

Subject: HB 446, Repealing RSA 676:12

Dear Chairman Patten:

The Office of State Planning takes this opportunity to express its opposition to HB 446, which would repeal RSA 676:12. This statute provides for a predictable process for the impact of municipal land use regulation changes upon the issuance of building permits. It contains a safe harbor provision for developers whose applications are accepted by a planning board prior to the first public posting of a proposed regulatory change (RSA 676:12, V). It serves to clearly codify an important aspect of the law of vested rights.

Repeal of this statute would leave the question of vested rights open to judicial interpretation, as was the case prior to the promulgation of the statute. Indeed, property owners and developers are afforded greater protection from local regulatory changes than they had been under common law prior to its enactment. For example, in Cesere v. Windham, 121 N.H. 522 (1981), the NH Supreme Court found that a developer did not have the right to proceed with an otherwise approved project where the town had posted a zoning change after the project application had been accepted by the planning board. Such a result would not happen today under RSA676:12.

As it is currently stands, RSA 676:12 provides a significant level of predictability in the development application process as it relates to regulatory changes. Its repeal would reduce predictability and lead to potentially unfair results.

Thank you for this opportunity to provide comment on this bill. If you have any questions, please feel free to call me at 271-2155.

Sincerely,

Benjamin D. Frost

cc: Rep. Bickford

Voting Sheets

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

EXECUTIVE SESSION on HB 446

BILL TITLE: **relative to building permits.**

DATE: March 18, 2003

LOB ROOM: 301

Amendments:

Sponsor: Rep. Patten — OLS Document #: 2003 0585h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Schmidt

Seconded by Rep. Gould

Amendment

Vote: 11-0 (Please attach record of roll call vote.)

Motions: OTP, (OTP/A), ITL, Interim Study (Please circle one.)

Moved by Rep. Theberge

Seconded by Rep. Stohl

Vote: 11-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 11-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Priscilla P. Lockwood, Clerk

OFFICE OF THE HOUSE CLERK 2003 SESSION

MUNICIPAL AND COUNTY GOVERNMENT

Bill #: HB 446 **Title:** relative to bldg permits

PH Date: 2/10/03 **Exec Session Date:** 3/18/03

Motion: OTP **Amendment #:** 2003-0585h

MEMBER	YEAS	NAYS
Patten. Betsey L. Chairman	11	
Brundige. Robert W. V Chairman	1	
Lockwood. Priscilla P	2	
Twomblv. James E	3	
Bovce. Laurie J	absent	
Dumaine. Dudlev Daniels	absent	
Pappas. Marc	4	
Dunne. Christopher H	absent	
Stohl. Eric G	5	
Noves. Richard A	absent	
Buhlman. David L	absent	
Dovle. Christopher L	absent	
Dupuis. Roland L	absent	
Gillick. Thomas J	absent	
Gould. Kenneth H	6	
Johnson. Nancv K	absent	
Coonev. Marv R	absent	
Davidson. Robert A	absent	
Osborne. Jessie L	7	
Schmidt. Peter B	8	
Theberge. Robert L	9	
Thomas, John	10	
TOTAL VOTE:	11	0

Printed: 1/6/2003

MUNICIPAL AND COUNTY GOVERNMENT

Bill #: HB446 Title: relative to bldg. permits

PH Date: 2/10/03 Exec Session Date: 3/18/03

Motion: OTP-A Amendment #:

MEMBER	YEAS	NAYS
Patten. Betsey L. Chairman	11	
Brundige. Robert W. V Chairman	1	
Lockwood. Priscilla P	2	
Twombly. James E	3	
Boyce. Laurie J	absent	
Dumaine. Dudley Daniels	absent	
Pappas. Marc	4	
Dunne. Christopher H	absent	
Stohl. Eric G	5	
Noyes. Richard A	absent	
Buhlman. David L	absent	
Doyle. Christopher L	absent	
Dupuis. Roland L	absent	
Gillick. Thomas J	absent	
Gould. Kenneth H	6	
Johnson. Nancy K	absent	
Cooney. Mary R	absent	
Davidson. Robert A	absent	
Osborne. Jessie L	7	
Schmidt. Peter B	8	
Theberge. Robert L	9	
Thomas, John	10	
TOTAL VOTE:	11	0

Printed: 1/6/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: **Municipal and County Government**

BILL NUMBER: **HB 446**

TITLE: relative to building permits.

DATE: March 18, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill would have eliminated the requirement that building inspectors withhold a building permit application if the application was filed after the first legal notice of a proposed change in the building code or zoning ordinance. Currently a petitioned article to amend a zoning ordinance has to be submitted within 120 days of an annual meeting. If the amendment proposed might negate a building permit, the building inspector has the authority to withhold the permit. The committee approved an amendment that puts Planning Board proposed amendments on the same time table. The amendment replaces section I of RSA 676:12 to read:

I. The building inspector shall not issue any building permit within the 120 days prior to the annual or special town or village district meeting if:

(a) application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7 and

(b) the proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit.

Vote 11-0.

Rep. Robert L. Theberge
FOR THE COMMITTEE

blp

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Municipal and County Government

HB 446, relative to building permits. **OUGHT TO PASS WITH AMENDMENT**

Rep. Robert L. Theberge for Municipal and County Government: This bill would have eliminated the requirement that building inspectors withhold a building permit application if the application was filed after the first legal notice of a proposed change in the building code or zoning ordinance. Currently a petitioned article to amend a zoning ordinance has to be submitted within 120 days of an annual meeting. If the amendment proposed might negate a building permit, the building inspector has the authority to withhold the permit. The committee approved an amendment that puts Planning Board proposed amendments on the same time table. The amendment replaces section I of RSA 676:12 to read:

I. The building inspector shall not issue any building permit within the 120 days prior to the annual or special town or village district meeting if:

(a) application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7 and

(b) the proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit. **Vote 11-0.**

COMMITTEE REPORT

COMMITTEE: **Municipal and County Government**

BILL NUMBER: **HB 446**

TITLE: relative to building permits.

DATE: March 18, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

re zoning ordinance

This bill would have eliminated the requirement that building inspectors withhold a building permit application if the application was filed after the first legal notice of a proposed change in the building code. Currently a petitioned article to amend a zoning ordinance has to be submitted within 120 days of an annual meeting. If the amendment proposed might negate a building permit, the building inspector has the authority to withhold the permit. The committee approved an amendment that puts ~~any~~ Planning Board proposed amendments on the same time table. The amendment replaces section I of RSA 676:12 to read:

I. The building inspector shall not issue any building permit within the 120 days prior to the annual or special town or village district meeting if:

(a) application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7 and

(b) the proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit.

Vote 11-0.

Rep. Robert L. Theberge
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

COMMITTEE REPORT

COMMITTEE: **Municipal and County Government**

BILL NUMBER: **HB 446**

TITLE: relative to building permits.

DATE: March 18, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

would have
This bill eliminates the requirement that building inspectors withhold a building permit application if the application was filed after the first legal notice of a proposed change in the building code. The amendment replaces section I of RSA 676:12 to read:

I. The building inspector shall not issue any building permit within the 120 days prior to the annual or special town or village district meeting if:

(a) Aapplication for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7 and

(b) the proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit.

Vote 11-0.

Rep. Robert L. Theberge
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

(1) Currently a petitioned article to ~~change~~ amend a zoning ordinance has to be submitted within 120 days of an ~~The committee approved an amendment that~~ ~~will~~ annual meeting. If the amendment proposed might negate a building permit, the building inspector had the authority to withhold the permit.

(2) the committee approved an amendment that ~~requires~~ puts ~~the~~ any Planning Board proposed amendments on the same time table.

HB 446, relative to building permits.
Ought to Pass with Amendment
Rep. Robert L. Theberge for Municipal
and County Government.

This bill eliminates the requirement that the building inspector withhold a building permit application if the application was filed after the first legal notice of a proposed change in the building code. The amendment replaces section 1 of RSA 676:12 to read:

I The building inspector shall not issue any building permit within the 120 days prior to the annual or special town or village district meeting if:

(a) Application for such permit is made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7 and

(b) The proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit

Vote 11-0

Robert L. Theberge
3/18/03