

LEGISLATIVE COMMITTEE MINUTES

**SB264**

# Bill as Introduced

SB 264 - AS INTRODUCED

2015 SESSION

15-0997  
06/09

SENATE BILL **264**

AN ACT relative to tipped employees.

SPONSORS: Sen. Stiles, Dist 24; Sen. Fuller Clark, Dist 21; Sen. Prescott, Dist 23; Rep. F. Rice, Rock 21; Rep. Emerick, Rock 21; Rep. Moody, Rock 17

COMMITTEE: Executive Departments and Administration

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ANALYSIS

This bill includes employees of certain ballrooms as tipped employees for purposes of the minimum hourly rate.

.....

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT           relative to tipped employees.

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

1           1 Minimum Hourly Rate; Tipped Employees. Amend the introductory paragraph of RSA 279:21  
2 to read as follows:

3           279:21 Minimum Hourly Rate. Unless otherwise provided by statute, no person, firm, or  
4 corporation shall employ any employee at an hourly rate lower than that set forth in the federal  
5 minimum wage law, as amended.

6 Tipped employees of a restaurant, hotel, motel, inn or cabin, *or ballroom as defined in RSA 175:1,*  
7 *V and licensed by the New Hampshire liquor commission under RSA 178:22, V(c)* who  
8 customarily and regularly receive more than \$30 a month in tips directly from the customers will  
9 receive a base rate from the employer of not less than 45 percent of the applicable minimum wage. If  
10 an employee shows to the satisfaction of the commissioner that the actual amount of wages received  
11 at the end of each pay period did not equal the minimum wage for all hours worked, the employer  
12 shall pay the employee the difference to guarantee the applicable minimum wage. The limitations  
13 imposed hereby shall be subject to the following exceptions:

14           2 Effective Date. This act shall take effect 60 days after its passage.

SB 264 - AS AMENDED BY THE SENATE

03/19/2015 0833s

2015 SESSION

15-0997  
06/09

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12 shall be subject to the following exceptions:

13       2 New Paragraph; Minimum Wage Law; Definitions; Ballroom. Amend RSA 279:1 by inserting  
14 after paragraph XV the following new paragraph:

15       XVI. "Ballroom" means an indoor facility which has seating accommodations for at least 500  
16 patrons, provides live entertainment, and is licensed by the New Hampshire liquor commission  
17 under RSA 178:22, V(c).

18       3 Effective Date. This act shall take effect upon its passage.

SB 264 - AS AMENDED BY THE HOUSE

03/19/2015 0833s  
1Apr2015... 1116h

2015 SESSION

15-0997  
06/09

SENATE BILL **264**

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1Apr2015... 1116h

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CHAPTER 1  
SB 264 - FINAL VERSION

03/19/2015 0833s  
1Apr2015... 1116h

2015 SESSION

15-0997  
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1Apr2015... 1116h

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12 shall be subject to the following exceptions:

13 1:2 New Paragraph; Minimum Wage Law; Definitions; Ballroom. Amend RSA 279:1 by  
14 inserting after paragraph XV the following new paragraph:

15 XVI. "Ballroom" means an indoor facility which has seating accommodations for at least 500  
16 patrons, provides live entertainment, and is licensed by the New Hampshire liquor commission.

17 1:3 Effective Date. This act shall take effect upon its passage.

18

19 Approved: April 10, 2015

20 Effective Date: April 10, 2015

# Amendments

Amendment to SB 264

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Minimum Hourly Rate; Tipped Employees. Amend the introductory paragraph of RSA 279:21  
4 to read as follows:

5 279:21 Minimum Hourly Rate. Unless otherwise provided by statute, no person, firm, or  
6 corporation shall employ any employee at an hourly rate lower than that set forth in the federal  
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17 XVI. "Ballroom" means an indoor facility which has seating accommodations for at least 500  
18 patrons, provides live entertainment, and is licensed by the New Hampshire liquor commission  
19 under RSA 178:22, V(c).

20 3 Effective Date. This act shall take effect upon its passage.

Rep. Infantine, Hills. 13  
March 24, 2015  
2015-1116h  
06/03

Amendment to SB 264

Amend RSA 279:1, XVI as inserted by section 2 of the bill by replacing it with the following:

XVI. "Ballroom" means an indoor facility which has seating accommodations for at least 500 patrons, provides live entertainment, and is licensed by the New Hampshire liquor commission.

# Committee Minutes

**SENATE CALENDAR NOTICE  
EXECUTIVE DEPARTMENTS AND ADMINISTRATION**

- Senator Sharon Carson Chairman
- Senator John Reagan V Chairman
- Senator Sam Cataldo
- Senator Donna Soucy
- Senator Jeff Woodburn

*open  
9:57 AM  
close 10:26 AM*

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: February 25, 2015**

**HEARINGS**

**Wednesday**

**3/11/2015**

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

LOB 101

9:00 AM

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

9:00 AM SB123

relative to warnings prior to the imposition of civil fines assessed by certain state agencies.

9:20 AM SB164

relative to the independent investment committee in the New Hampshire retirement system.

9:40 AM ~~SB264~~

relative to tipped employees.

Sponsors:

**SB123**

- Sen. Andy Sanborn
- Sen. Jeb Bradley

- Sen. Nancy Stiles
- Sen. Jeanie Forrester

Sen. Gary Daniels

Sen. Gerald Little

**SB164**

- Sen. David Watters
- Rep. Raymond Gagnon

- Sen. Donna Soucy
- Rep. Mark Proulx

- Sen. Lou D'Allesandro
- Rep. David Danielson

- Rep. Jacalyn Cilley
- Sen. Martha Fuller Clark

**SB264**

- Sen. Nancy Stiles
- Rep. J. Tracy Emerick

- Sen. Martha Fuller Clark
- Rep. Marcia Moody

Sen. Russell Prescott

Rep. Frederick Rice

**SENATE  
EXECUTIVE DEPARTMENTS AND ADMINISTRATION  
COMMITTEE**

**Deb Chroniak, Legislative Aide**

**SB 264 – relative to tipped employees.**

Hearing Date: March 11, 2015

Time Opened: 9:50 a.m.

Time Closed: 10:20 a.m.

**Members of the Committee Present:** Senators Carson, Reagan, Cataldo, Soucy and Woodburn

**Members of the Committee Absent:** No one

**Bill Analysis:** This bill includes employees of certain ballrooms as tipped employees for purposes of the minimum hourly rate.

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**Sponsors:** Sen. Stiles, Dist 24; Sen. Fuller Clark, Dist 21; Sen. Prescott, Dist 23; Rep. F. Rice, Rock 21; Rep. Emerick, Rock 21; Rep. Moody, Rock 17

**Who supports the bill:** Senator Stiles and Prescott; Kristin MacKinnon, Owner, Casino Ballroom; Attorney Jack Sanders, representing Casino Ballroom

**Who opposes the bill:** No one

**Who is neutral to the bill:** Commissioner Jim Craig, NH Department of Labor; Michele Small, Administrator of Inspection Division, NH Department of Labor

**Summary of testimony presented in support:**

**Senator Nancy Stiles:**

- Legislation was in response to a determination of an audit performed by the New Hampshire Department of Labor (regarding the Hampton Beach Casino Ballroom).
- Tipped employees (bartenders and wait-staff) are paid tipped wages.
- The audit determined that a ballroom was not a restaurant, hotel, motel, inn or cabin and that the Casino Ballroom is not entitled to pay its tipped employees the tipped wage.

Section 1 of SB 264 is the Minimum Hourly Rate; Tipped Employees (RSA 279:21).



Because ballroom was not within the current RSA, the Department of Labor determined directly tipped employees in ballrooms must receive the “full minimum wage”.

- This legislation would add tipped employees of a **ballroom** to the language under this RSA. There are only two licensed establishments in New Hampshire that are classified as ballrooms.
- This legislation would meet the Department of Labor concerns.

**Jack Sanders, Attorney for Hampton Beach Casino Ballroom and Kristin MacKinnon, Casino Ballroom Owner:**

- Actual ballroom is operated by Kristin MacKinnon and her brother, Fred Schaaque; an important business at Hampton Beach.
- Kristin MacKinnon’s father bought the complex in 1976; her involvement came in 1995.
- Live shows are held. Last year they held 71 shows, 22 being sold out. This brought 115,000 to 120,000 people in to the area. Their season runs from March through the end of November.
- Employees declared tips average \$19.00 to \$29.00 per hour, something they are not looking to change, but to continue the operation as they know it.

**Senator Reagan** stated that by the description of ballroom that it seems more of a night club. **Ms. MacKinnon** said by definition of the Liquor Commission, they hold a ballroom license which allows them to sell alcohol only during live entertainment.

- Their food license is through Health and Human Services (referred to as a “cocktail lounge license”) which allows the ballroom to serve “prepared food”. Revenue to be considered a restaurant is 60/40 and they do not qualify for that. The word restaurant did not cover the ballroom.

**Attorney Sanders** said, historically Hampton Casino Ballroom evolved into a show venue. The business has changed considerably over the years, and his client was unaware of the narrow statute.

- The Liquor Commission fashioned their statute to fit the business.
- The Department of Labor would like the definition of ballroom in the Labor statutes (from this legislation).
- Licensing would be taken from RSA 178:22 allowing the Commission to issue a “cocktail license”.

**Senator Woodburn** asked about economic harm to the ballroom due to the audit. **Ms. MacKinnon** stated they had to do a wage adjustment going back to August.

- **Attorney Sanders** stated that the Hampton Beach Chamber of Commerce presented an award as “Business of the Year” to the Hampton Beach Casino Ballroom who employs 136 employees.

**Summary of testimony presented in neutral position:**

**Commissioner Jim Craig, NH Department of Labor and Michele Small, Administrator of Inspection Division, NH Department of Labor:**

**Michele Small, NH Department of Labor:**

- There was nothing in statute that stated employees could not receive tips. The issue was on the subminimum pay (\$3.27 per hour), rather than the minimum wage of \$7.25 per hour.
- They worked to develop the statute language and to place the language within the Department of Labor's law, so that ballrooms could pay the subminimum rate.
- Wants to be sure the amendment goes through because there is concern of a definition tied to a different agency. Much cleaner to have ballroom definition under Labor's RSA 279:1-XVI, which definition would be taken directly from the Liquor Commission statute definition, and also the inclusion of license by the NH Liquor Commission.

**Commissioner Jim Craig, NH Department of Labor:**

- Audit was due to a complaint and that is where they found discrepancy in law which they did address. Want to make sure there is no further harm to the business and that the employees are paid properly. This, they know, was not a deliberate action and this legislation will fix the issue.

**Senator Carson** stated this bill would be execed out of committee today and asked all parties involved to please give her language to bring in an amendment that would fix the statute and this particular issue.

**Commissioner Craig** wanted to make it clear that there was no penalty, only those wages which were properly paid to employees.

**Fiscal Note:** N/A

**Future Action:** Senator Soucy motioned OTP on Amendment, seconded by Senator Reagan. The vote was unanimous. The motion of OTP as Amended was made by Senator Reagan, seconded by Senator Soucy. The vote was unanimous. Senator Carson will move this bill out of Committee.

dac  
Date hearing report completed: 3-13-15-F

[file: SB 264 report]

# Speakers



# Testimony

SB264

#1

Intro

I have introduced Senate Bill 264 in response to a determination the New Hampshire Department of Labor recently made regarding a business in my district – the Hampton Beach Casino Ballroom. The Ballroom has been owned by the same family for almost 40 years. During this time, the directly tipped employees – the bartenders and wait-staff – have been paid the “tipped wage.” After a recent audit of the business by the Department of Labor a determination was made that because the Ballroom is not a restaurant, hotel, motel, inn or cabin, it is not entitled to pay its directly tipped employees the “tipped wage.”

If you look at Section 1 of SB 264, you will notice the current law is everything NOT in *bold italics*. Because there is no mention of “ballroom” in the current law, the Department believes directly tipped employees of ballrooms must receive the full minimum wage.

On a personal note I can tell you my son worked at the ballroom during the summers when he was going to college. I can confirm that we were delighted that he was paid "tipped wages" as it certainly helped pay a large portion of his college costs. Not only was it a fun job for him, he made very good money.

#1

Senate Bill 264 is a pretty simple and narrow bill. It will codify in law a practice that has been occurring in the industry for almost 40 years. This bill does not seek to allow ballrooms to do anything different than what they've been doing. The bartenders and wait staff at ballrooms are no different than those at any given restaurant.

SB-264 will only allow tipped employees of a ballroom that qualify for a ballroom liquor license by the NH Liquor Commission to be paid the "tipped wage." There are currently two establishments licensed as ballrooms in New Hampshire – the Hampton Beach Casino Ballroom in Hampton and the Rockingham Ballroom in Newmarket.

*Reference - to be placed in Labor Statute*

SB 264 is crafted narrowly to address the Department's concern that we not open up the statute too liberally. I ask this committee to please look favorably and pass this legislation.

Thank you

# Committee Report



**STATE OF NEW HAMPSHIRE**  
**SENATE**  
**REPORT OF THE COMMITTEE**

Date: March 11, 2015

**THE COMMITTEE ON Executive Departments and Administration**  
to which was referred Senate Bill 264

**AN ACT** relative to tipped employees.

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

**OUGHT TO PASS WITH AMENDMENT**

BY A VOTE OF: 5-0

AMENDMENT # 0833 s

Senator Sharon M. Carson  
For the Committee

Deb Chroniak 271-1403

## New Hampshire General Court - Bill Status System

**Docket of SB264**

Docket Abbreviations

**Bill Title:** relative to tipped employees.*Official Docket of SB264:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
2/12/2015	S	<b>Introduced</b> and Referred to Executive Departments and Administration; <b>SJ 6</b>
2/26/2015	S	Hearing: 3/11/15, Room 101, LOB, 9:40 a.m.; <b>SC12</b>
3/11/2015	S	Committee Report: Ought to Pass with Amendment #2015-0833s, 3/19/15; <b>SC13</b>
3/19/2015	S	Committee Amendment 0833s, AA, VV
3/19/2015	S	<b>Ought to Pass with Amendment</b> 0833s, MA, VV; OT3rdg; <b>SJ 9</b>
3/19/2015	H	Introduced and Referred to Labor, Industrial & Rehabilitative Services (In Recess from 3/12/2015); <b>HJ 26</b> , PG. 1275
3/19/2015	H	Public Hearing: 3/24/2015 10:15 AM LOB 307
3/19/2015	H	Executive Session: 3/25/2015 12:00 PM LOB 307
3/26/2015	H	Committee Report: Ought to Pass with Amendment #2015-1116h for Apr 1 (Vote 19-0; CC); <b>HC 25</b> , PG. 903
4/1/2015	H	Amendment #1116h: AA VV; <b>HJ 31</b> , PG. 1342-1343
4/1/2015	H	<b>Ought to Pass with Amendment</b> #1116h: MA VV; <b>HJ 31</b> , PG. 1342-1343
4/9/2015	S	Sen. Carson Concurs with House Amendment #1116h, MA, VV; <b>SJ 11</b>
4/9/2015	S	Enrolled 4/9/2015; <b>SJ 11</b>
4/9/2015	H	Enrolled; <b>HJ 31</b> , PG. 1479
4/15/2015	S	Signed by the Governor on 04/10/2015; Chapter 0001; Effective 04/10/2015

NH House

NH Senate

# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

513264

ORIGINAL REFERRAL

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
- HEARING REPORT
- PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

#1

- SIGN-UP SHEET(S)

### ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 08335      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_  
 - AMENDMENT # 1116h      \_\_\_\_\_ - AMENDMENT # \_\_\_\_\_

### ALL AVAILABLE VERSIONS OF THE BILL:

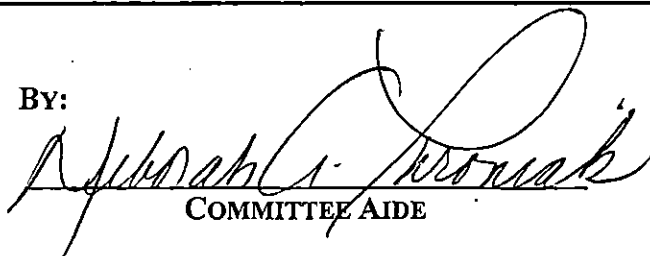
AS INTRODUCED       AS AMENDED BY THE HOUSE  
 FINAL VERSION       AS AMENDED BY THE SENATE

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

DATE DELIVERED TO SENATE CLERK

8-12-15

BY:

  
COMMITTEE AIDE