HB 1645-FN - AS INTRODUCED

2024 SESSION

24-2760
10/05

HOUSE BILL ***1645-FN***

AN ACT establishing a condominium dispute resolution board.

SPONSORS: Rep. Almy, Graf. 17

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill establishes a condominium dispute resolution board to resolve matters involving condominium associations and unit owners.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

24-2760
10/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT establishing a condominium dispute resolution board.

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

1 New Subdivision; Condominium Act; Condominium Dispute Resolution Board. Amend RSA 356-B by inserting after section 70 the following new subdivision:

Condominium Dispute Resolution Board

356-B:71 Board Established; Members; Terms; Chairperson.

I. There is hereby created a condominium dispute resolution board consisting of the following members:

(a) Two members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Three members, appointed by the governor, who are resident owners of condominiums in New Hampshire and from 3 different executive council districts. Members appointed under this subparagraph shall not be members of their respective condominium board.

(c) Two members, appointed by the governor, who are members of a condominium association board in New Hampshire, and from 2 different executive council districts, from a list of 3 persons nominated by the New England chapter of the Community Associations Institute.

(d) One member, appointed by the governor, who represents a condominium association management company, from a list of 3 persons nominated by the New England chapter of the Community Associations Institute.

(e) One member of the New Hampshire Bar Association, appointed by the president of the association.

II. No more than 3 members of the board shall be involved professionally or employed in the condominium industry.

III. Non-legislative members of the board shall serve 3-year terms and until a successor is appointed, except that the initial appointments shall be staggered: 2 members shall be appointed to one-year terms, 2 members shall be appointed to 2-year terms, and 3 members shall be appointed to 3-year terms. Legislative members shall serve a term coterminous with their term in office.

IV. The chairperson for the board shall be chosen from among the members at the initial organizational meeting and shall serve at the pleasure of the members of the board.

V. If there is a vacancy on the board, the provisions of RSA 21:33-a and 21:34 shall apply to all members.

VI. If any member of the board is absent for 3 consecutive meetings, without cause, the board shall inform the appointing authority in writing and the appointing authority shall appoint a new member to the board within 60 days from the receipt of the written notification.

VII. The board shall hold meetings at least every 90 days and may meet more frequently as deemed necessary by the board.

356-B:72 Quorum, Disqualification of Members; Compensation.

I. A majority of the board shall constitute a quorum to conduct hearings, and a vote of at least 4 members present and voting in favor shall be required to adopt and approve any matter under consideration.

II. As a board member, one may disqualify oneself relative to any matter before the board, or if the board votes that any member has or may have a conflict of interest in any matter before the board, that member shall be disqualified to sit as a board member on the particular matter. The board may hear the matter if it has a quorum. If the board does not have a quorum, the governor shall appoint an additional public member to hear the particular matter pending before the board.

III. The legislative members of the board shall receive legislative mileage for meetings of the board. The remaining members shall receive mileage at the state employee rate for meetings of the board.

356-B:73 Jurisdiction; Procedure.

I. The board shall hear and determine matters involving condominium unit owner complaints related to: failure by the condominium association to follow its declaration and bylaws; failure to follow proper voting procedures as defined in RSA 356-B:39; other actions not in compliance with condominium instruments or the condominium act, RSA 356-B. Any matters relating to time share interests shall not be under the jurisdiction of the board.

II. Nothing in this subdivision shall preclude the right of the board to use the services of a mediator to resolve a dispute.

III.(a) Any condominium unit owner may petition the board by filing a complaint with the board and paying a $250 filing fee which shall be used to defray the costs of the board. Prior to filing a complaint, the petitioner shall provide 10 days notice to the opposite party of intent to file. After review of the claim and a decision by the board that the matter has merit and is not frivolous, the board shall schedule a hearing. If the board finds the claim to be frivolous or without merit, it shall dismiss the complaint and explain in writing to the petitioner its reasons for dismissing the complaint.

(b) The board shall serve notice, in writing, of the time and place of the hearing upon all appropriate parties at least 20 days prior to the date of the hearing. The notice shall inform both parties to the complaint that they may choose to be represented by counsel.

(c) All hearings held by the board shall be held pursuant to RSA 541-A:31 through RSA 541-A:36 unless such proceedings are specifically inconsistent with the provisions of this subdivision.

All hearings of the board shall be subject to the provisions of RSA 91-A. The board shall not be bound by common law or statutory rules of evidence but may admit all testimony having a reasonable probative value. It may exclude evidence which, in the opinion of the board, is immaterial, irrelevant, or unduly repetitious.

356-B:74 Decisions; Judicial Review and Enforcement.

I. When the board makes its decision, an order shall be made in writing and shall include findings of facts. The findings of facts shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The parties shall be notified by mail of any decision or order.

II. A decision of the board may be appealed, by either party following a request for rehearing, by applying for an appeal to the superior court for the county in which either party resides in accordance with the procedures set forth in RSA 677:2-14, inclusive.

III. If no timely appeal is taken pursuant to paragraph II, the decision of the board shall become final. The board shall file a certified abstract of any final decision with the clerk of the superior court in the county of residence of the complainant. The clerk of such court shall enter judgment thereon, and such judgment may be enforced as with any final judgment of the superior court.

356-B:75 Meetings and Records. The board shall hold meetings in Concord, New Hampshire or in any other location deemed appropriate by the board. The records of the board shall be maintained at the office of professional licensure and certification.

356-B:76 Legal Assistance Provided by the Department of Justice. The civil bureau of the department of justice shall act as counsel for the board, and assist in judicial filings and actions as necessary.

356-B:77 Notification and Cooperation Required. The board shall notify the consumer protection and antitrust bureau, department of justice, that the board may accept and act on written complaints properly forwarded to it by such bureau relative to condominium association actions and condominium unit owner complaints.

356-B:78 Rulemaking. The board, under the direction of the bureau chief of the consumer protection and antitrust bureau, shall adopt rules under RSA 541-A relative to the administration of this subdivision.

356-B:79 Annual Report. The board shall submit to the governor, the speaker of the house of representatives, and the senate president, not later than March 31 of each year, a report of its activities during the preceding calendar year. The report shall include, but not be limited to, the number of complaints received, by category according to RSA 356-B:73, and the number and percent of complaints accepted and rejected. The report may also include recommendations for improvements, including rule or statutory changes.

2 New Subparagraph; Office of Professional Licensure and Certification; Administration of Condominium Dispute Resolution Board. Amend RSA 310:2, II by inserting after subparagraph (bbb) the following new subparagraph:

(ccc) Condominium dispute resolution board under RSA 356-B:71.

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

LBA
24-2760
Revised 12/28/23

HB 1645-FN- FISCAL NOTE
AS INTRODUCED

AN ACT establishing a condominium dispute resolution board.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	**FY 2025**	**FY 2026**	**FY 2027**
Revenue	$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Revenue Fund(s)	Office of Professional Licensure and Certification Fund			
Expenditures	$0	Indeterminable Increase $0 to $374,000+	Indeterminable Increase $0 to $388,000+	Indeterminable Increase $0 to $400,000+
Funding Source(s)	General Fund Office of Professional Licensure and Certification Fund			
Appropriations	$0	$0	$0	$0
Funding Source(s)	None			

- Does this bill provide sufficient funding to cover estimated expenditures? [X] No
- Does this bill authorize new positions to implement this bill? [X] No

Estimated Political Subdivision Impact - Increase / (Decrease)				
	FY 2024	**FY 2025**	**FY 2026**	**FY 2027**
County Revenue	$0	$0	$0	$0
County Expenditures	$0	Indeterminable		
Local Revenue	$0	$0	$0	$0
Local Expenditures	$0	$0	$0	$0

METHODOLOGY:

This bill establishes a condominium dispute resolution board to resolve matters involving condominium associations and unit owners.

The Office of Professional Licensure and Certification (OPLC) states this bill creates a new condominium dispute resolution board overseen by OPLC. The OPLC is unable to estimate how many condominium association exist in New Hampshire nor the number of individuals residing under the condominium associations. However, to the extent the OPLC is responsible for administrative services and hearing every complaint between an association and resident the OPLC estimates they would need four new positions including a board administrator, an

investigator, a prosecutor and a hearings offices for a cost of $374,000 in FY 2025, $388,000 in FY 2026 and $400,000 in FY 2027.

Assumed Start Date 07/1/2024		FY 2025	FY 2026	FY 2027
Board Administrator	Labor Grade 19	$77,000	$80,000	$82,000
Investigator	Labor Grade 21	$82,000	$84,000	$87,000
Prosecutor	Labor Grade 28	$102,000	$106,000	$109,000
Hearings Officer	Labor Grade 31	$113,000	$118,000	$122,000
	Total	$374,000	$388,000	$400,000

Additionally, the OPLC states there will be an indeterminable increase in revenue as the bill identifies a new $250 filing fee for the filing of complaints with the board. Since the OPLC lacks data on expected complaint volumes, it can't offer a reliable estimate. Moreover, without a license or certification included in this bill, the Office might need to raise licensing fees for licensees overseen by various boards to address potential variations in costs and income.

The Department of Justice states this bill creates a board to address complaints from condominium owners against their associations, however, the Department states it lacks clear definition on the board's authority and whether it alters existing jurisdiction. The bill mandates the Consumer Protection and Antitrust Bureau Chief to oversee rulemaking for the board and designates the Civil Bureau as its legal counsel. The Department states this will likely impact both bureau's budgets due to potential increased workload and hearings by an indeterminable amount. The Department states the bill does not specify the board's power regarding monetary relief, penalties, or enforcement measures, and creates ambiguity around CPAB's role in enforcing the Condominium Act. The Department states the bill is not clear on whether the CPAB can forward complaints to the board, whether a filing fee applies, and qualifications to serve on the board (relative to ownership of an entire condominium or just one unit).

The bill also provides for civil remedies. There is no way to predict how many such actions would occur, but the Judicial Branch has provided average cost information for civil cases in the Superior Court:

Superior Court	**FY 2024**	**FY 2025**
Complex Civil Case	$1,321	$1,347
Routine Civil Case	$494	$504
Superior Court Fees	**As of 1/12/2020**	

Original Entry Fee	$280
Third-Party Claim	$280
Motion to Reopen	$160

AGENCIES CONTACTED:

Office of Professional Licensure and Certification, Department of Justice and Judicial Branch