HB 1497 - AS INTRODUCED

2026 SESSION

26-2431
06/09

HOUSE BILL ***1497***

AN ACT relative to replacing members of local land use boards for certain conduct.

SPONSORS: Rep. Aylward, Merr. 5; Rep. Sabourin dit Choiniere, Rock. 30

COMMITTEE: Municipal and County Government

ANALYSIS

This bill establishes procedures and standards for the removal and replacement of members from local land use boards.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

AN ACT relative to replacing members of local land use boards for certain conduct.

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

1 Removal of Members. RSA 673:13 is repealed and reenacted to read as follows:

673:13 Removal of Members.

I. The governing body may, by resolution, remove an appointed, appointed alternate, or elected member of a local land use board from office for malfeasance, misfeasance, inefficiency, or neglect of duty directly related to the performance of official duties, or if dismissed from office pursuant to RSA 42:1, or convicted of a violation of RSA 95:1.

II. The city council, select board, county commissioners with approval of the county delegation, or district commissioners may, for any cause enumerated in paragraph I, remove members appointed by them by resolution.

III. In this section:

(a) "Malfeasance" means a willful or corrupt action, including misuse of resources or authority, or illegal acts in office or failure to act in the discharge of official duties, and requires an intentional act or omission relating to the duties of a public office. It shall not include acts that, although in violation of criminal law, have no connection with official duties.

(b) "Member" means an elected, appointed, ex-officio, or alternate member of a planning board, zoning board of adjustment, board committee or subcommittee, council, select board, select board committee, or county or district commission.

(c) "Misfeasance" means the improper or negligent performance of a lawful act, or the negligent failure to perform a specific duty resulting in harm.

(d) "Inefficiency" means an inability or unwillingness to perform duties.

(e) "Neglect of duty" means an omission or failure to fulfill official duties, whether willful or due to carelessness or inattention, including but not limited to:

(1) Violating a board's rules of procedure, a municipality's conflict of interest ordinance pursuant to RSA 31:39-a, or code of ethical conduct;

(2) Chronic absenteeism, defined as failure without good cause to attend 3 or more consecutive duly noticed meetings, or more than 25 percent of such meetings in any 12-month period;

(3) Reliance on remote participation in violation of RSA 91-A:2, III(e);

(4) Failure, without good cause, to review necessary materials or to participate in deliberations and votes required for proper discharge of duties.

(5) For purposes of this section, "good cause" means circumstances beyond the member's reasonable control preventing attendance or participation, including but not limited to personal or family illness, disability, emergency, military service, or unavoidable professional or personal obligations. "Good cause" shall not include preference, convenience, or voluntary commitments conflicting with scheduled meetings.

(f) "Official conduct" means actions, decisions, or omissions made while performing the duties of public office.

IV. Upon written petition by any person for removal of a land use board or other member, the governing body shall, no earlier than 45 days and no later than 60 days after receipt, hold a public hearing. The member shall receive not fewer than 30 days' written notice of the grounds for removal. Notice may be delivered in person, by verified mail, or email. The burden shall be on the petitioner to establish grounds for removal by clear and convincing evidence.

V. Public notice of the hearing shall include reference to RSA 673:13, and shall be posted at least 7 days in advance in at least 2 public places, including the municipality's website, if any.

VI. Notwithstanding RSA 91-A:3, II(c), nothing in this section shall prevent the governing body, in public session at a regular or special meeting, from discussing whether to refer allegations to law enforcement or schedule a removal hearing, provided that the official receives not fewer than 15 days' written notice of the meeting and a description of administrative matters to be considered. All petitions, hearings, deliberations, and decisions shall occur in public session and minutes shall be kept.

VII. After hearing, the governing body shall take a vote and render a written resolution of removal stating findings of fact and conclusions of law, which shall be immediately transmitted to the removed member. The governing body shall promptly transmit to the attorney general or appropriate law enforcement agency any evidence indicating a violation of the criminal code, unless, after consultation with municipal counsel, it determines such referral is unwarranted.

VIII. The governing body shall send a copy of the resolution to the member by verified mail, file it with the clerk within 5 days, and post it publicly in 2 places for 30 days, including the municipality's website, if any.

IX. The removed member may appeal to the superior court within 30 days. The court shall review the record to determine whether the removal was lawful, supported by clear and convincing evidence, and consistent with due process.

X. Any person aggrieved by failure of the governing body to comply may petition the superior court for injunctive relief, declaratory judgment, or mandamus. Nothing in this section shall preclude additional remedies under RSA 91-A or other law.

XI. The requirements imposed under this section, including timely scheduling of a public hearing, providing written notice and findings, and rendering a decision, shall constitute statutory

duties imposed by law. Failure to carry out these duties in good faith shall constitute official oppression under RSA 643:1.

XII. Nothing in this section shall be construed to exempt from disclosure records, documents, or information pertaining to the official conduct of an elected or appointed public official. This paragraph shall not be interpreted to authorize disclosure of records otherwise exempted under RSA 91-A that do not directly relate to official conduct.

XIII. This section supersedes conflicting provisions of RSA 43, but shall not be construed to diminish rights or remedies under RSA 91-A.

XIV. If a land use board member is removed, the vacancy shall be filled as provided in RSA 673:12. For all other members, vacancies shall be filled by the appointing authority, or as otherwise provided by law.

XV. Any member removed for just cause under RSA 673:13, dismissed from office pursuant to RSA 42:1, or found in violation of RSA 95:1, shall be ineligible to serve on the board from which removed for the remainder of the member's term. After the expiration of this period, eligibility to serve shall be automatically restored unless otherwise barred by law.

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