

# Senate Commerce Committee

*Aaron Jones 271-2609*

**SB 175**, relative to the use of covenants by municipalities.

**Hearing Date:** March 4, 2025

**Time Opened:** 10:41 a.m.

**Time Closed:** 10:54 a.m.

**Members of the Committee Present:** Senators Innis, Ricciardi, Murphy, McGough, Fenton and Reardon

**Members of the Committee Absent :** None

**Bill Analysis:** This bill grants municipalities the authority to enforce private covenants while prohibiting municipalities and state government from requiring or encouraging covenants as a condition of zoning or land use approval, with exceptions made for workforce housing developments.

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**Sponsors:**

Sen. Murphy

Sen. Innis

Sen. Pearl

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**Who supports the bill:** Senator Keith Murphy, Krista Chamberlain, Janet Lucas, Curtis Howland, James Gardner, Bill Alleman

**Who opposes the bill:** Representative Linda Gould, Brodie Deshaies (NHMA), Tim Corwin (NH Planners Association), Roy Schweiker, Jamie Pike, Daniel Richardson, George Morin, Karen Santoro, Bruce Woodruff, Roger Murray

**Who is neutral on the bill:** No one

**Summary of testimony presented in support:**

***Senator Keith Murphy***

- This bill attempted to empower municipalities.
- Covenants were used before zoning. They are legal agreements written into a deed and recorded. They are passed on unless there is an expiration date.
- Many communities continue to use covenants, such as Houston.
- This bill would grant municipalities the ability to enforce covenants.
- Covenants are used to maintain some semblance of aesthetic compatibility and quality of life.
- As part of a covenant, there could be a prohibition against subdivisions below a certain size.

- While communities would enforce covenants, they would not be able to require them.
- Covenants should be voluntarily entered into instead of being tacked onto buyers against their will.
- **Senator Ricciardi** said she supported the vast majority of housing bills, but the unintended consequences were not being looked at. The lack of attention to detail on these mandates could lead to towns having different rules resulting in costly lawsuits. She said they could not get rid of local control without putting a burden on taxpayers.
  - **Senator Murphy** said he did not think this applied to this bill because it was trying to empower local control.

### **Summary of testimony presented in opposition:**

#### ***Brodie Deshaies, New Hampshire Municipal Association***

- Covenants is used in planning and zoning, but it does not have a specific legal definition.
- Mr. Deshaies said they interpreted covenants as a promise from an applicant to do or not do certain things. A variance or a special exception could be granted by a local board.
- As part of a site plan or subdivision approval, there can be a development restriction if it is in accordance with RSA 674:21-a. There could be an agreement that streets would be dedicated to public use or part of the land could be used as a park.
- This bill would prohibit a municipality from requiring or encouraging affordability restrictions that are not tied to the workforce housing statute, RSA 674:58-61.
  - Mr. Deshaies said this could inhibit communities, such as Dover, from adopting innovative solutions like fair market rents.
  - This bill could affect state agencies like the Department of Business and Economic Affairs since their InvestNH program is tied to 80 percent of the area median income, not workforce housing income limits.
- This bill would require municipalities to enforce private covenants on issues, such as maintaining private roads or driveways, what color homes are painted, or whether clothes can be hung on a line. Mr. Deshaies asked what the compelling interest for a municipality would be to enforce the covenant of a private association.
- By removing the ability of municipalities to require certain covenants during the planning and zoning process, and making them responsible for enforcing private agreements, it could create conflicts. A private covenant could be discriminatory against certain individuals, which would lead to lawsuits that taxpayers would have to pay for.

- **Senator Murphy** said he was not married to the text of this bill, but he has brought forward over a dozen housing bills that have been opposed by his organization. He asked if they had any constructive ideas to encourage more building because he would be happy to change this bill.
  - **Mr. Deshaies** stated that SB 115 and SB 279 were ways to work collaboratively with municipalities to increase investment in infrastructure as well as ensuring there is reasonable and responsible higher-density development. The Association was happy to work with any legislator, especially in advance of the legislative session. For many bills, they were not able to provide feedback. Many of the bills have problems that conflict with existing law or historical precedence thereby making them unworkable.

**Neutral Information Presented:** None

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Date Hearing Report completed: March 7, 2025