Bill as Introduced

HB 722-FN – AS INTRODUCED

2003 SESSION

03-1090
06/09

HOUSE BILL ***722-FN***

AN ACT relative to land use changes.

SPONSORS: Rep. Hutchinson, Rock 75

COMMITTEE: Municipal and County Government

ANALYSIS

This bill allows 50 registered voters to protest a land use change before the planning board. Receipt of a protest petition shall suspend planning board action on the plan and shall cause the local governing body to hold a special town meeting to approve the land use change. The special meeting shall be binding on the planning board if 70 percent of the voters who voted in the last municipal election vote in the special meeting.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 722-FN – AS INTRODUCED

03-1090
06/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to land use changes.

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

1 New Paragraph; Land Use Change Protest Petition. Amend RSA 674:35 by inserting after paragraph II the following new paragraph:

III. Residents of the municipality may protest any land use change pending before the planning board by presenting a petition signed by 50 registered voters of the municipality to the board, with a copy to the governing body. Upon receipt of the protest petition, the planning board shall suspend any action on the proposed land use change until such time as the proposed change has been put before the voters in a special town meeting. Upon receipt of the protest petition, the governing body of the municipality shall schedule a special town meeting for the purpose of approving such land use change. The vote of such special town meeting shall be binding on the planning board if 70 percent of the voters who participated in the most recent municipal election vote at the special meeting. If less than 70 percent of said voters vote at the special meeting, the result shall not be binding on the planning board and no further protest petitions on the land use change shall be allowed.

2 Effective Date. This act shall take effect January 1, 2004.

LBAO
03-1090
1/28/03

HB 722-FN - FISCAL NOTE

AN ACT relative to land use changes.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill as it is awaiting information from the Department of Revenue Administration and the N.H. Municipal Association. When completed, the fiscal note will be forwarded to the House Clerk's Office.

LBAO
03-1090
Revised 2/4/03

HB 722 FISCAL NOTE

AN ACT relative to land use changes.

FISCAL IMPACT:

The New Hampshire Municipal Association states this bill may increase local expenditures by an indeterminable amount in FY 2004 and each year thereafter. There will be no fiscal impact on state, county, and local revenue or state and county expenditures.

METHODOLOGY:

The Association states this bill amends RSA 674:35 relative to the power of municipalities to regulate subdivisions to provide a mechanism by which 50 residents of a municipality may protest any land use change pending before the planning board by filing a petition, which would suspend further planning board action. The filing of the petition would also require the governing body to schedule a special town meeting for the purpose of acting on the proposed land used change, and the vote of the meeting would be binding on the planning board if a sufficient number of voters attended. This bill could result in increased municipal costs due to the costs incurred in calling and holding a special town meeting (i.e. – hall rental and setup/breakdown, checklist review sessions, election official pay). There would also be the potential for additional litigation costs if the voters at the meeting denied (or approved) a proposal in a manner contrary to local regulations, state law, or the state or federal constitution.

The Department of Revenue Administration states this bill will have no fiscal impact on the Department.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 722 Date 3/4/03

Committee M+CG Relative to land use changes

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
Karen Hutchinson	Rep. Londonderry		Dist. 75	✓	
Ken Hajjar	Wheelhouse Rd, Londonderry	432-0001	self		X
Tom Dolan	19 Isabella Drive, Londonderry	434-5461	Self		X

Hearing Minutes

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

PUBLIC HEARING ON HB 722-FN

BILL TITLE: relative to land use changes.

DATE: March 4, 2003

LOB ROOM: 301 **Time Public Hearing Called to Order:** 9:32 AM

Time Adjourned: 10:10 AM

(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. Hutchinson, Rock 75

TESTIMONY

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

Rep. Hutchinson, Dist 75
This bill returns some power back to the people from the planning board and selectmen. Zoning cannot list every land use, so people should be able to vote on changes. AES plant in Londonderry was an example of zoning compliance but unwanted by the populace. The bill requires greater number of petitioners than usual warrant articles.

Gary Bernier, New Hampshire Municipal Association
Some of these are really problems, but this bill is not the way to solve them. The bill would take away planning board authority. Cost would be a 28-A issue. It also allows voters to veto an otherwise legal situation. This could lead to litigation. Zoning enactment should be the forum for incompatible uses.

Ken Hajjar, Londonderry Budget Committee
Opposes the bill. Could backfire and have the process stopped when it is a process most want. Zoning has been updated and worked on in Londonderry. Should be local decision.

***Tom Dolan, Londonderry Town Council**
See written testimony.

Gary Abbott, Association General Contractors
Opposes the bill. Agree that special interest groups could control.

Respectfully submitted,

Priscilla P. Lockwood

Priscilla P. Lockwood, Clerk
Municipal and County Government

Testimony

File HB 722

TOWN OF LONDONDERRY

Town Manager

50 Nashua Road - Suite 100
Londonderry, NH 03053-3416
website: www.londonderry.org
Main: 432-1100 Ext. 120 FAX: 432-1128

February 25, 2003

Betsey L. Patten, Chairman
Municipal and County Government Committee
Room 301 - Legislative Ofc. Building
Concord, NH 03301

RE: HB722

Dear Chairman Patten:

On behalf of the Londonderry Town Council, please accept my thanks for the opportunity to comment on House Bill 722, an act relative to land use changes, and introduction of a Land Use Change Protest Petition mechanism.

The Town Council, at its February 24, 2003 meeting, voted to oppose the passage of this Legislation for a number of reasons. First, it is unknown how this bill would be implemented in the face of current state statutes. Most New Hampshire towns are required to place zoning amendments on the Official Ballot at the Annual Meeting. Should a protest petition be received, would the municipality be required to schedule a Special Town Meeting, when in all likelihood the Annual Meeting is scheduled to take place within the 30-60 days? Cities and other New Hampshire towns like Londonderry have adopted charters whereby the Town or City Council acts as the Legislative Body for the purposes of acting upon ordinance changes. Accordingly, this bill would be ineffectual in those communities, unless local voters determined that a charter revision was pursued according to RSA 49-B.

RSA 675:5 currently provides a mechanism to file a protest petition by those property owners most directly impacted by a zoning change, which would then require a super majority of 2/3 for passage. Finally, it is unknown whether this legislation was intended to give voters an opportunity to voice their concerns on any particular land use application before the local planning board. However, the Courts have long held that municipalities cannot "spot" zone a single lot or a small group of lots where the allowed uses are out of character and context with surrounding land uses. I would venture to guess that the Court's response would be similar when reviewing a mechanism whereby a particular land use application could be thwarted by the process proposed by this legislation, even though the proposal would otherwise meet all requirements of that particular zone.

I would encourage the Committee to recommend defeat of HB722. Please call upon me should I be able to provide any additional information.

Sincerely,

David R. Caron
Town Manager

cc: Londonderry Reps.
File

File HB 722

Comments by Tom Dolan on HB 722 to: 3-4-2003

Betsey L. Patten, Chairman
Municipal and County Government Committee
Room 301 - Legislative Ofc. Building
Concord, NH 03301

Good Morning Chairman Patten. My name is Tom Dolan. I am from Londonderry in Rockingham County and proudly serve my community as it's Vice Chair of the Town Council.

On behalf of the Londonderry Town Council, please accept my thanks for the opportunity to comment on House Bill 722, an act relative to land use changes, and introduction of a Land Use Change Protest Petition mechanism.

The Londonderry Town Council, at its February 24, 2003 meeting, voted unanimously to oppose the passage of this Legislation for a number of reasons. First, it is unknown how this bill would be implemented in the face of current state statutes. Most New Hampshire towns are required to place zoning amendments on the Official Ballot at the Annual Meeting. Should a protest petition be received, would the municipality be required to schedule a Special Town Meeting, when in all likelihood the Annual Meeting is scheduled to take place within the 30-60 days? Some cities and other New Hampshire towns like Londonderry have adopted charters whereby the Town or City Council acts as the Legislative Body for the purposes of acting upon ordinance changes. Accordingly, this bill would be ineffectual in those communities.

Madame Chair, Londonderry is a beautiful southern NH community known for it superb school system and postcard-like apple orchards. However, like many NH communities, we in Londonderry are seeing the rural character of our town being seriously threatened by large commercial developments. These developments can often bring traffic patterns along major corridors to unsafe levels. In the last couple of years, we have had over 10 deaths on Londonderry's roads (excluding Interstate 93).

Londonderry recently created a Performance Zone along a stretch of NH Route 102 and is now considering a similar measure along a portion of NH Route 28 near exit 5 on Interstate Route 93. Londonderry's Performance Zone was modeled after the Performance Zone in Bedford, NH. This proposed legislation would attempt to halt these types of proactive measures in their tracks by what could be a small coalition of 50 developers and realtors. Many communities, working hard to preserve their community character and quality of life, could then find themselves thrown into a myriad of special town meetings funded by local taxpayers.

The genesis of this Bill apparently had something to do with a promise made by the Bill's sponsor in the aftermath of the state siting of a natural gas-fired power plant in Londonderry's industrial zone just south of the airport. Whether you were in favor of the power plant siting or not, this Bill would have had no impact on the power plant's

location in Londonderry. It was sited by the state EFSEC and not by the Londonderry Planning Board. The land for the power plant was already zoned industrial and did not require a land use change for the state to site it in its location. It would seem more prudent to craft legislation around the state siting process rather than putting limitations on local Planning Boards if a desire exists to restrict the power plant siting process.

RSA 675:5 currently provides a mechanism to file a protest petition by those property owners most directly impacted by a zoning change, which would then require a super majority of 2/3 for passage. This proposed legislation may give voters an opportunity to veto any particular land use application before the local planning board. However, the Courts have long held that municipalities cannot "spot" zone a single lot or a small group of lots where the allowed uses are out of character and context with surrounding land uses. I would venture to guess that the Court's response would be similar when reviewing a mechanism whereby a particular land use application could be thwarted by the process proposed by this legislation, even though the proposal would otherwise meet all requirements of that particular zone.

Ironically enough the proposed Bill would have little to no impact to a charter town like Londonderry since we have a budgetary town meeting. The legislative body, the Town Council, approves zoning changes. This Bill however could negatively impact other non-charter towns. I would encourage the Committee to recommend defeat of HB722.

This Bill presents you with an important question: Will land use issues in the small towns of NH be administered by local Planning Boards and elected officials who are accountable to the voters, or instead be managed by small groups of developers and realtors accountable only to their clients?

Thank you. I look forward later this morning to testifying (this time) in favor of another Bill you are considering.

Voting Sheets

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

EXECUTIVE SESSION on HB 722-FN

BILL TITLE: **relative to land use changes.**

DATE: March 18, 2003

LOB ROOM: 301

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Brundige

Seconded by Rep. Boyce

Vote: 15-0 (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE: 15-0

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Priscilla P. Lockwood, Clerk

MUNICIPAL AND COUNTY GOVERNMENT

Bill #: HB 722 **Title:** Land use Changes

PH Date: 3/4/03 **Exec Session Date:** 3/18/03

Motion: ITL **Amendment #:**

MEMBER	YEAS	NAYS
Patten. Betsey L. Chairman	15	
Brundige. Robert W. V Chairman	1	
Lockwood. Priscilla P	2	
Twombly. James E	3	
Boyce. Laurie J	4	
Dumaine. Dudley Daniels	5	
Pappas. Marc	6	
Dunne. Christopher H	absent	
Stohl. Eric G	7	
Noyes. Richard A	8	
Buhlman. David L	absent	
Doyle. Christopher L	absent	
Dupuis. Roland L	9	
Gillick. Thomas J	10	
Gould. Kenneth H	11	
Johnson. Nancy K	absent	
Cooney. Mary R	absent	
Davidson. Robert A	absent	
Osborne. Jessie L	12	
Schmidt. Peter B	13	
Theberge. Robert L	14	
TOTAL VOTE:	15	0

Printed: 1/6/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: **Municipal and County Government**

BILL NUMBER: **HB 722-FN**

TITLE: relative to land use changes.

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 allows 50 registered voters to protest a land use change before the planning board. The committee received five bills that deal with planning and zoning issues with some issues proposed going to the legislative body. The committee did not have the proper time to consider a thoughtful resolution, so they voted to retain the subject matter of HB 722 to be discussed in HB 713.

Vote 15-0.

Rep. Robert W. Brundige
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Municipal and County Government

HB 722-FN, relative to land use changes. **INEXPEDIENT TO LEGISLATE**

Rep. Robert W. Brundige for Municipal and County Government: This bill allows 50 registered voters to protest a land use change before the planning board. The committee received five bills that deal with planning and zoning issues with some issues proposed going to the legislative body. The committee did not have the proper time to consider a thoughtful resolution, so they voted to retain the subject matter of HB 722 to be discussed in HB 713. **Vote 15-0.**

COMMITTEE REPORT

COMMITTEE: **Municipal and County Government**

BILL NUMBER: **HB 722-FN**

TITLE: relative to land use changes.

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 allows 50 registered voters to protest a land use change before the planning board. ~~Receipt of a protest petition shall suspend planning board action on the plan, and shall cause the local governing body to hold a special town meeting to approve the land use change. The special meeting shall be binding on the planning board if 70 percent of the voters, who voted in the last municipal election, vote in the special meeting. This bill would take away planning board authority and would allow the voters to veto an otherwise legal situation. Cost of the special town meeting could be an Article 28-A issue and could lead to costly litigation. The committee agreed this bill is not required at this time.~~ The committee received five bills that deal with planning + zoning issues with some issues proposed going to the legislative body. The committee did not have the proper time to consider a thoughtful resolution so they voted to retain the subject matter of HB722 to be discussed in HB713.

Vote 15-0.

Rep. Robert W. Brundige
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

HB713

HB 365, HB 588 ,HB722 and HB723 all deal with zoning issues – including governmental land uses to nonconforming residential uses to land use changes and definition of residences in non-residential or commercial zones. The RSAs involved are mostly in the same chapter and the committee will review these issues together during the summer and fall.

HB 723

RELATIVE TO LAND USE CHANGES

ITL 15-0

THIS BILL ALLOWS 50 REGISTERED VOTERS TO PROTEST A LAND USE CHANGE BEFORE THE PLANNING BOARD. RECEIPT OF A PROTEST PETITION SHALL SUSPEND PLANNING BOARD ACTION ON THE PLAN AND SHALL CAUSE THE LOCAL GOVERNING BODY TO HOLD A SPECIAL TOWN MEETING TO APPROVE THE LAND USE CHANGE. THE SPECIAL MEETING SHALL BE BINDING ON THE PLANNING BOARD IF 70 PERCENT OF THE VOTERS WHO VOTED IN THE LAST MUNICIPAL ELECTION, VOTE IN THE SPECIAL MEETING.

THIS BILL WOULD TAKE AWAY PLANNING BOARD AUTHORITY AND WOULD ALLOW THE VOTERS TO VETO AN OTHERWISE LEGAL SITUATION. COST OF THE SPECIAL

TOWN MEETING COULD BE

AN ARTICLE 28-A ISSUE.

AND COULD LEAD TO COSTLY

LITIGATION. THE COMMITTEE

AGREED THIS BILL IS NOT

REQUIRED AT THIS TIME. 15-0

Robert M Burns