

Bill as Introduced

HB 239 - AS INTRODUCED

2011 SESSION

11-0288

05/10

HOUSE BILL **239**

AN ACT prohibiting a state agency from establishing a fee without legislative approval.

SPONSORS: Rep. Ulery, Hills 27; Rep. Renzullo, Hills 27

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill prohibits an agency from establishing a fee without legislative approval.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT prohibiting a state agency from establishing a fee without legislative approval.

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

1 1 New Section; Legislation Establishing Fees. Amend RSA 14 by inserting after section 50 the
2 following new section:

3 14:51 Legislation Establishing Fees.

4 I. Notwithstanding any other provision of law, no agency shall establish, impose, or enforce
5 any fee for service or fee for licensure without legislation establishing the amount of the fee or an
6 acceptable fee range.

7 II. Any law in effect prior to January 1, 2012 that delegated legislative authority to establish
8 fees is hereby declared null and void. Likewise, any rule establishing fees not otherwise established
9 in law is hereby declared null and void.

10 2 Applicability. Any rule in effect on January 1, 2012 that does not comply with section 1 of this
11 act shall remain valid until its expiration, amendment, or renewal, under RSA 541-A, at which time
12 the requirements of RSA 14:50, as inserted by section 1, shall apply.

13 3 Effective Date. This act shall take effect January 1, 2012.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON HB 239

BILL TITLE: prohibiting a state agency from establishing a fee without legislative approval.

DATE: 2/8/11

LOB ROOM: 306 **Time Public Hearing Called to Order:** 11:20 am

Time Adjourned: 12:00 pm

(please circle if present)

Committee Members: Reps. McGuire, Hawkins, Sytek, Day, Gould, Pratt, Vita, Perkins, Winter, Bowers, Whitehead, Hansen, Proulx, R. Schmidt, Pilotte, Judy and Sullivan.

Bill Sponsors: Rep. Ulery, Hills 27; Rep. Renzullo, Hills 27

TESTIMONY

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

Rep. Ulery – Introduced bill
Bring back to Legislative Oversight – Last year it was brought up that it would cost state money

Rep. McGuire – Line 7

Rep. Ulery – Declares null and void – any agency fee

Rep. Hansen – Line 7

Rep. Ulery – Wants this law to accept fees for agency

Rep. Schmidt – In view of fact – agencies to by JLCAR – Legislature meets January-June

Rep. Winter – II – Sec 1 – (line 7)

Rep. Whitehead – Would this bill be incumbent – By 112 these agencies would not be leg. Oversight

Rep. Pilotte – If we're looking at Lic. Fee (L6) how would dollar amount be

Rep. Ulery – Goes to JLCAR to arrange a fee – have _____ that it shall not go beyond – maximum will be intensive, but over its _____
Change year – JLCAR – checks

Rep. Rice – Self-determination if fee making gone “amuck”. If we don't provide Leg. Oversight in Hampton on Beach.

***Mary Castelli** – Cannot have a fee unless there is a statute that says it can be done.

Michael Holt – JLCAR increase of any agency involvement

Rep. Perkins – 25. Fee? What explanation

Michael Holt – Waiver section

Rep. Pilotte – Do all HHS notices say that there is a fee?

Michael Holt – Yes

Rep. Schmidt – Set fees?

Sheri Holloway – Not aware any authority.

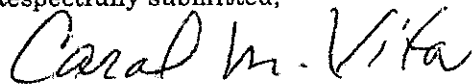
John Raymond – 84 fees that they collect. Fees are collected pay for dedicated funds. All other monies go back to general fund.

Gretchen Hamel – People are benefitting from their services – are not paying for them

Rep. Schmidt – Any fees being collected by DES?

Gretchen Hamel – No

Respectfully submitted,

A handwritten signature in cursive script that reads "Carol M. Vita".

Carol M. Vita, Clerk

Sub
Committee

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON HB 239

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Committee Members: Reps. McGuire, Hawkins, Sytek, Day, Gould, Pratt, Vita, Perkins, Winter, Bowers, P. Brown, Hansen, Proulx, P. Schmidt, Pilotta, Judy and Sullivan.

R. WHITEHEAD

Bill Sponsors: Rep. Ulery, Hills 27; Rep. Renzullo, Hills 27

TESTIMONY

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

- 5 * Rep Ulery - INTRODUCTION
- 3 Rep Rice
- Mary Castelli Michael Holt (DHHS)
- John Raymond - STATE FIRE MARSHALL OFFICE
- * SHERI KALLOWAY - DEPT OF SAFETY
- GRETCHEN HAMIL - DEPT OF ENVIRONMENTAL SVCS.

Holt waiver section

Rep. Pichotte Do all HHS notices say that there is a FEE

HOLT YES

~~SHERI HOLLOWAY~~

~~JOHN RAYMOND~~

Rep Schmidt - SET FEES ?

Sheri Holloway NOT AWARE ANY AUTHORITY

J. Raymond Set Fees that they collect.

Rep. Vowles - ~~NO~~

FEES ARE COLLECTED PAY FOR DEDICATED FUNDS
ALL OTHER MONIES GOES BACK TO GENERAL FUND

Rep. Pichotte -

~~BOYERS~~

Schmidt - From Dept

Quetchen Hanel -

People are benefiting from these services
are not paying for them

Schmidt - Any fees being collected by DES -

Q. Hanel - NO

239

Sub Com.

~~Key Person~~

Julery - Bill back to Leg. - oversight
last year it was brought up that it would
cost state money -

- Carol McQuinn - line 7 -

Julery - declares - null & void - any agency fee

Hanson - line 7 -

Julery - Wants this law to accept fees for agency
~~after~~ - 2012

Schmidt - in view of fact - agencies go BY TLCA
in view fact - Leg meets JAN-JUNE

Rep Winter - II - Sec 1 - (line 7)

Rep Whitehead - Would this bill be incumbent. BY 1/12
these agencies would not be Reg. oversight

Rep Pilote - If we're looking at Lic. Fee (66)
How would dollar amt be

Alley goes to TLCA to arrange a fee - Have in point
that it shall not go beyond - maximum will
be intensive, but once it's in place -

Alley Change year - TLCA - checks

~~Rep Perkins~~

Rep Rice Self determination of fee making gone
"a muck" - If we don't provide leg oversight
W Hampton on Beach.

Party Castelli - Cannot have a fee unless there is a
statute that says it can be done

M. Hoel TLCA increase of any agency involvement

Perkins - 25. Fee? what explanation

Testimony

Jordan Cherry

The Constitution of the free, sovereign, independent body politic of New Hampshire:

Part the First; [Art.] 12. [Protection and Taxation Reciprocal.] Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property; he is therefore bound to contribute his share in the expense of such protection, and to yield his personal service when necessary. But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent.

June 2, 1784

Amended 1964 by striking out reference to buying one's way out of military service.

Part the Second; [Art.] 5. [Power to Make Laws, Elect Officers, Define Their Powers and Duties, Impose Fines and Assess Taxes; Prohibited from Authorizing Towns to Aid Certain Corporations.] And farther, full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions, and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this constitution, as they may judge for the benefit and welfare of this state, and for the governing and ordering thereof, and of the subjects of the same, for the necessary support and defense of the government thereof, and to name and settle biennially, or provide by fixed laws for the naming and settling, all civil officers within this state, such officers excepted, the election and appointment of whom are hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this state, and the forms of such oaths or affirmations as shall be respectively administered unto them, for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and also to impose fines, mulcts, imprisonments, and other punishments, and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state; and upon all estates within the same; to be issued and disposed of by warrant, under the hand of the governor of this state for the time being, with the advice and consent of the council, for the public service, in the necessary defense and support of the government of this state, and the protection and preservation of the subjects thereof, according to such acts as are, or shall be, in force within the same; provided that the general court shall not authorize any town to loan or give its money or credit directly or indirectly for the benefit of any corporation having for its object a dividend of profits or in any way aid the same by taking its stocks or bonds. For the purpose of encouraging conservation of the forest resources of the state, the general court may provide for special assessments, rates and taxes on growing wood and timber.

June 2, 1784

Amended 1792 changing "president" to "governor."

Amended 1877 changing "annually" to "biennially." Also amended to prohibit towns and cities from loaning money or credit to corporations.

Amended 1942 to permit a timber tax.

Tax:

A fee charged ("levied") by a government on a product, income, or activity. If tax is levied directly on personal or corporate income, then it is a direct tax. If tax is levied on the price of a good or service, then it is called an indirect tax. The purpose of taxation is to finance government expenditure. One of the most important uses of taxes is to finance public goods and services, such as street lighting and street cleaning. Since public goods and services do not allow a non-payer to be excluded, or allow exclusion by a consumer, there cannot be a market in the good or service, and so they need to be provided by the government or a quasi-government agency, which tend to finance themselves largely through taxes.

Fee: A charge for services rendered.

Charge: An expense or cost.

Expense: Any cost of doing business resulting from revenue-generating activities.

Cost: The total money, time and resources associated with a purchase or activity.

Read more: <http://www.investorwords.com/1148/cost.html#ixzz1DCzNXvhp>

Read more: <http://www.investorwords.com/1842/expense.html#ixzz1DCz9cRhT>

Read more: <http://www.investorwords.com/1922/fee.html#ixzz1DCyVvVIE>

Read more: <http://www.investorwords.com/4879/tax.html#ixzz1DCyIT0UQ>

Read more: <http://www.investorwords.com/4879/tax.html#ixzz1DD0IxS7v>

This rather clearly explains that a fee is a tax by a different name, at least in this definition. Since only the Legislature is charged with setting taxes, it appears to me to be rather unconscionable that a fee be set by an agency head without clear, precise and direct legislative oversight.

Merriam Webster:

¹**tax** *verb* \ˈtaks\ transitive verb

1: to assess or determine judicially the amount of (costs in a court action)

2: to levy a tax on

3 *obsolete* : to enter (a name) in a list <there went out a decree ... that all the world should be *taxed* — Luke 2:1(Authorized Version)>

4: charge, accuse <*taxed* him with neglect of duty>; *also*: censure

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+++++

fee (fē)

n.

1. A fixed sum charged, as by an institution or by law, for a privilege: a license fee; tuition fees.
2. A charge for professional services: a surgeon's fee.
3. A tip; a gratuity.
4. *Law* An inherited or heritable estate in land.
5.
 - a. In feudal law, an estate in land granted by a lord to his vassal on condition of homage and service. Also called *feud*², *fief*.
 - b. The land so held.

tr. v. **feed, fee-ing, fees**

1. To give a tip to.
2. *Scots* To hire.

Idiom:

in fee Law

In absolute and legal possession.

[Middle English *fe*, from Old English *feoh*, *cattle, goods, money*, and from Anglo-Norman *fee*, *fief* (from Old French *fief*, of Germanic origin; akin to Old English *feoh*); see *peku-* in Indo-European roots.]

Word History: It is possible to see the idea of money taking hold of the human mind by studying a few words that express the notion of wealth or goods. The word *fee* now denotes money paid or received for a service rendered. *Fee* comes from Old English *feoh*, which has three meanings, all equally ancient: "cattle, livestock"; "goods, possessions, movable property"; "money." The Germanic form behind the Old English is **fehu*, which derives by Grimm's Law from Indo-European **peku-*, "cattle." **Fehu* is therefore a cognate of Latin *pecu*, "cattle," also a direct descendant of Indo-European **peku-*. Latin *pecu* has several derivatives that ultimately were borrowed into English. One was *pecunia*, "money," the source of our word *pecuniary*. Another was *peculiaris*, "pertaining to one's *pecunia* or property," the source of our word *peculiar*. Finally, our word *peculator* comes from yet a third derivative, *peculator*, "embezzler of public money, peculator."

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Even the plain English definitions make an equation between a tax and a fee and to create an artificial legislative difference is farcical, in my opinion. Protect the people – demand direct legislative oversight.



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

February 8, 2011

*Gretchen
Holloway*

The Honorable Carol McGuire, Chairman
House Executive Departments and Administration Committee
Legislative Office Building, Room 306
Concord, New Hampshire 03301

Re: HB 239, prohibiting a state agency from establishing a fee without legislative approval

Dear Representative McGuire and members of the Committee:

Thank you for the opportunity to testify on HB 239, prohibiting a state agency from establishing a fee without legislative approval. The Department of Environmental Services acknowledges that, as a matter of law, no agency has the right to establish fees in rules without legislative authorization. However, the Department does not support this bill.

Section 1 of HB 239 proposes to prohibit an agency from establishing, imposing, or enforcing any fee for service or for licensure without legislation "establishing the amount of the fee or an acceptable fee range" (p. 1, lines 4-6). This section also declares that all statutes in effect prior to January 1, 2012 which delegated legislative authority to establish fees are "null and void" (p. 1, lines 7-9). Section 2 of the bill purports to allow a rule in effect on January 1, 2012 that "does not comply with section 1 of this act" to remain valid until it expires, is amended, or renewed.

At least two serious problems arise from the language of the bill. First, if the underlying statutory authority for the fee has been nullified, then any rule based on the law is of questionable validity regardless of what this statute says. Second, the bill would nullify all statutes -- regardless of whether the statute establishes a range for the fees and so would be in compliance with the apparent intent of the bill -- without attempting to replace the authority with any other authority and without allowing time for agencies to seek necessary replacement legislation. This essentially would eliminate programs and agencies that are fee funded, without doing so expressly so that affected interests could weigh in.

Thank you again for the opportunity to comment on this bill. If you have any questions, please call me or Gretchen Hamel of my staff at 271-3137.

Sincerely,

Thomas S. Burack

Thomas S. Burack
Commissioner

cc: Rep. Ulery
Rep. Renzullo



State of New Hampshire

DEPARTMENT OF SAFETY
JAMES H. HAYES BLDG. 33 HAZEN DR.
CONCORD, N.H. 03305
603/271-2559

J Raymond
S Kelloway

JOHN J. BARTHELMES
COMMISSIONER OF SAFETY

EARL M. SWEENEY
ASSISTANT COMMISSIONER

Executive Departments and Administration

Department of Safety Comments on HB_239 ___ SB ___ as Introduced (x) as amended ()

Good morning Madam Chairman McGuire and honorable members of the committee. For the record my name is Sheri Kelloway, I am representing the Office of the Commissioner of Safety and my name is John Raymond, Assistant Director of the State Fire Marshal's Office.

[This bill prohibits a State agency from establishing a fee without legislative approval of an amount or range and nullifies any such existing fees after January 1, 2012.]

The Department of Safety understands the intent of this bill, to have the Legislature involved in the setting of any fees. However, if this bill passes as worded and with the deadline that is in it, there will be some enormous consequences that could overwhelm both the Legislature and State agencies.

This bill somehow escaped a fiscal note. There will be a great rulemaking cost to all the State agencies to comply with it, and it will take an enormous amount of clerical and administrative time away from other work at a time when we expect everyone will be shorthanded due to the budget crunch. It will also put an enormous workload on the Legislature to review the reenactment of many of these rules at a time when your plate is full, as well.

As with other State agencies, our Department has been given the authority to adopt certain fees, which are rarely set in statute. Rather than bore the Committee with a recitation of all the instances, we will describe the effect it will have on just one of our Divisions, the Division of Fire Safety, which includes the Fire Marshal, the Plumber's Board,

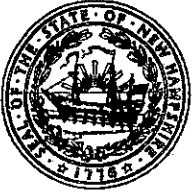
the Gasfitter Regulations, the Electrician's Board, the Modular Housing law, and the Manufactured Housing law. These represent a total of 84 separate fees, only 12 of which are protected by language detailing the amount within the enabling statute.

Paragraph II of HB 239 states that "any law in effect prior to January 1, 2012 that delegated legislative authority to establish fees is null and void." This statement means that if the bill passes as worded, not only will 72 separate fees in this one Division be repealed but the laws associated with these fees would also become null and void. In one fell swoop, this would wipe out the State Fire Code, the Electricians' Licensing law, the Plumbers' Licensing law, the Modular Housing law, the Manufactured Housing law, and Amelia's Law for the licensing of gasfitters. The obvious ramifications of losing all of these laws would be a tremendous blow to the safety and consumer protection of all NH citizens.

The bill would also eliminate 85% of the fee-based income of this one Division, which would otherwise be a burden on the General Fund if those operations were to continue in any fashion, rather than having user fees.

We have kept our testimony very brief, but we would be happy to give you a list of all the fees in the Division of Fire Safety that would be affected. Time has not even permitted us to go through our other 6 Divisions but there are certainly fees everywhere, including the Divisions of State Police and Motor Vehicles, and Division of Safety Services fees on boating, aerial tramway and other fees that would be affected and perhaps more laws that would be inadvertently repealed.

It would be better if this is the Committee's desire, to make a change going forward rather than making the bill retroactive. Also it is important to note that whenever we set a fee it is nearly always done by passing a rule, which requires Legislative oversight and approval through JLCAR.



STATE OF NEW HAMPSHIRE
 DEPARTMENT OF HEALTH AND HUMAN SERVICES
 OFFICE OF OPERATIONS SUPPORT

129 PLEASANT STREET, CONCORD, NH 03301-3857
 603-271-5577 1-800-852-3345 Ext. 5577
 FAX: 603-271-4912 TDD Access: 1-800-735-2964

Nicholas A. Toumpas
 Commissioner

Mary P. Castelli
 Senior Division Director

Handwritten:
 Hinko
 Ho
 John
 Raymond

February 8, 2011

The Honorable Representative Carol McGuire, Chair
 House Executive Departments and Administration Committee
 Legislative Office Building, Room 306
 Concord, NH 03301

Regarding: HB 239

Dear Representative McGuire and Committee Members:

The Department of Health and Human Services (Department) appreciates the opportunity to provide comment on HB 239 prohibiting a state agency from establishing a fee without legislation establishing the amount of the fee or an acceptable fee range.

The Department recognizes the responsibility of the legislature to oversee its delegation of authority to establish fees in rules and is aware of current law (RSA 541-A:22, III(c)), which already prohibits agencies from requiring fees by rule unless specifically authorized by a statute. However, the Department does not support this bill.

HB 239 would have a significant fiscal impact to the Department and the state general fund. A number of department programs are either partially or entirely fee-funded. In addition, many programs, through their fees, generate revenue for the state general fund. This bill proposes to limit such sources of funding, threatening the viability of certain legislatively mandated programs and reducing revenue to the state general fund. Such programs include:

- Bureau of Drug and Alcohol Services: Impaired Driver Intervention Programs (RSA 265-A:39, IV); Multiple DWI Offender Program (RSA 265-A:40)
- Within the Division of Public Health Services:
 - Public Health Laboratory (RSA 131:4); \$300,000 annually
 - Newborn Screening and Newborn Hearing Screening Program (RSA 132:10-a, II); \$800,000 annually
 - Lead Poisoning Prevention and Control Program (RSA 130-A:10, IV); \$30,000 annually
 - Radiological Health Program (RSA 125-F:8); \$1.1 million annually
 - Food Protection Program including Food Establishment Licensing (RSA 143-A:6, V; RSA 143-A:9, I-a; RSA 143-A:13, V); Beverages and Bottled Water (RSA 143:11); Shellfish Sanitation (RSA 143:22-a); Cold Storage (RSA 145:3); Milk Sanitation (RSA 184:85); \$1,476,250 annually.
- Division of Child Support Services (RSA 161-B:3, IV; RSA 161-B:8, II): \$260,000 annually.
- The Committee for the Protection of Human Subjects (RSA 171-A:19-a, IX).

The Honorable Carol McGuire, Chair
House Executive Departments and Administration Committee
February 8, 2011
Page Two

- Health Care Data Collection (RSA 126:30).

This bill would also have a profound impact on Professional Licensing Boards throughout the state, which is required to generate revenue, through fees set in rule, at 125% of their operating budget (see attached list).

HB 239 overlaps with HB 222 (pending House Executive Departments and Administration Committee subcommittee's work scheduled for later this afternoon), which prevents an agency from adopting a rule, which increases a fee "until the fee increase is approved in legislation adopted by the general court." In both cases, additional burdens for agencies would result, particularly because the general court is not in session year-round. By requiring general court approval for specific fees, these bills remove the Department's ability to be responsive to changing fiscal realities. Necessary budgetary work through rules could be delayed by 6 months or to later legislative sessions.

Lastly, this bill does not address the underlying uncertainties regarding implementation and applicability, and appears to be inconsistent with regard to the effect on currently effective rules.

Thank you again for the opportunity to comment on HB 239.

Sincerely,



Mary P. Castelli
Senior Division Director

**List of Boards & Commissions Related To
Department of Health and Human Services**

1. Those boards for which the department has rulemaking authority:
 - Massage Therapists and Massage Establishments (RSA 328-B)
 - Reflexologists/Structural Integrators/Asian Bodywork Therapists (RSA 328-H)
 - Electrologists (RSA 314); Body Arts (RSA 314-A)
 - Ophthalmic Dispensers (RSA 327-A)
2. Those boards administratively attached to the department:
 - Midwifery (RSA 326-D)
 - Licensed Dietitians (RSA 326-H)
 - Naturopathic Health Care Practice (RSA 328-E)
 - Allied Health Professionals (RSA 328-F)
 - Podiatry (RSA 315)
 - Chiropractic (RSA 316-A)
 - Dentists and Dentistry (RSA 317-A)
 - Embalmers and Funeral Directors (RSA 325)
 - Optometry (RSA 327)
 - Acupuncture (RSA 328-G)
 - Physicians and Surgeons (RSA 329)
 - Mental Health Practice (RSA 330-A)
 - Alcohol and Other Drug Abuse Professionals (RSA 330-C)
3. This bill will also affect the following independent boards:
 - Physicians and Surgeons (RSA 329:9)
 - Barbering, Cosmetology, and Esthetics (RSA 313-A)
 - Pharmacists and Pharmacies (RSA 318)
 - Registered Nurses, Licensed Practical Nurses, and Licensed Nursing Assistants (RSA 326-B)

John Raymond
Sheri Holloway

HB 239

An act prohibiting a state agency from establishing a fee without legislative approval.

New Section RSA 14:51

Paragraph I:

Notwithstanding any other provision of law, no agency shall establish, impose or enforce any fee for service for licensure without legislation establishing the amount of the fee or an acceptable fee range.

Paragraph II:

Any law in effect prior to January 1, 2012 that delegated legislative authority to establish fees is hereby declared null and void. Likewise, any rule establishing fees not otherwise established in law is hereby declared null and void.

Comment:

The Division has several statutes which give the division (through the commissioner) the authority to adopt fees. Rarely is the fee set in the statute. Below is a summary of fees that the division collects and the legislative source:

BUREAU: Building Safety & Construction

SECTION: Electrical Safety & Licensing

FEE NAME	AMOUNT	RSA	RULE	BY LEG (Y/N)
Examination Fee for Master & Journeyman	\$50.00	319-C:6-a	Saf-C 9304.04	N
Relicensing Examination Fee	\$25.00	319-C:6-a	Saf-C 9304.04	N
Corporation	\$125.00	319-C:6-a	Saf-C 9302.01(i)	N
Initial Master Electrician (3 years)	\$270.00	319-C:6-a	Saf-C 9302.02(d)	N
Initial Journeyman Electrician	\$150.00	319-C:6-a	Saf-C 9302.03(d)	N
Initial High/Medium Voltage Electrician (3 years)	\$270.00	319-C:6-a	Saf-C 9302.04(d)	N
Initial Apprentice Electrician (1 year)	\$30.00	319-C:6-a	Saf-C 9302.05(d)	N
Initial High-Medium Voltage Trainee (1 year)	\$30.00	319-C:6-a	Saf-C 9302.06(d)	N
Renewal of Corporation License	\$125.00	319-C:6-a	Saf-C 9305.01	N
Renewal of Master Electrician License	\$270.00	319-C:6-a	Saf-C 9305.01	N
Renewal of Journeyman Electrician License	\$150.00	319-C:6-a	Saf-C 9305.04	N
Renewal of Apprentice Card	\$30.00	319-C:6-a	Saf-C 9305.05	N
Renewal of High/Medium Voltage License	\$90.00	319-C:6-a	Saf-C 9305.06	N
Renewal of High/Medium Voltage Trainee Card	\$30.00	319-C:6-a	Saf-C 9305.07	N
Certified Copy of a License	\$10.00	319-C:6-a	Saf-C 9306.01	N
Replacement Fee	\$10.00	319-C:6-a	Saf-C 9306.02	N
Photocopy Fee – First Page	\$10.00	319-C:6-a	Saf-C	N

			9306.03(a)	
Photocopy Fee – Additional Page(s)	\$0.25/page	319-C:6-a	Saf-C 9306.03(b)	N
VHS Copying Fee	\$50.00	319-C:6-a	Saf-C 9306.05(a)	N
Digital Photographs on CD Copying Fee	\$15.00	319-C:6-a	Saf-C 9306.05(b)	N

Bureau: Building Safety & Construction

Section: Mechanical Safety & Licensing

FEE NAME	AMOUNT	RSA	RULE	BY LEG (Y/N)
Original Individual Gas Fitter License	\$225.00	153:28(I)	Saf-C 8009.01(a)	N
Renewal of Individual Gas Fitter License	\$200.00	153:28(I)	Saf-C 8009.01(b)	N
Late Renewal Fee	\$75.00	153:28(I)	Saf-C 8009.01(c)	N
Reinstatement Fee	\$125.00	153:28(I)	Saf-C 8009.01(d)	N
Replacement License	\$50.00	153:28(I)	Saf-C 8009.01(e)	N
Out of State License	\$250.00	153:28(I)	Saf-C 8009.01(f)	N
Business Entity License	\$325.00	153:28(I)	Saf-C 8009.01(g)	N
Renewals of Business Entity License	\$300.00	153:28(I)	Saf-C 8009.01(h)	N
Late fee for Business Entity License	\$100.00	153:28(I)	Saf-C 8009.01(i)	N
Replacement of Business Entity License	\$150.00	153:28(I)	Saf-C 8009.01(j)	N

Bureau: Building Safety & Construction

Section: Plumbing Safety & Licensing

FEE NAME	AMOUNT	RSA	RULE	BY LEG (Y/N)
Replacement Wall Certificate	\$25.00	329-A:5-a	Plu 305.02(c)	N
Replacement Wallet Card	\$25.00	329-A:5-a	Plu 305.02(d)	N
Seminars	\$50.00	329-A:5-a	Plu 305.02(e)	N
Workshops	\$50.00	329-A:5-a	Plu 305.02(f)	N
Initial Apprentice Card	\$60.00	329-A:5-a	Plu 308.02(c)	N
Renewal of Apprentice Card	\$40.00	329-A:5-a	Plu 308.05(c)	N
Initial Corporation License	\$190.00	329-A:5-a	Plu 308.03(a)	N
Renewal of Corporate License	\$190.00	329-A:5-a	Plu 308.06	N
Inspection Fee Minimum (Calculated on Cost of Job)	\$75.00	329-A:5-a	Plu 308.08	N
Initial Journeyman License	\$125.00	329-A:5-a	Plu 3087.02(a)(2)	N
Renewal of Journeyman License	\$100.00	329-A:5-a	Plu 308.05(a)(2)	N
Late Fee (per month up to 12 months)	\$25/mo	329-A:5-a	Plu 308.07	N
Initial Master Plumber	\$190.00	329-A:5-a	Plu 308.02(a)(1)	N
Renewal of Master Plumber	\$165.00	329-A:5-a	Plu 308.05(a)(1)	N
Water Treatment Business Certification	\$125.00	329-A:5-a	Plu 308.04(a)	N
Renewal of Water Treatment Business Certification	\$100.00	329-A:5-a	Plu 308.06	N
Initial Water Treatment Technician Certification	\$125.00	329-A:5-a	Plu 308.02(b)	N
Renewal of Water Treatment Technician Certification	\$100.00	329-A:5-a	Plu 308.05(b)	N

Bureau: Building Safety & Construction

Section: Modular Housing Section

FEE NAME	AMOUNT	RSA	RULE	BY LEG (Y/N)
Third Party Agency Application Fee	\$300.00	205-C:6	Saf-C 3304.02(b)	N
Third Party Agency Approval Fee	\$700.00	205-C:6	Saf-C 3304.09(a)	N
Third Party Agency Renewal Fee	\$1000.00	205-C:6	Saf-C 3304.09(a)(2)	N
Manufacturer Application Fee	\$300.00	205-C:6	Saf-C 3308(b)	N
Manufacturer Approval Fee	\$700.00	205-C:6	Saf-C 3308.01(f)	N
Manufacturer Renewal Fee	\$1000.00	205-C:6	Saf-C 3308.01(a)(2)	N
Modular Labels – Residential up to 4 residences	\$100/label Not to exceed \$2000	205-C:6	Saf-C 3309.11(a)	N
Modular Labels – Non-residential	\$100.00/label	205-C:6	Saf-C 3309.11(b)	N
Lost Label Fee	\$100.00/label	205-C:6	Saf-C 3309.11(c)	N
Inspection Fee	\$75.00/hr	205-C:6	Saf-C 3310.02(g)	N
Re-Inspection Fee for relocated modular units	\$75.00/hr	205-C:6	Saf-C 3310.07	N
Late Fee – 30-91 days	\$100.00	205-C:6	Saf-C 3313.01(a)(1)	N
Late Fee – 91-180 days	\$500.	205-C:6	Saf-C 3313.01(a)(2)	N

Bureau: Building Safety & Construction

Section: Fire Protection Equipment Technicians

FEE NAME	AMOUNT	RSA	RULE	BY LEG (Y/N)
Initial Firm Certificate of Registration – Base Fee	\$100.00	153:5-a	Saf-C 1206.01(a)	Y
Firm Certificate of Registration – Multiple Discipline Endorsement	\$50.00/endorsement	153:5-a	Saf-C 1206.01(b)	Y
Initial Individual Certificate	\$50.00	153:5-a	Saf-C 1206.01(c)	Y
Individual Certificate – Multiple Discipline Endorsement	\$5.00/endorsement	153:5-a	Saf-C 1206.01(d)	Y
Renewal Firm Certificate – Base Fee	\$90.00	153:5-a	Saf-C 1206.01(e)	Y
Renewal Individual Certificate – Base Fee	\$40.00	153:5-a	Saf-C 1206.01(f)	Y

Bureau: Building Safety & Construction

Section: Manufactured Housing

FEE NAME	AMOUNT	RSA	RULE	BY LEG (Y/N)
Initial Installer's License	\$75.00	205-D:7	Inst 301.07(a)	N
Renewal Installer's License	\$50.00	205-D:7	Inst 301.07(b)	N
Duplicate License	\$10.00	205-D:7	Inst 301.07(c)	N
Late Fee	\$10.00	205-D:11	None	Y
Warranty Seal	\$50.00	205-D:12	Inst 401.03	Y
Inspections	\$100.00	205-D:12	None	Y

Bureau: Bureau of Administration

Section: Lightning Rod Section

FEE NAME	AMOUNT	RSA	RULE	BY LEG (Y/N)
Lightning Rod Dealer	\$50.00	323:3	Saf-C 6017	Y
Lightning Rod Agent	\$10.00	323:4	Saf-C 6017	Y

Bureau: Field Operations Bureau

Section: Pyrotechnics Section

FEE NAME	AMOUNT	RSA	RULE	BY LEG (Y/N)
Original Base License (3 year license)	\$200.00	153:5	Saf-C 6019.12	N
Pyrotechnic to a proximate audience Endorsement	\$100.00	153:5	Saf-C 6019.12(a)(2)(a)	N
Flame Effects Endorsement	\$100.00	153:5	Saf-C 6019.12(a)(2)(b)	N
Special Effects Endorsement	\$100.00	153:5	Saf-C 6019.12(a)(2)(c)	N
Renewal of Base License	\$100.00	153:5	Saf-C 6019.12(a)(3)	N
Renewal of Pyrotechnic to a proximate audience Endorsement	\$100.00	153:5	Saf-C 6019.12(a)(4)(a)	N
Renewal of Flame Effects Endorsement	\$100.00	153:5	Saf-C 6019.12(a)(4)(b)	N
Renewal of Special Effects Endorsement	\$100.00	153:5	Saf-C 6019.12(a)(4)(c)	N
Special Effects Permit – Depending upon complexity	\$250.00 - \$400.00	153:5-c	(Proposed rule pending)	Y

SUMMARY

Of the 84 fees listed above, only twelve are protected by language detailing the amount within the enabling legislation. The remaining 72 fees are at peril with the proposed legislation. What is more troubling is the precise language of the bill. Paragraph II states that "any law in effect prior to January 1, 2012 that delegated legislative authority to establish fees is hereby null and void." This statement means that, if passed, not only will the 72 listed above (identified with "N" in last column) be eliminated, but the laws associated with those fees will also become null and void. This would be a blanket repeal of RSA 153:5(State Fire Code), RSA 319-C (Electricians' Licensing Law), RSA 329-A (Plumbers' Licensing Law), RSA 205-C (Modular Housing Law), RSA 205-D Manufactured Housing Law, RSA 153:27-37 (Amilia's Law for Licensure of Gas Fitters).

The obvious ramifications of losing all of these laws would be a tremendous blow to the safety and protection of NH citizens.



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF OPERATIONS SUPPORT

129 PLEASANT STREET, CONCORD, NH 03301-3857
603-271-5577 1-800-852-3345 Ext. 5577
FAX: 603-271-4912 TDD Access: 1-800-735-2964

Nicholas A. Toumpas
Commissioner

Mary P. Castelli
Senior Division Director

Michael Holt
Mary Castelli

February 8, 2011

The Honorable Representative Carol McGuire, Chair
House Executive Departments and Administration Committee
Legislative Office Building, Room 306
Concord, NH 03301

Regarding: HB 239

Dear Representative McGuire and Committee Members:

The Department of Health and Human Services (Department) appreciates the opportunity to provide comment on HB 239 prohibiting a state agency from establishing a fee without legislation establishing the amount of the fee or an acceptable fee range.

The Department recognizes the responsibility of the legislature to oversee its delegation of authority to establish fees in rules and is aware of current law (RSA 541-A:22, III(c)), which already prohibits agencies from requiring fees by rule unless specifically authorized by a statute. However, the Department does not support this bill.

HB 239 would have a significant fiscal impact to the Department and the state general fund. A number of department programs are either partially or entirely fee-funded. In addition, many programs, through their fees, generate revenue for the state general fund. This bill proposes to limit such sources of funding, threatening the viability of certain legislatively mandated programs and reducing revenue to the state general fund. Such programs include:

- Bureau of Drug and Alcohol Services: Impaired Driver Intervention Programs (RSA 265-A:39, IV); Multiple DWI Offender Program (RSA 265-A:40)
- Within the Division of Public Health Services:
 - Public Health Laboratory (RSA 131:4); \$300,000 annually
 - Newborn Screening and Newborn Hearing Screening Program (RSA 132:10-a, II); \$800,000 annually
 - Lead Poisoning Prevention and Control Program (RSA 130-A:10, IV); \$30,000 annually
 - Radiological Health Program (RSA 125-F:8); \$1.1 million annually
 - Food Protection Program including Food Establishment Licensing (RSA 143-A:6, V; RSA 143-A:9, I-a; RSA 143-A:13, V); Beverages and Bottled Water (RSA 143:11); Shellfish Sanitation (RSA 143:22-a); Cold Storage (RSA 145:3); Milk Sanitation (RSA 184:85); \$1,476,250 annually.
- Division of Child Support Services (RSA 161-B:3, IV; RSA 161-B:8, II): \$260,000 annually.
- The Committee for the Protection of Human Subjects (RSA 171-A:19-a, IX).

The Honorable Carol McGuire, Chair
House Executive Departments and Administration Committee
February 8, 2011
Page Two

- Health Care Data Collection (RSA 126:30).

This bill would also have a profound impact on Professional Licensing Boards throughout the state, which is required to generate revenue, through fees set in rule, at 125% of their operating budget (see attached list).

HB 239 overlaps with HB 222 (pending House Executive Departments and Administration Committee subcommittee's work scheduled for later this afternoon), which prevents an agency from adopting a rule, which increases a fee "until the fee increase is approved in legislation adopted by the general court." In both cases, additional burdens for agencies would result, particularly because the general court is not in session year-round. By requiring general court approval for specific fees, these bills remove the Department's ability to be responsive to changing fiscal realities. Necessary budgetary work through rules could be delayed by 6 months or to later legislative sessions.

Lastly, this bill does not address the underlying uncertainties regarding implementation and applicability, and appears to be inconsistent with regard to the effect on currently effective rules.

Thank you again for the opportunity to comment on HB 239.

Sincerely,



Mary P. Castelli
Senior Division Director

**List of Boards & Commissions Related To
Department of Health and Human Services**

1. Those boards for which the department has rulemaking authority:
 - Massage Therapists and Massage Establishments (RSA 328-B)
 - Reflexologists/Structural Integrators/Asian Bodywork Therapists (RSA 328-H)
 - Electrologists (RSA 314); Body Arts (RSA 314-A)
 - Ophthalmic Dispensers (RSA 327-A)
2. Those boards administratively attached to the department:
 - Midwifery (RSA 326-D)
 - Licensed Dietitians (RSA 326-H)
 - Naturopathic Health Care Practice (RSA 328-E)
 - Allied Health Professionals (RSA 328-F)
 - Podiatry (RSA 315)
 - Chiropractic (RSA 316-A)
 - Dentists and Dentistry (RSA 317-A)
 - Embalmers and Funeral Directors (RSA 325)
 - Optometry (RSA 327)
 - Acupuncture (RSA 328-G)
 - Physicians and Surgeons (RSA 329)
 - Mental Health Practice (RSA 330-A)
 - Alcohol and Other Drug Abuse Professionals (RSA 330-C)
3. This bill will also affect the following independent boards:
 - Physicians and Surgeons (RSA 329:9)
 - Barbering, Cosmetology, and Esthetics (RSA 313-A)
 - Pharmacists and Pharmacies (RSA 318)
 - Registered Nurses, Licensed Practical Nurses, and Licensed Nursing Assistants (RSA 326-B)

Voting Sheets

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 239

BILL TITLE: prohibiting a state agency from establishing a fee without legislative approval.

DATE: February 16, 2011

LOB ROOM: 306

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Hawkins

Seconded by Rep. Proulx

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

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

Moved by Rep. Bowers

Seconded by Rep. White

Vote: 16-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 16-0

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Carol Vita, Clerk



~~Retention~~

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 239

BILL TITLE: prohibiting a state agency from establishing a fee without legislative approval.

DATE: 5/16/11

LOB ROOM: 306

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

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

Moved by Rep. **HAWKINS**

Seconded by Rep. **P. ROULY**

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

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

Moved by Rep. **BOWERS**

Seconded by Rep. **WHITE**

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

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Carol Vita, Clerk

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

Bill #: 239 Title: PROHIBITING A STATE AGENCY FROM ESTABLISHING A FEE W/OUT LEGISLATIVE APPROVAL
 PH Date: 2/8/11 Exec Session Date: 2/16/11
 Motion: ~~RESOLVE~~ ITC Amendment #: _____

MEMBER	YEAS	NAYS
McGuire, Carol M, Chairman	✓	
Hawkins, Kenneth, V Chairman	✓	
Sytek, John J	✓	
Day, Russell C	✓	
Gould, Kenneth H	✓	
Pratt, Calvin D	✓	
Vita, Carol M, Clerk	✓	
Perkins, Lawrence B	✓	
Winter, Steven J	✓	
Bowers, Spec	✓	
Hansen, Peter T	✓	
Proulx, Mark L	✓	
Whitehead, Randall A	✓	
Schmidt, Peter B	✓	
Pilotte, Maurice L	✓	
Jeudy, Jean L	✓	
Sullivan, Daniel J	16	0
TOTAL VOTE:	16	0

Committee Report

CONSENT CALENDAR

February 17, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on EXECUTIVE DEPARTMENTS AND
ADMINISTRATION to which was referred HB239,**

**AN ACT prohibiting a state agency from establishing a
fee without legislative approval. Having considered the
same, report the same with the following Resolution:**

RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Spec Bowers

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	EXECUTIVE DEPARTMENTS AND ADMINISTRATION
Bill Number:	HB239
Title:	prohibiting a state agency from establishing a fee without legislative approval.
Date:	February 17, 2011
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

HB 239 is unnecessary and unworkable. It prohibits a state agency from establishing a fee without legislative approval. Under JLCAR procedures it is unnecessary. Every rule already is vetted for being authorized by legislation. To the extent that the bill would require every fee to be based on legislation specifying a precise fee or an acceptable fee range, it would require multiple bills to authorize existing rules and fees.

Vote 16-0.

Rep. Spec Bowers
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

HB239, prohibiting a state agency from establishing a fee without legislative approval.

INEXPEDIENT TO LEGISLATE.

Rep. Spec Bowers for EXECUTIVE DEPARTMENTS AND ADMINISTRATION. HB 239 is unnecessary and unworkable. It prohibits a state agency from establishing a fee without legislative approval. Under JLCAR procedures it is unnecessary. Every rule already is vetted for being authorized by legislation. To the extent that the bill would require every fee to be based on legislation specifying a precise fee or an acceptable fee range, it would require multiple bills to authorize existing rules and fees. **Vote 16-0.**

Original: House Clerk
Cc: Committee Bill File

HB 239 is unnecessary and unworkable. It prohibits a state agency from establishing a fee without legislative approval. Under JLCAR procedures it is unnecessary. Every rule already is vetted for being authorized by legislation. To the extent that the bill would require every fee to be based on legislation specifying a precise fee or an acceptable fee range, it would require multiple bills to authorize existing rules and fees.

Rep Bowers

Carol M. Devine

COMMITTEE REPORT

COMMITTEE:

EDNA

BILL NUMBER:

HB 239

TITLE:

DATE:

2/16/11

CONSENT CALENDAR:

YES

NO

OUGHT TO PASS

OUGHT TO PASS W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

Lined area for the Statement of Intent.

COMMITTEE VOTE:

16-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep.

Carol Vita

For the Committee