

# Bill as Introduced

HB 654-FN-LOCAL - AS INTRODUCED

2011 SESSION

11-1114  
10/09

HOUSE BILL

**654-FN-LOCAL**

AN ACT

relative to credit for retirement system employer contribution overpayments.

SPONSORS:

Rep. Jasper, Hills 27; Rep. O'Brien, Hills 4; Rep. Reagan, Rock 1; Rep. Rodeschin, Sull 2; Rep. Munck, Straf 2; Rep. Long, Hills 10; Rep. Flanagan, Hills 5; Rep. Chandler, Carr 1; Sen. Carson, Dist 14

COMMITTEE:

Special Committee on Public Employee Pensions Reform

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ANALYSIS

This bill requires the retirement system to credit overpayments by retirement system employers made prior to the recertification of employer contribution rates.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

**HB 654-FN-LOCAL - AS INTRODUCED**

11-1114  
10/09

**STATE OF NEW HAMPSHIRE**

*In the Year of Our Lord Two Thousand Eleven*

**AN ACT** relative to credit for retirement system employer contribution overpayments.

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

1       1 New Hampshire Retirement System; Credit for Certain Employer Payments. To the extent  
2 that retirement system employer contribution percentage rates in effect for any month of the state  
3 fiscal year beginning July 1, 2011 exceed the rates made effective following the recertification of  
4 employer contribution rates under 2011, 224:188, any overpayment based on the rates prior to  
5 recertification shall be credited to the benefit of the employer against future payments. The  
6 retirement system shall determine the amounts by which a retirement system employer made  
7 payments at a contribution percentage rate greater than the recalculated rate recertified as required  
8 in 2011, 224:188, and such amounts shall be deemed overpayments to be credited to the respective  
9 employer during the remainder of the state fiscal year.

10       2 Effective Date. This act shall take effect upon its passage.

LBAO  
11-1114  
09/09/11

**HB 654-FN-LOCAL - FISCAL NOTE**

AN ACT relative to credit for retirement system employer contribution overpayments.

**FISCAL IMPACT:**

The New Hampshire Retirement System states this bill will decrease state expenditures by \$1,795,249 in FY 2012 and will decrease county and local expenditures by \$4,161,723 in FY 2012. There will be no fiscal impact on state, county or local revenues.

**METHODOLOGY:**

The New Hampshire Retirement System states this bill would produce employer contribution credits for any month in state fiscal year 2012 in which the employer contribution rates in effect for the month exceeded the employer contribution rates in effect following the recertification of rates under chapter 224:188, laws of 2011. As rates were recertified effective August 1, 2011, the only month for which contribution credits would be generated would be July 2011. The System states the amounts of the estimated credits were determined by subtracting from the originally certified employer contribution rates, the employer contribution rates as recertified effective August 1, 2011, and multiplying the difference by the applicable pensionable salaries for July 2011, as reported by all participating employers.

	A	B	C	D	E
	July 2011 Certified Rate	August 2011 Recertified Rate	Rate Difference (A - B)	July 2011 Pensionable Salaries	Contribution Credit (C X D)
<u>State</u>					
Employees	12.31%	10.08%	2.23%	\$57,456,058	\$1,281,270
Police	25.57%	19.95%	5.62%	\$8,494,797	\$477,408
Fire	30.90%	22.89%	8.01%	\$456,572	\$36,571
<b>Total</b>					<b>\$1,795,249</b>
<u>Political Subdivisions</u>					
Employees	11.09%	8.80%	2.29%	\$59,978,167	\$1,373,500
Teachers	13.95%	11.30%	2.65%	\$34,081,040	\$903,148
Police	25.57%	19.95%	5.62%	\$18,959,403	\$1,065,518

**HB 654-FN-LOCAL**

**- Page 3 -**

<b>Fire</b>	<b>30.90%</b>	<b>22.89%</b>	<b>8.01%</b>	<b>\$10,231,667</b>	<b>\$819,557</b>
<b>Total</b>					<b>\$4,161,723</b>

The System states the administrative cost of implementing this bill can be absorbed within its existing budget.

# Committee Minutes

**SENATE CALENDAR NOTICE**  
**EXECUTIVE DEPARTMENTS AND ADMINISTRATION**

Senator Sharon Carson Chairman  
~~Senator Fenton Groen V Chairman~~  
~~Senator Sylvia Larsen~~  
~~Senator Jim Luther~~  
~~Senator Raymond White~~

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

Date: March 7, 2012

**HEARINGS**

**Thursday**

**3/15/2012**

**EXECUTIVE DEPARTMENTS AND ADMINISTRATION**

**SH 100**

**9:00 AM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

9:00 AM HB654-FN-L

relative to credit for retirement system employer contribution overpayments.

9:15 AM HB624

(New Title) relative to the rulemaking authority of state agencies to establish fees and costs and establishing a committee to study the rulemaking authority of state agencies to establish fees.

9:30 AM HB222-FN

(New Title) relative to the specificity of certain statutory provisions granting rulemaking authority.

**Sponsors:**

**HB654-FN-L**

Rep. Shawn Jasper  
 Rep. Philip Munck  
 Sen. Sharon Carson

Rep. William O'Brien  
 Rep. Patrick Long

Rep. John Reagan  
 Rep. Jack Flanagan

Rep. Beverly Rodeschin  
 Rep. Gene Chandler

**HB624**

Rep. J. Brandon Giuda  
 Rep. Thomas Laware  
 Rep. Daniel Donovan

Rep. Frederick Rice  
 Rep. William O'Brien  
 Rep. Winfred Hutchinson

Rep. Peter Hansen  
 Rep. David Bettencourt  
 Sen. Jeb Bradley

Rep. Joseph Pitre  
 Rep. Daniel Tamburello

**HB222-FN**

Rep. George Lambert

Rep. Laura Jones

# Executive Dept. and Administration Committee

## Hearing Report

**TO:** Members of the Senate

**FROM:** Deb Chroniak, Legislative Aide

**RE:** Hearing report on HB 654-FN-Local, An Act relative to credit for retirement system employer contribution overpayments.

**HEARING DATE:** March 15, 2012

**MEMBERS OF THE COMMITTEE PRESENT:** Senator Groen, Senator Luther, Senator Larsen, Senator White

**MEMBERS OF THE COMMITTEE ABSENT:** Senator Carson

**Sponsor(s):** Rep. Jasper, Hills 27; Rep. O'Brien, Hills 4; Rep. Reagan, Rock 1; Rep. Rodeschin, Sull 2; Rep. Munck, Straf 2; Rep. Long, Hills 10; Rep. Flanagan, Hills 5; Rep. Chandler, Carr 1; Sen. Carson, Dist 14

**What the bill does:** This bill requires the retirement system to credit overpayments by retirement system employers made prior to the recertification of employer contribution rates.

**Who supports the bill:** Dean Michener, NH School Boards Association, Barbara Reid, NH Municipal Association.

**Who opposes the bill:** Attorney Timothy J. Crutchfield, Chief Legal Counsel for the NH Retirement System.

### **Summary of testimony received:**

The Vice Chair, Senator Groen opened the hearing at 9:10 a.m.

- **Rep. Carol McGuire (in support)** spoke saying HB 654 is a credit for retirement system employer contribution overpayments that were made in July 2011, between the times the rates changed and the times the revised rates from HB 2 kicked in.



- **Attorney Timothy Crutchfield**, Chief Legal Counsel, NH Retirement System (NHRS) speaking on behalf on the Retirement Systems Board of Trustees **in opposition** to this legislation. Attorney Crutchfield stated that HB 654 seeks to effectively reduce employer contributions made to the retirement system in July 2011 by applying a credit for employers with a difference between the employers contribution rates in effect in July 2011 and the employer contribution rates that were recertified by the Retirement Systems Board effective August 1, 2011, pursuant to HB 2, Section 188. However, the employer contribution rates that took effect on July 1, 2011 were properly certified by the Board of Trustees pursuant to 100-A:16 III, therefore, there was no "overpayment" of employer contributions in July 2011.
- **Attorney Crutchfield** stated that Section 188 of HB 2 provided that the "old" employer contribution rates would remain in effect pending the recertification. Section 188 states, "...such employer contribution rates shall be effective as soon as possible following July 1, 2011, as approved by the Board of Trustees".
- Part I, Article 36-a of the NH Constitution requires the NHRS contributing employers to pay actuarially sound contribution rates certified by the Board of Trustees. Based on a review of HB 654 by legal counsel, the Board asserts that a "credit" which would have the effect of making the recertification retroactive is a potential violation of Part I, Article 36-a.
- **Senator Luther** asked if the only reason that Attorney Crutchfield opposes HB 654 is due to the constitutionality issues. Attorney Crutchfield stated not only the constitutionality question, but also the legal question of following the law, as written, under that section of HB 2.
- **Senator Larsen** stated the constitutional issue that Attorney Crutchfield raised is the retroactivity, and the requirement to pay sound contribution rates. **Attorney Crutchfield** stated that was correct and that those were properly certified by the Board per the constitution.
- **Dean Michener** (in support), NH School Boards Association, stating that the bottom line for school districts in this bill is the effect of any elimination of state share in retirement contribution rates have on local districts. He stated that they worked with legislators and were in support of the reform and the retirement statute that was made, and that reform had a significant impact on the local districts. He went on to state that the problem is the school districts are paying more now than they would have paid without reform, but still having a state share in the payment of contribution rates for their teachers. That is assuming the 25% level of state contribution. The law said it was going back to 35%. They have strong concerns about this, and it seems that they should really be looking at the 25% level. They feel that the Legislature may well do that again, and they need to be prepared for that. He stated that none were thinking of a total elimination of any state share.
- **Mr. Michener** stated that another problem that they had that had to be absorbed, was that school districts started their operations last fall, but unlike other state revenues that were cut, they still have the appropriation.

The state would be paying money; they would be paying less money. so the impact was that it had to be absorbed through the property tax, and citizens would pay more. The problem with the retirement contribution is those payments, the state's share is always paid directly to the retirement system, so their bill was less. They had budgeted for what their bill was, but when there was no state payment to the retirement system, the bill to them was larger than what they had budgeted for, and it came after their budgets were adopted. They were left with having to make cuts to other programs to meet the expense of an increased cost.

- He supports the payback for those payments that were made in August (sic).

- **Senator Luther** stated that if the credit were made, how far that would go to the loss of funds. **Mr. Michener** stated that the credit would be about \$900,000 state-wide for school districts. **Mr. Michener** stated that they are presently paying 11.3% total for teachers, but if there had been no reform the total rate would be 13.95%, but at the 25% levels it would have been 10.46%. **He is not prepared to quickly answer that question, but he can get back with that information to the Committee. Senator Luther would like to see that information.**

The hearing closed at 9:23 a.m.

**Funding:** The NHRS states this bill will decrease state expenditures by \$1,795,249 in FY 2012 and will decrease county and local expenditures y \$4,161,723 in FY 2012. There will be no fiscal impact on state, county or local revenues.

**Future Action:** The Committee took the bill under advisement.

DAC

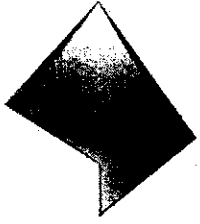
[file: HB0654-FN report]

Dated: March 17, 2012

# Speakers



# Testimony



# NHRS

New Hampshire Retirement System

**NH Retirement System**  
54 Regional Drive  
Concord, NH 03301  
Phone: (603) 410-3500  
[www.nhrs.org](http://www.nhrs.org)

**House Bill 654 Opposed by NH Retirement System (NHRS) Board of Trustees  
Testimony Presented to the Senate Executive Departments & Administration Committee  
By Timothy Crutchfield, NHRS Chief Legal Counsel  
March 15, 2012**

My name is Timothy Crutchfield, and I am the chief legal counsel for the New Hampshire Retirement System. I am here on behalf of the New Hampshire Retirement System Board of Trustees to oppose House Bill 654.

House Bill 654 seeks to effectively reduce employer contributions made to the New Hampshire Retirement System in July 2011 by applying a credit for employers for the difference between the employer contribution rates in effect in July 2011, and the employer contribution rates that were recertified by the New Hampshire Retirement System Board of Trustees effective August 1, 2011, pursuant to House Bill 2, section 188. However, the employer contribution rates that took effect on July 1, 2011, were properly certified by the Board of Trustees in September 2010, pursuant to RSA 100-A:16, III, and, therefore, there was no "overpayment" of employer contributions in July 2011.

Section 188 of House Bill 2 expressly provided that the "old" employer contribution rates would remain in effect pending the recertification – the "old" rates being those rates properly and legally certified by the Board in September 2010, and effective July 1, 2011. Section 188 of House Bill 2 states, in part, "... such employer contribution rates shall be effective as soon as possible following July 1, 2011 [emphasis added] as approved by the board of trustees."

Article 36-a of the New Hampshire Constitution requires NHRS contributing employers to pay actuarially sound contribution rates certified by the Board of Trustees. Based on a review of House Bill 654 by its legal counsel, the Board asserts that a "credit" which would have the effect of making the recertification retroactive is a potential violation of Part I, Article 36-a of the New Hampshire Constitution.

Based on the aforementioned constitutionality concerns of House Bill 654, the New Hampshire Retirement System Board of Trustees opposes House Bill 654.

Thank you for your time to hear my testimony. I would be happy to address any questions you may have.

###

#2



**NH Retirement System**  
**54 Regional Drive**  
**Concord, NH 03301**  
**Phone: (603) 410-3500**  
**www.nhrs.org**

**NHRS Bill Brief: HB 654-FN (as passed by the NH House)**

*Prepared for the NH Senate ED&A Committee*

**Summary:** AN ACT relative to credit for retirement system employer contribution overpayments.

**Analysis:** This bill requires the retirement system to credit overpayments by retirement system employers made prior to the recertification of employer contribution rates.

**Sponsors:** Rep. Jasper, Hills 27; Rep. O'Brien, Hills 4; Rep. Reagan, Rock 1; Rep. Rodeschin, Sull 2; Rep. Munck, Straf 2; Rep. Long, Hills 10; Rep. Flanagan, Hills 5; Rep. Chandler, Carr 1; Sen. Carson, Dist 14.

**NHRS Position**

The Board of Trustees of the New Hampshire Retirement System opposes this bill on the grounds that the employer rates which took effect July 1, 2011, were legally certified and, therefore, there was no "overpayment" of employer contributions in July 2011. Further, crediting employers would potentially violate Part I, Article 36-a of the New Hampshire Constitution.

**Legal Considerations**

House Bill 654 seeks to reduce employer contributions made to the New Hampshire Retirement System in July 2011 by crediting employers for the difference between the employer contribution rates in effect in July 2011, and the employer contribution rates that were recertified by the New Hampshire Retirement System Board of Trustees effective August 1, 2011, pursuant to House Bill 2, section 188 (see attachment).

NHRS contends that the employer contribution rates that took effect on July 1, 2011, were properly certified by the Board of Trustees in September 2010, pursuant to RSA 100-A:16, III, and, therefore, there was no "overpayment" of employer contributions in July 2011.

Section 188 of House Bill 2 expressly provided that the "old" employer contribution rates would remain in effect pending the recertification – the "old" rates being those rates properly and legally certified by the Board in September 2010, and effective July 1, 2011. Section 188 of House Bill 2 states, in part, "... such employer contribution rates shall be effective as soon as possible following July 1, 2011 [emphasis added] as approved by the board of trustees."

Article 36-a of the New Hampshire Constitution requires NHRS contributing employers to pay actuarially sound contribution rates certified by the Board of Trustees. Based on a review of House Bill 654 by its legal counsel, the Board asserts that a "credit" that has the effect of making the recertification retroactive is a potential violation of Part I, Article 36-a of the New Hampshire Constitution.

The Board of Trustees has waived confidentiality on a legal memo prepared by Attorney Andrew Schulman regarding these issues (see attachment).

## Financial Considerations

**Employers:** The amounts of the estimated credits resulting from the passage of HB 654 were determined by subtracting the employer contribution rates as recertified effective August 1, 2011, from the originally certified employer contribution rates, and multiplying the difference by the applicable pensionable salaries for July 2011, as reported by all participating employers. The estimated impact is:

	A	B	C	D	E
	July 2011 Certified Rate	August 2011 Recertified Rate	Rate Difference (A - B)	July 2011 Pensionable Salaries	Contribution Credit (C X D)
<b>State</b>					
Employees	12.31%	10.08%	2.23%	\$57,456,058	\$1,281,270
Police	25.57%	19.95%	5.62%	\$8,494,797	\$477,408
Fire	30.90%	22.89%	8.01%	\$456,572	\$36,571
<b>Total State</b>					<b>\$1,795,249</b>
<b>Political Subdivisions</b>					
Employees	11.09%	8.80%	2.29%	\$59,978,167	\$1,373,500
Teachers	13.95%	11.30%	2.65%	\$34,081,040	\$903,148
Police	25.57%	19.95%	5.62%	\$18,959,403	\$1,065,518
Fire	30.90%	22.89%	8.01%	\$10,231,667	\$819,557
<b>Total Political Subs</b>					<b>\$4,161,723</b>

While the credits would provide short-term savings to employers, any employer credits provided would result in additional costs for the state and its political subdivisions in FY 2014 and beyond. These costs would continue in future years until the entire amount credited in FY 2012, plus interest, is fully recovered. The System states this would be for 26 years beginning in FY 2014.

<b>Projected Increase in 2014-16 Employer Contributions</b>			
	FY 2014	FY 2015	FY 2016
<b>State</b>			
Employees	\$96,706	\$100,332	\$104,094
Police	\$40,818	\$42,349	\$43,937
Fire	\$2,657	\$2,757	\$2,860
<b>Total State</b>	<b>\$140,181</b>	<b>\$145,438</b>	<b>\$150,891</b>
<b>Political Subdivisions</b>			
Employees	\$104,903	\$108,837	\$112,918
Teachers	\$94,342	\$97,879	\$71,170
Police	\$105,865	\$109,835	\$113,954
Fire	\$74,114	\$76,893	\$79,776
<b>Total Political Subs</b>	<b>\$379,224</b>	<b>\$393,444</b>	<b>\$377,818</b>

# # #





GETMAN,  
SCHULTHESS  
& STEERE, P.A.

*Attorneys at Law*

1838 Elm Street, Manchester, NH 03104  
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Andrew R. Schulman, Esq. aschulman@gss-lawyers.com

**PRIVILEGED AND CONFIDENTIAL  
ATTORNEY WORK PRODUCT<sup>1</sup>**

TO: NHRS Board of Trustees

CC: Kim France, NHRS Interim Executive Director  
Tim Crutchfield, Esq. NHRS Legal Counsel

Ian Lanoff, Esq., Groom Law Group  
Julia Zuckerman, Esq., Groom Law Group  
Lonie Hassel, Esq., Groom Law Group

FROM: Andrew R. Schulman 

DATE: September 23, 2011

\*\*\*\*\*

Introduction: Kim France asked me to respond to an issue that arose when she testified before the Legislature on September 22, 2011 regarding the Constitutionality of HB 654. As you know, that Bill would require NHRS to provide employers with a credit against future contributions in the amount by which their July 2011 contributions (determined using the “old,” pre-HB 2, fiscal 2012 certification) exceeded the monthly contributions for the rest of fiscal 2012 (determined using the “new” post-HB 2 re-certification ).

Apparently some House members opined that the pre-HB 2 fiscal 2012 contribution rates should never have been used for July, 2011. Instead, they claimed that the 2011 contribution rate should have been continued until the post-HB 2 fiscal 2012 recertification was complete.

Analysis: I can say with confidence that HB 2 cannot reasonably be read to require the use of fiscal 2011 contribution rates during the first portion of fiscal 2012. Some House

<sup>1</sup>On October 11, 2011, the NHRS Board of Trustees waived the attorney-client privilege with regard to this memorandum.

HB2 – Section 188

224:188 Retirement System; Recalculation of Employer Rates; Recertification. Notwithstanding the notice requirements of RSA 100-A:16, III, the board of trustees of the retirement system shall recalculate employer contribution rates for the state fiscal years 2012 and 2013 to reflect the requirements of amendments to RSA 100-A in the 2011 legislative session. The recalculation shall be based on the demographic and economic assumptions as disclosed in the June 30, 2010 valuation issued November 24, 2010 by the New Hampshire retirement system actuary. Such recalculation shall not use a changed assumed rate of return until fiscal year 2014. Notwithstanding the notice requirements of RSA 100-A:16, III, such employer contribution rates shall be effective as soon as possible following July 1, 2011 as approved by the board of trustees. The recertification of employer contribution percentages by the board shall be effective when provided to each employer within a reasonable period of time not to exceed 30 days from the approval of the recalculation by the board of trustees, as amended by section 174 of this act, after July 1, 2011. The exception to the notice requirements of RSA 100-A:16, III in this section shall be limited to the applicable employer contribution rates for the biennium beginning July 1, 2011.

*Attorneys at Law*

members may believe that this is what they accomplished. But the text of the statute says otherwise.

RSA 100-A:16,III(a) requires the NHRS Trustees to certify employer contribution rates for the next fiscal biennium on or before the first day of October preceding each regular session of the Legislature. Pursuant to this statute, in September, 2009 the NHRS Trustees properly certified employer contribution rates for all of fiscal 2011. Per the underlying statute (RSA 100-A:16, III(a)), those contribution rates were only valid for fiscal 2011. Those rates were never certified for any month of fiscal 2012.

Per the same statute, in September, 2010 the NHRS Trustees properly certified employer contribution rates for fiscal 2012. Those contribution rates were scheduled to go into effect on July 1, 2011.

HB 2 (2011 Laws, 224:188,) became law on June 30, 2011—one day before the start of fiscal 2012 and, therefore one day before the effective date of the fiscal 2012 contribution rates. HB 2 required that fiscal 2012 and 2013 contribution rates be recertified to reflect changes in member contribution rates and member benefits.

The text of HB 2 expressly recognized that it would be impossible to perform the recertification prior to July 1, 2011. HB 2 required that the recertified employer contribution rates be “effective as soon as possible *following July 1, 2011.*” Therefore, the black letter text of the statute provided that the recertified rates would first become effective when the recertification was completed at some point after July 1, 2011.



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The text of HB 2 is silent as to what employer contribution rates should be used prior to the effective date of the recertified rates. However, it could not be the fiscal 2011 rate because that rate was never certified for use in fiscal 2012. Therefore, the only way to read HB 2 is that it required the use of the previously certified fiscal 2012 rate (i.e. the pre-HB 2 rate that was certified in 2010) until the recertification was complete.

HB 2 says nothing about reducing the post-recertification, *monthly* employer contribution rate so that the *annual* employer contribution for fiscal 2012 will be equal to what it would be if the recertified rates were used for all twelve months.

HB 2 does reference RSA 100-A:16, but only for the purpose of stating that the “notice provisions” of that statute are inapplicable. In other words, the recertified rates did not need to be published nine months ahead of time.

\* \* \*

Since employer contributions for July 2011 were (a) properly certified and (b) properly paid as certified, it would likely violate Part 1, Article 36-a for the Legislature to require NHRS to disgorge any of these contributions, either directly or by means of a credit against future contributions.

Arguably, the provisions of both sentences of Article 36-a would be violated by HB 654. The first sentence requires that employer contributions “shall be appropriated each fiscal year to the same extent as is certified.” Although the New Hampshire Supreme Court has never construed this clause of Article 36-a, I think that if there has been a proper certification then the amount certified must be paid. (Note that this has nothing to do with whether it would be good



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Andrew R. Schulman, Esq.

[aschulman@gss-lawyers.com](mailto:aschulman@gss-lawyers.com)

or bad actuarial practice to allow the credit required by HB 654. Although contributions must be certified based on “sound actuarial valuation and practices,” once they are so certified they must be paid. Here, there is no dispute that the July 2011 contribution rate was properly certified and, therefore, it was properly paid.)

The second sentence of Article 36-a may also be triggered if HB 654 becomes law. That sentence forbids “diversions” of NHRS assets for any non-retirement purposes. Certainly ordering NHRS to make a lump sum payment to employers would be a diversion of assets. Arguably a credit that accomplishes the same thing would be a diversion as well.

I’ve not included case law in this memorandum, in part because it was requested on an expedited basis and in part because there are no New Hampshire Supreme Court decisions that control the issue. I would be happy to do further research and provide multi-jurisdictional case law upon request.

SUBMISSION #1

Chroniak, Deborah

**From:** Larsen, Sylvia  
**Sent:** Thursday, January 05, 2012 4:55 PM  
**To:** Carson, Sharon  
**Subject:** FW: HB 654

**Attachments:** 2011\_09\_14\_Rep\_Jasper\_Memo\_HB654.PDF; Schulman\_memo\_LSR0114\_2011\_09\_05\_waiver.pdf

Dear Sharon,

As this bill will be reviewed in ED&A, I wanted to make sure you had a copy of this email relating to the NH Retirement System and HB 654. I promised I would get you a copy of these documents during session yesterday.

I look forward to working with you on this and other important bills in the weeks ahead,

Best regards,

Sylvia B. Larsen  
Senator, District 15  
Senate Democratic Leader  
(603) 271-3207

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**From:** France, Kim [mailto:kim.france@nhrs.org]  
**Sent:** Tuesday, January 03, 2012 9:07 PM  
**To:** Bragdon, Peter; Barnes, Jack; Bradley, Jeb; Jeb Bradley; Larsen, Sylvia  
**Subject:** FW: HB 654

Good evening, Senators,

I understand the Senate is scheduled to consider retained bills including House Bill 654. I wish to share with you documents related to the NH Retirement System Board of Trustees' opposition to House Bill 654, including potential constitutional issues with this bill.

Please do not hesitate to contact me with any questions.

Respectfully,  
Kim

Kim France  
Interim Executive Director  
NH Retirement System  
54 Regional Drive  
Concord, NH 03301  
Phone: (603) 410-3556  
FAX: (603) 410-3557  
Email: [kim.france@nhrs.org](mailto:kim.france@nhrs.org)  
Website: [www.nhrs.org](http://www.nhrs.org)

-----Original Message-----

**From:** France, Kim  
**Sent:** Wednesday, September 14, 2011 4:06 PM  
**To:** 'shawn.jasper@leg.state.nh.us'  
**Cc:** 'Sharon.Carson@leg.state.nh.us'; 'william.obrien@leg.state.nh.us'; 'gene.chandler@leg.state.nh.us'; 'jack.flanagan@leg.state.nh.us'; 'khawkins2@comcast.net'; 'long55@comcast.net'; 'philip.munck@leg.state.nh.us'; 'john.reagan@juno.com'  
**Subject:** HB 654

Representative Jasper,

1/6/2012

Thank you for your time to speak by phone earlier today. Attached, please find the documents pertaining to the Board's opposition of House Bill 654, which I referenced during our phone call.

Respectfully,  
Kim

Kim France  
Interim Executive Director  
NH Retirement System  
54 Regional Drive  
Concord, NH 03301  
Phone: (603) 410-3556  
FAX: (603) 410-3557  
Email: [kim.france@nhrs.org](mailto:kim.france@nhrs.org)  
Website: [www.nhrs.org](http://www.nhrs.org)

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# NHRS

New Hampshire Retirement System

## Memo

VIA ELECTRONIC MAIL

To: Representative Shawn Jasper

From: Kim France, NHRS Interim Executive Director

Date: September 14, 2011

Re: HB 654

Cc: Sen. Carson; Speaker O'Brien; Reps. Chandler, Flanagan, Hawkins, Long, Munck, Reagan, and Rodeschin; NHRS Board of Trustees

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I am contacting you and the other sponsors of House Bill 654, as well as the Chair of the Special Committee on Public Employee Pensions Reform, to notify all of you that the NH Retirement System (NHRS) Board of Trustees voted unanimously to oppose HB 654 at its meeting on September 13, 2011.

Based on a review by its legal counsel, the Board asserts that NHRS participating employers paid contributions for July at the rate that was certified by the Board per RSA 100-A:16, III, and, therefore, there were no "overpayments" made by employers. Furthermore, the Legislature, in Section 188 of House Bill 2, specifically made the employer rate recertification effective "as soon as possible after July 1, 2011." HB 654 has the effect of making the recertification retroactive, a potential violation of Part I, Article 36-a of the NH Constitution.

I am attaching a copy of the memo from Attorney Andrew Schulman to the NHRS Board dated September 5, 2011, that speaks to the potential constitutional issue.

Please contact me if you have any questions or if I may be of assistance.

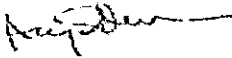


**PRIVILEGED AND CONFIDENTIAL  
ATTORNEY WORK PRODUCT<sup>1</sup>**

TO: NHRS Board of Trustees

CC: Kim France, NHRS Interim Executive Director  
Tim Crutchfield, Esq. NHRS Legal Counsel

Ian Lanoff, Esq., Groom Law Group  
Julia Zuckerman, Esq., Groom Law Group  
Lonie Hassel, Esq., Groom Law Group

FROM: Andrew R. Schulman 

DATE: September 5, 2011

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I have taken a look at LSR 11-114.0. As you know, that LSR would require NHRS to credit employers for so-called "overpayments." The "overpayments" equal the difference in the amount the employers paid in July 2011, using the "old" certified employer contribution rate for fiscal 2011, and the amount that they *would have paid* had the "new" certified contribution rate, required by HB 2, Section 188 been in effect.

However, there were no "overpayments." The "old" employer contribution rate was properly certified and was in effect until the "new" recertification was published. Section 188 expressly provided that the "old" rate would stay in effect pending the recertification:

**Notwithstanding the notice requirements of RSA 100-A:16, III, such employer contribution rates shall be effective as soon as possible following July 1, 2011 as approved by the board of trustees. The recertification of employer contribution percentages by the board shall be effective when provided to each employer within a reasonable period of time not to exceed 30 days from the approval of the recalculation by the board of trustees, as amended by section 174 of this act, after July 1, 2011.**

<sup>1</sup> On September 13, 2011, the NHRS Board of Trustees waived the attorney-client privilege with regard to this memorandum.



GETMAN,  
SCHULTHEISS  
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Andrew R. Schulman, Esq. [aschulman@gss-lawyers.com](mailto:aschulman@gss-lawyers.com)

Therefore, employers paid contributions for July at the rate that (a) the Board certified and (b) the Legislature expressly approved in Section 188, by making the recertification effective "as soon as possible after July 1, 2011."

I have grave concerns about the constitutionality of a "credit" that would have the effect of making the re-certification retroactive. Part 1, Article 36-a requires employers to pay contributions as "certified." By retroactively reducing the certified rate, I think this LSR would violate Article 36-a.

Please note that the Constitutional issue presented by the LSR is different from that presented in our current lawsuit over the constitutionality of the recertification. The lawsuit raises questions of (a) whether the Legislature can order a special recertification for future contributions based on future changes in benefit structure and member contribution rates and (b) whether the Legislature can require the use of the economic assumptions that the Board already used in for the existing certification.

In contrast, this LSR says nothing about a future recertification or the use of any criteria for recertification. It simply reduces the amount of future employer contributions based on the belief that the contribution rate for July should have been lower.

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE

Date: March 22, 2012

THE COMMITTEE ON Executive Departments and Administration  
to which was referred House Bill 654-FN-L

AN ACT                      relative to credit for retirement system employer  
   contribution overpayments.

Having considered the same, the committee recommends that the Bill:

**IS INEXPEDIENT TO LEGISLATE**

BY A VOTE OF:    5-0

AMENDMENT #            s

Senator Fenton Groen  
For the Committee

Deb Chroniak 271-1403

## New Hampshire General Court - Bill Status System

**Docket of HB654**

Docket Abbreviations

**Bill Title:** relative to credit for retirement system employer contribution overpayments.*Official Docket of HB654:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
9/14/2011	H	Late Drafting and Introduction Approved by Rules Committee; <b>HJ 64</b> , PG.1973
9/14/2011	H	Rules Suspension to Permit Introduction, Printing, Referral to Committee, Public Hearing and Committee Report (Rep Bettencourt): MA <b>RC 260-97</b> by Required Two-Thirds; <b>HJ 64</b> , PG.1973-1976
9/14/2011	H	Introduced and Referred to Special Committee on Public Employee Pensions Reform; <b>HJ 64</b> , PG.1976
9/14/2011	H	Public Hearing: 9/22/2011 10:00 AM LOB 305-307
9/21/2011	H	Executive Session: 9/29/2011 1:30 PM LOB 305-307 ==RECESSED==
9/29/2011	H	==RECONVENE== Executive Session: 10/4/2011 2:30 PM LOB 303
10/5/2011	H	Majority Committee Report: Ought to Pass for Oct 12 (Vote 6-3; RC); <b>HC 62</b> , PG.1932
10/5/2011	H	Minority Committee Report: Inexpedient to Legislate; <b>HC 62</b> , PG.1932
10/12/2011	H	Ought to Pass: MA <b>RC 253-110</b> ; <b>HJ 68</b> , PG.2057-2059
10/12/2011	H	Suspend House Rules to Allow Second Committee (Finance) and Reporting Deadline to December 23, 2011 (Rep Shurtleff): MF <b>RC 113-248</b> by Required Two-Thirds; <b>HJ 68</b> , PG.2059-2061
1/4/2012	S	Sen. Bradley Moved to Suspend all Rules necessary to allow the consideration of HB 654 and further allow it to be reported out of policy committee in the 2012 Senate Session by the adopted Senate deadline for HBs. 2/3 necessary, MA, <b>RC 16Y-6N</b>
1/4/2012	S	Introduced 9/7/2011 and Referred to Executive Dept. & Admin; <b>SJ 22</b> , Pg.747
3/8/2012	S	Hearing: 3/15/12, Room 100, SH, 9:00 a.m.; <b>SC10</b>
3/22/2012	S	Committee Report: Inexpedient to Legislate, 3/28/12; <b>SC12</b>
3/28/2012	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===

NH House

NH Senate

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

                     ORIGINAL REFERRAL HB 654/FN-1 RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

PREPARED TESTIMONY AND OTHER SUBMISSIONS

List by number [ Submission 1 thru 4 or Submission 1, 2, 3, 4 ] here:

#1, #2                      SUBMISSION #1

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

\_\_\_ - AMENDMENT # \_\_\_                      \_\_\_ - AMENDMENT # \_\_\_  
\_\_\_ - AMENDMENT # \_\_\_                      \_\_\_ - AMENDMENT # \_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED                      \_\_\_ AS AMENDED BY THE HOUSE  
\_\_\_ FINAL VERSION                      \_\_\_ AS AMENDED BY THE SENATE

\_\_\_ EXECUTIVE SESSION REPORT

\_\_\_ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

DATE DELIVERED TO SENATE CLERK 6-29-12

[Signature]  
COMMITTEE AIDE