

Senate Judiciary Committee

Pete Mulvey 271-4063

SB 265, repealing the provision related to religious use of land and structures.

Hearing Date: March 11, 2025

Time Opened: 1:15 p.m.

Time Closed: 1:44 p.m.

Members of the Committee Present: Senators Gannon, Abbas, Altschiller and Reardon

Members of the Committee Absent : Senator Carson

Bill Analysis: This bill repeals the statute that prohibits certain zoning ordinances and site plan reviews related to the use of land and structures for religious purposes.

Sponsors:

Sen. Prentiss

Sen. Altschiller

Sen. Long

Rep. Hakken-Phillips

Rep. Muirhead

Who supports the bill: 16 signed in support of SB 265. Contact peter.mulvey@gc.nh.gov for further details.

Who opposes the bill: 98 signed in opposition to SB 265. Contact peter.mulvey@gc.nh.gov for further details.

Who is neutral on the bill: N/A

Summary of testimony:

Senator Suzanne Prentiss

Senate District 5

- SB 265 repealed RSA 674:76; Statute enacted in 2022, relative to religious land-use and structures.
- Senator Prentiss stated that in no way was the purpose of the bill to infringe on anyone's right to freedom of religion or speech.
- Sen. Prentiss argued that with the current statute, local control was usurped.
 - As written, the statute stated that no zoning or site plan review ordinances shall prohibit, regulate, or restrict the use of land or structures primarily for religious purposes.

- Sen. Prentiss stated that conflict arose from the fact that communities already had zoning ordinances and regulated where religious structures could be built.
- Sen. Prentiss explained that constituents brought the matter to her attention, which evolved from a 2022 community dispute concerned with home prayer groups.
 - Sen. Prentiss stated that she believed the community was Bedford.
 - At the time, representatives from Strafford shared their issues with local land use officials over the number of people they could have in their home for a prayer meeting.
- Sen. Prentiss believed there was a notable difference between hosting several people in your home for a prayer meeting and a categorical zoning/building ordinance exemption.
- Sen. Prentiss sought middle ground on the issue and how to accommodate prayer meetings.
- Sen. Prentiss reiterated her concern about local control and religious structures.
- Sen. Prentiss concluded that she was amenable to changes and hoped to strike a middle ground.

Michael Tierney

Attorney

- Mr. Tierney stated that he had over 50 clients among a variety of religious affiliations who sought his assistance on land use.
- Mr. Tierney had asked Rep. Wuelper to bring forward the initial bill back in 2022 after numerous churches were subject to discrimination from discretionary zoning ordinances.
- Discrimination not just limited to the prayer group in Bedford but was also prevalent in the Town of Hanover.
 - The Town of Hanover has not approved a new church in Mr. Tierney's lifetime.
 - The last church that was approved was in 1960.
- Christ Redeemer Church had been trying to build in Hanover for almost 20 years.
- Hanover has a particular ordinance which made it easier to build a secular structure and harder to build a religious structure.
- Any church needed to gain a special exception, and a church had to prove that it would fit the character of the neighborhood in question.
 - Mr. Tierney stated that the character of the neighborhood was discretionary, and led to uncertain determinations by the municipal board which could lend itself to discriminatory rulings.

- Hanover felt that the Christ Redeemer Church was too large and did not fit the model of early 20th century churches which had smaller congregations.
- Mr. Tierney argued that anytime a government tried to determine how a church should organize, or gather, it was problematic.
- RSA 674:76 was not unique; nearly every state had an exemption from local zoning ordinances when it came to religious use.
 - Vermont has an exemption, and Massachusetts has a statutory exemption from discretionary provisions which can be used discriminatorily.
 - RSA 674:76 allowed definitive regulations, applicable to everyone.
- If RSA 674:76 were not law, many town ordinances would allow for discrimination by requiring religious sites to prove that they are “harmonious and aesthetically pleasing” and of “adequate proportions”.
- Local boards should not be able to determine who they want in their towns and who they don’t want in their towns.
- Mr. Tierney said he handled about 20 different cases in which towns decided they did not want a particular religious group and used zoning ordinances to keep them out.
 - The Town of Richmond, NH used their authority to prevent a church from expanding on the basis that they didn’t want, “more of those types of people” in town.
- Mr. Tierney argued that RSA 674:76 should be kept so that religious institutions knew their rights were protected.
- Sen. Gannon stated that content-based restrictions always failed and asked if prevention of a church’s construction on aesthetic grounds was content-based.
 - Mr. Tierney replied in the affirmative.
- Sen. Reardon asked if there were certain districts in a town which allowed a church and those which didn’t.
 - Mr. Tierney replied that in many towns churches were allowed throughout the town and in others they were allowed in residential and commercial areas, but not industrial areas.
 - Since RSA 674:76 was enacted, churches were allowed in any district and could not be restricted.
- Sen. Reardon asked if Mr. Tierney believed that the current language in RSA 674:76 gave a town more license to deny.

- Mr. Tierney noted that the areas where towns were allowed to regulate were outlined in the statute and said towns could regulate if regulation of all uses was the same.
- Mr. Tierney noted that the Town of Bedford had different standards for different denominations which was not permissible.
- Sen. Reardon asked if in the absence of the statute, if the local zoning ordinances would be relied upon.
 - Mr. Tierney stated that she was correct in addition to the Federal Religious Land Use and Institutionalized Persons Act, which would limit whether a zoning ordinance could regulate a church.
 - Part I, Article V of the New Hampshire Constitution also required exemptions for religious uses.

Kurt Wuelper

Former Representative – Strafford District 3

- Rep. Wuelper stated that he was the prime sponsor of the past bill which enacted the RSA in question.
- Rep. Wuelper clarified that a person called him to say there was a need for the bill and he introduced the legislation as a result.
- Rep. Wuelper stated that he was very confident that both legislative bodies as well as the governor, a short time ago, thought it was important enough to enact the statute.
- Rep. Wuelper stated that he believed he did the right thing and if there was a need to study the RSA to go ahead and study it and emphasized that a repeal would be a mistake.

Shawn Foster

Senior Pastor of Crossing Life Church

- Mr. Foster spoke in opposition to SB 265.
- RSA 674:76 was enacted to protect churches in New Hampshire from undue discrimination and harassment.
- Mr. Foster stated that he had personally dealt with such hardship. In 2013, Crossing Life Church was denied a property tax exemption and had to spend over \$50,000 to contend with the town to eventually receive full exemption.
- Similar situations continued when the church had to spend tens of thousands of dollars to erect a tent during COVID so that the congregation could meet outside.
 - Mr. Foster said Crossing Life Church was subject to processes that no other businesses was subject to.

- Mr. Foster clarified that his church was currently in another legal battle with its town concerning the church's employment of an accessory dwelling unit to combat the housing crisis, despite no prohibition in zoning ordinances.
- Mr. Foster said Crossing Life Church took advantage of RSA 674:76 to gain full site plan approval for an expanded building across the street from where the church was.
 - The church would not have been able to get approval without RSA 674:76.
- Mr. Foster explained that Crossing Life Church did a lot to give back to the community and said they wanted to spend their time as a resource in Windham.

Ian Huyett, Esq.

Attorney, Cornerstone Policy Research

- Mr. Huyett appeared in opposition to SB 265.
- Cornerstone was the only religious liberty advocacy group in New Hampshire.
- The main area where there was widespread discrimination against religious institutions was in zoning.
 - Zoning was where the most anti-religious discrimination took place and was the most transparent in the state.
- Mr. Huyett referred to ongoing litigation in Hanover, which he suspected would be dismissed, stating that plaintiffs sought to eliminate the concept of religious liberty as it was contrary to the separation of the church and the state.
- Mr. Huyett emphasized that the State Supreme Court determined that we did not live in a system of majority rule, and that we lived in a constitutional republic founded on the rule of law which encompassed protections for majority rights.
- Mr. Huyett stated that before the statute was passed, many communities were able to prevent the construction of any religious structures at all and would always find one pretext after another.

Brodie Deshaies

New Hampshire Municipal Association

- Mr. Deshaies noted SB 265 was primarily a land use law, while it did target religious properties.
- Mr. Deshaies wanted to elaborate on the biggest differences between SB 265 and when the current law went into effect in 2022.
 - The current law regulated height and size requirements, but did not allow for planning boards to conduct site plan reviews of religious properties that municipalities required for certain zoning districts relative to lighting, noise, drainage, erosion, sediment control, etc.

- The aforementioned categories were not applicable to religious properties and the current law did not specify what qualified as a religious property.
- Municipalities typically required that a building be used 51% of the time for religious purposes to be a church.
- Mr. Deshaies said that without the statute, all federal and state laws pertaining to land use and other codes such as fire and setback ordinances would continue to apply to qualifying properties.
- Mr. Deshaies believed there was some compelling interest for municipalities to subject property to the other site plan review requirements, as equal to everyone.
- Sen. Reardon asked if the Municipal Association supported or opposed the bill.
 - Mr. Deshaies clarified that the NHMA supported it.

PM

Date Hearing Report completed: March 17, 2025