

# Committee Report

**REGULAR CALENDAR**

**February 8, 2017**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Education to which was referred HB  
354-FN-A-LOCAL,**

**AN ACT making an appropriation to the department of  
education to provide additional adequate education  
grant payments to certain municipalities. Having  
considered the same, report the same with the following  
amendment, and the recommendation that the bill  
OUGHT TO PASS WITH AMENDMENT.**

**Rep. Terry Wolf**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	Education
Bill Number:	HB 354-FN-A-LOCAL
Title:	making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.
Date:	February 8, 2017
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2017-0076h

### STATEMENT OF INTENT

There are several communities that have not received full adequacy funding due to a cap put in place when the adequacy formula changed several years ago. Many of these communities have seen increased enrollments. In the last biennium, the legislature changed the cap from 108% to 160% and removed it entirely effective FY2018. The City of Dover filed a lawsuit claiming the cap was unconstitutional and won. This bill provides the funding, which was already set aside, due to the remaining 24 communities as a result of Dover's lawsuit. The amendment makes the bill effective upon passage.

Vote 18-0.

Rep. Terry Wolf  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

### Education

**HB 354-FN-A-LOCAL**, making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Terry Wolf for Education. There are several communities that have not received full adequacy funding due to a cap put in place when the adequacy formula changed several years ago. Many of these communities have seen increased enrollments. In the last biennium, the legislature changed the cap from 108% to 160% and removed it entirely effective FY2018. The City of Dover filed a lawsuit claiming the cap was unconstitutional and won. This bill provides the funding, which was already set aside, due to the remaining 24 communities as a result of Dover's lawsuit. The amendment makes the bill effective upon passage. **Vote 18-0.**

Original: House Clerk  
Cc: Committee Bill File

# COMMITTEE REPORT

COMMITTEE: Education

BILL NUMBER: HB 354-FN-L

TITLE: \_\_\_\_\_

making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

DATE: 2-7-2017 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.  
00764

STATEMENT OF INTENT:  
sent via email (mm)

COMMITTEE VOTE: 18-0

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

RESPECTFULLY SUBMITTED,  
Rep. Terry Wolf  
For the Committee

There are several communities that have not received full adequacy funding due to a cap put in place when the adequacy formula changed several years ago - many of these communities have seen increased enrollments. In the last biennium, the legislature changed the cap from 108% to 160% and removed it entirely in FY2018. Dover filed a lawsuit saying the cap was unconstitutional and won. This bill provides the funding to the remaining 24 communities, which has already been set aside. The amendment changes date to effective upon passage.

Representative Terry Wolf  
Assistant Majority Whip  
Hillsborough 7 Bedford  
House Education Committee

Rep. Bates, Rock. 7  
January 19, 2017  
2017-0076h  
10/04

Amendment to HB 354-FN-A-LOCAL

1 Amend the introductory paragraph of section 1 of the bill by replacing it with the following:

2

3       1 Appropriation; Additional Adequate Education Grants to Certain Municipalities. The sum of  
4 \$9,065,044 for the fiscal year ending June 30, 2017 is hereby appropriated to the department of  
5 education for the purpose of providing additional adequate education grants to certain  
6 municipalities as calculated in RSA 198:40-a and 198:41 for the fiscal year ending June 30, 2016,  
7 which were not distributed to those municipalities in that fiscal year. Said sum shall be a charge  
8 against the education trust fund established in RSA 198:39. Notwithstanding RSA 198:42, the  
9 commissioner of the department of education shall disburse a lump sum to each municipality as  
10 follows:

11

12 Amend the bill by replacing section 2 with the following:

13

14       2 Effective Date. This act shall take effect upon its passage.

# Voting Sheets





HOUSE COMMITTEE ON EDUCATION

EXECUTIVE SESSION on HB 354-FN-A-LOCAL

BILL TITLE: making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

DATE: 2-7-2017

LOB ROOM: 207

① Amendment

MOTION: (Please check one box)

- OTP, ITL, Retain (1st year), Adoption of Amendment # 0076h, Interim Study (2nd year)

Moved by Rep. Wolf Secoded by Rep. Grenier Vote: 18-0

②

MOTION: (Please check one box)

- OTP/A, ITL, Retain (1st year), Adoption of Amendment #, Interim Study (2nd year)

Moved by Rep. Wolf Secoded by Rep. Cordelli Vote: 18-0

MOTION: (Please check one box)

- OTP, ITL, Retain (1st year), Adoption of Amendment #, Interim Study (2nd year)

Moved by Rep. Secoded by Rep. Vote:

MOTION: (Please check one box)

- OTP, ITL, Retain (1st year), Adoption of Amendment #, Interim Study (2nd year)

Moved by Rep. Secoded by Rep. Vote:

CONSENT CALENDAR: YES NO

Minority Report? Yes No If yes, author, Rep: Motion:

Respectfully submitted: Rep Barbara Shaw, Clerk

① Amendment



STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK

1/10/2017 9:30:55 AM  
Roll Call Committee Registers  
Report

2017 SESSION

EDUCATION

Bill #: HB 354-FN-A4 Title: making an appropriation to the

PH Date: 01/24/2017 Exec Session Date: 2/7/17

Motion: OTP Amendment #: 0076h

MEMBER	YEAS	NAYS
Ladd, Rick M. Chariman	✓	
Wolf, Terry M. Vice Chairman	✓	
Cordelli, Glenn	✓	
Grenier, James L.	✓	
Pitre, Joseph A.	✓	
Elliott, Robert J.	✓	
Moore, Josh	✓	
Sullivan, Victoria L.		
Halstead, Carolyn	✓	
Moffett, Michael	✓	
Wolf, Dan	✓	
Shaw, Barbara E. Clerk	✓	
Myler, Mel <i>Rep. Altschiller</i>	✓	
Heath, Mary	✓	
Burton, Wayne M.	✓	
Cornell, Patricia	✓	
Doherty, David	✓	
Tanner, Linda L.	✓	
Le, Tamara	✓	
<b>TOTAL VOTE:</b>	<b>18</b>	<b>0</b>



2016 SESSION

EDUCATION

Bill #: HB 354-FN-L Title: making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

PH Date: 01 24 2017

Exec Session Date: 1 1

Motion: OTP/A

Amendment #: 0076h

MEMBER	YEAS	NAYS
Ladd, Rick M. Chariman	✓	
Wolf, Terry M. Vice Chairman	✓	
Cordelli, Glenn	✓	
Grenier, James L.	✓	
Pitre, Joseph A.	✓	
Elliott, Robert J.	✓	
Moore, Josh	✓	
Sullivan, Victoria L.		
Halstead, Carolyn	✓	
Moffett, Michael	✓	
Wolf, Dan	✓	
Shaw, Barbara E. Clerk	✓	
Myler, Mel <u>Rep. Altschiller</u>	✓	
Heath, Mary	✓	
Burton, Wayne M.	✓	
Cornell, Patricia	✓	
Doherty, David	✓	
Tanner, Linda L.	✓	
Le, Tamara	✓	
<b>TOTAL VOTE:</b>	<u>18</u>	<u>0</u>

Rep. Bates, Rock. 7  
January 19, 2017  
2017-0076h  
10/04

Amendment to HB 354-FN-A-LOCAL

1 Amend the introductory paragraph of section 1 of the bill by replacing it with the following:

2

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9 commissioner of the department of education shall disburse a lump sum to each municipality as  
10 follows:

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12 Amend the bill by replacing section 2 with the following:

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14       2 Effective Date. This act shall take effect upon its passage.

# Hearing Minutes

HOUSE COMMITTEE ON EDUCATION  
PUBLIC HEARING ON HB 354-FN-A-LOCAL

**BILL TITLE:** making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

**DATE:** January 24, 2017

**LOB ROOM:** 207                      **Time Public Hearing Called to Order:** 10:00 a.m.  
**Time Adjourned:** 10:30 a.m.

Committee Members: Reps. Ladd, T. Wolf, Cordelli, Pitre, Elliott, M. Moffett, D. Wolf, Myler, Heath, Cornell, Doherty, Tanner, T. Le and Shaw

Bill Sponsors:

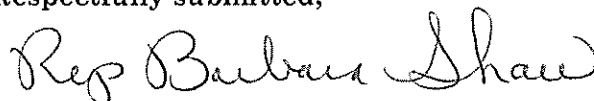
Rep. Bates	Rep. Gould	Rep. Murphy
Rep. R. Gordon	Rep. Spillane	Rep. Eaton
Rep. G. Smith	Rep. Abrami	Rep. Hoell
Rep. Lovejoy		

TESTIMONY

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

- (1.) \* Rep. David Bates - sponsor
- supports - amendment - changes date to June 30, 2017
  - funds in 198:42 capped at 108% July 1. This year July 1 this year cap lifted. 24 communities underfunded.
  - Dover filed a lawsuit - court found cap unconstitutional
- \*Written testimony for reference.
- (2.) Kaitlin Davis - DOE - for technical support
- is funding available in Ed trust fund?
  - Yes
  - will this affect appropriation for full-time Kindergarten?
  - Unknown.

Respectfully submitted,



Rep. Barbara Shaw, Clerk

HOUSE COMMITTEE ON EDUCATION  
PUBLIC HEARING ON HB 354-FN-A-LOCAL

BILL TITLE: making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

DATE: 1-24-2017

ROOM: 207

Time Public Hearing Called to Order: 10:00 AM

Time Adjourned: 10:30 AM

(please circle if present)

Committee Members: Reps. Ladd, T. Wolf, Cordelli, Grenier, <sup>here</sup> ~~Pitre~~, Elliott, J. Moore, V. Sullivan, Halstead, M. Moffett, D. Wolf, Myler, Heath, ~~Burton~~, Cornell, Doherty, Tanner, ~~T. Le~~ and Shaw <sup>here</sup>

Bill Sponsors:

Rep. Bates  
Rep. R. Gordon  
Rep. G. Smith  
Rep. Lovejoy

Rep. Gould  
Rep. Spillane  
Rep. Abrami

Rep. Murphy  
Rep. Eaton  
Rep. Hoell

TESTIMONY

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

① Rep. David Bates - sponsor

- supports - amendment - changes date to June 30, ~~2017~~ 2017
- funds in 198:42 capped at ~~108%~~ <sup>108%</sup> July 1 this year cap lifted. 24 communities underfunded
- Dover filed a lawsuit - court found cap unconstitutional
- \* written testimony for reference.

② Kaitlin Davis - DOE - for technical support

- is funding available in Ed. trust fund?  
Yes
- will this affect appropriation for full time K?  
unknown

Respectfully submitted,  
Rep Barbara Shaw,  
Clerk





# Testimony

①

## LITIGATION

The State and certain of its agencies and employees are defendants in numerous lawsuits that assert claims regarding social welfare program funding, breach of contract, negligence, and 42 U.S.C. §1983. Although the Attorney General is unable to predict the ultimate outcome of the majority of these suits, the State believes that the likelihood of such litigation resulting, either individually or in the aggregate, in final judgments against the State which would materially affect its financial position is remote. Accordingly, no provision for the ultimate liability, if any, has been made in the State's financial statements.

Except as otherwise noted below, the following matters are currently pending and at this time it is not possible to predict the outcome of these matters:

*State of New Hampshire v. Philip Morris USA, RJ Reynolds, Inc. and Lorillard Tobacco Company.* This matter is a petition for a declaratory order. Defendants are signatories to the Tobacco Master Settlement Agreement under which Defendants are required to make annual payments to all of the states, including the State of New Hampshire. The annual payments received since 2006 have been approximately \$5 million below the required amount. On June 5, 2006, the Superior Court ordered the case to arbitration under the terms of the Master Settlement Agreement. A notice of appeal was filed to the New Hampshire Supreme Court on August 11, 2006. Briefs were filed and oral argument occurred in March, 2007. The Supreme Court affirmed the ruling of the Superior Court on June 22, 2007. The arbitration process for all states began on July 1, 2010, and is expected to last at least two years. The tobacco companies are seeking recovery of up to the entire annual payment of approximately \$50 million made to the State under the MSA. The tobacco companies have identified thirty-five states they claim failed to "diligent enforce" their obligations under the MSA, including New Hampshire. The arbitration will begin April 23, 2012 with a presentation of facts and issues common to all the individual state cases. Individual state hearings are scheduled to begin May 21, 2012 and will continue at least through 2012. New Hampshire's hearing, scheduled for November, 2012, was postponed. Since that time, some states, including New Hampshire, have joined in a settlement agreement which has been submitted to the New Hampshire Legislature and was approved in March 2013. The settlement resolves the diligent enforcement dispute with the settling states through 2015. Under the terms of the settlement, the tobacco companies accepted a reduction in their claim for a non-participating manufacturer (NPM) adjustment against the settling states. The settlement resulted in the release by the tobacco companies of approximately \$63.2 million to New Hampshire from the disputed payments account. In exchange, New Hampshire's 2013 annual tobacco payment was reduced by approximately \$42.4 million, and its annual payment will be reduced through 2017 by approximately \$4 million, as payment for its share of the settlement agreement. This matter is now concluded.

*Professional Fire Fighters of New Hampshire, et al v. State of New Hampshire ("Firefighters II").* This suit challenges other portions of HB 2 that affect the State Retirement System. Petitioners challenge Section 161 (definition of Earnable Compensation), Section 163 (definition of Average Final Compensation), Section 164 (Maximum Retirement Benefit), Section 166 (Age Multiplier to calculate benefit), and Section 186 (repeal of disability exception from the gainful occupation reduction provision) of HB 2. Petitioners seek an order finding HB 2 is unconstitutional under the Contracts and Takings Clauses of both the New Hampshire Constitution and the United States Constitution. Petitioners also sought injunctive relief, payment of damages and attorneys' fees. The issues raised in this lawsuit are similar to the issues raised in *Firefighters I* (see *Professional Firefighters, et al v. State of New Hampshire (Firefighters I)* above). The trial court issued a preliminary order in May 2013, which held that employees have a contractual interest in their retirement benefit when they become "permanent employees" (approximately 1 year into employment). The Court found there is a factual question on whether the changes to the law resulted in a "substantial impairment" and did not issue an injunction. In light of the Supreme Court's decisions in *Firefighters I* and *American Federation of Teachers*, the trial court vacated this ruling and ordered the state to file a motion seeking judgment in its favor on the grounds that the former pension laws created no protectable contractual rights. In February 2016, the court granted this motion, resulting in dismissal of the case. On appeal, the New Hampshire Supreme Court summarily affirmed the superior court's order dismissing the case. Litigation of this matter is concluded.

*City of Dover v. State of New Hampshire.* In this case, filed August 20, 2015, the City of Dover challenges the State's distribution of education aid to municipalities as a violation of the state constitutional entitlement to an adequate education, insofar as the statutory distribution scheme imposes a "cap" limiting the aid that a particular

municipality can receive in a particular year to 108% of the aid it received in the prior year. The suit seeks both prospective and retrospective relief against the cap, which has been in effect since 2009. If the request for prospective relief is successful, it will require a restructuring of the State's formula for distributing education aid to municipalities. If the request for retrospective relief is successful, it would require paying the City of Dover the difference between the aid they received in each of those years and the aid they would have otherwise gotten, but for the cap. While the aggregate amount of that potential exposure has not yet been calculated for all fiscal years at issue, the total amount of aid to all municipalities withheld on the basis of the cap for fiscal year 2016 will be approximately \$10.44 million. Shortly after the suit was filed, the state entered into a stipulation agreeing that any final rulings regarding the constitutionality of the cap would apply not only to Dover, but to all other municipalities affected by the cap.

On September 6, 2016, the superior court issued a final order ruling that the cap is unconstitutional but limiting Dover to prospective relief. In effect, this ruling entitles to Dover to the \$1.377 million it would have received but for the cap in fiscal year 2016. It is the state's position that this ruling also entitles the 24 other municipalities to be paid the difference between the amount they would have received in fiscal year 2016 and the amount they actually received due to the cap; in total, that amount for the other municipalities is approximately \$9.065 million. On September 26, 2016, the State agreed to settle the lawsuit with Dover by paying the \$1.377 million. The approximately \$9.065 million for the other municipalities would have to be appropriated by the Legislature in accordance with RSA 14:35-b before the other municipalities could receive their amounts. A bill will be submitted for the 2017 legislative session. The plaintiffs and the State have agreed to a settlement which ends this case.

*Bedford School District and William Foote v. State of New Hampshire, et al.* The Bedford School District and Mr. Foote, a taxpayer in Bedford, sued the State arguing that Bedford did not receive all of the education adequacy payments for fiscal year 2016 and would not receive all of the education adequacy payments for fiscal year 2017. A hearing was held on June 29, 2016, where Bedford's request for a preliminary injunction was denied. The State filed an Answer objecting to Bedford's claim for adequacy payments from fiscal year 2016 as being untimely filed thus barring it by sovereign and requesting that the claim for fiscal year 2017's adequacy payments be stayed pending the order in the City of Dover v. Department of Education litigation. The State is currently awaiting the scheduling of a compliance hearing.

*Dartmouth Hitchcock, et al v. Toumpas.* In August 2011, 10 of New Hampshire's 13 non-critical access hospitals and a "John Doe" individual Medicaid recipient filed a lawsuit in the Federal District Court for the District of New Hampshire against the Commissioner of the DHHS. The lawsuit challenges a number of legislative and agency actions since 2005 that have reduced the reimbursement rates for Medicaid in-patient and out-patient services and eliminated disproportionate share payments to non-critical access hospitals in the State budget for fiscal years 2012-2013. The claims are brought under the supremacy clause of the United States Constitution related to the Medicaid statute, 42 U.S.C. § 1396a(a)(30)(A) and 42 U.S.C. § 1396a(a)(13)(a), alleging that the changes are contrary to the intent of the Medicaid statute as the resulting payments are insufficient to ensure access to services to Medicaid clients, and further alleging that the changes cannot be implemented because the State did not give notice or do a state plan amendment regarding each change. A motion for preliminary injunction requesting that the Court enjoin each of the changes and require the State to revert to prior payments levels was filed at the same time. The response to the complaint and the motion for preliminary injunction were filed on September 23, 2011. The potential impact on the State's General Fund could be in excess of \$100 million. It is not possible at this time to provide a more precise estimate of potential exposure for the State. Additional pleadings have been filed answering the complaint, moving to dismiss the 42 U.S.C. § 1396a(a)(30)(A) claims (Counts I-IV) and briefing the legal and evidentiary issues raised in the plaintiffs' motion for preliminary injunction. On December 8, 2011 the court heard oral argument on the legal standing issues raised in the motion to dismiss and the preliminary injunction. There was a further evidentiary hearing on the motion for preliminary injunction held on January 10-12, 2012. On March 2, 2012, the Court issued a preliminary injunction ordering the State to provide notice of the current rates and its intention to continue those rates. The Court's order also requires the State to allow for submission of comments for no less than 30 days. All other issues are still pending with the Court. The notice required by the preliminary injunction order was published, comments were received, and a notice of intent to continue to use the rates at the current level was published. The further briefing ordered by the Court regarding the ability to bring the access claims under the Supremacy clause in light of the 2012 United States Supreme Court decision in *Douglas v. Indep. Living Ctr. of So. Calif.* has been filed and supplements have been submitted regarding access reports and monitoring activity related to access between the State and CMS. On September 27, 2012, the Court issued an order

Exhibit A

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

STRAFFORD, SS.

Docket No. 219-2015-CV-312

THE CITY OF DOVER  
288 Central Avenue  
Dover, NH 03820

v.

THE STATE OF NEW HAMPSHIRE  
107 North Main Street  
Concord, NH 03301

AGREEMENT AND STIPULATION AS TO SCHEDULING AND APPLICATION OF  
ORDERS REGARDING INJUNCTIVE AND DECLARATORY RELIEF  
ISSUED IN THIS MATTER

NOW COME the City of Dover (the "City"), by and through its counsel, Bernstein, Shur, Sawyer & Nelson, P.A., and the State of New Hampshire (the "State"), through its counsel, the Office of the Attorney General, and hereby stipulate and agree as follows.

Introduction

1. The City brought an action for declaratory and injunctive relief and imposition of a constructive trust alleging that the payment cap, described in R.S.A. 198:41, III (b), on education adequacy payments, which are calculated pursuant to R.S.A. 198:40-a, is unconstitutional and should not be enforced. The State has yet to respond to the City's petition and reserves all rights to do so.

2. The next education adequacy payment from the State, pursuant to R.S.A. 198:42, is due to be made on September 1, 2015. In theory, any ruling on the City's preliminary injunction

request should be made before September 1, 2015, so that the City will not be further harmed by application of the cap to this September 1<sup>st</sup> payment, if the cap is found to be unconstitutional.

3. The parties, however, wish to provide the Court with ample and sufficient time to consider this matter without the time pressure of a September 1, 2015 payment.

4. To accommodate this mutual interest, the State and the City have agreed that the rulings ultimately issued by this Court will be applied to all education adequacy payments made on or after September 1, 2015. In the event that the City is successful in obtaining a preliminary or permanent injunction against the cap required by R.S.A. 198:41, III (b), the parties agree that the State will make a supplemental payment equal to the sum total of all funds withheld in any education adequacy payments made on or after September 1, 2015, because of the application of the cap, within ten (10) business days after the time for a motion to stay the preliminary or the permanent injunction has expired or, in the event that a motion to stay has been filed, within ten (10) business days after the motion to stay has been finally denied.

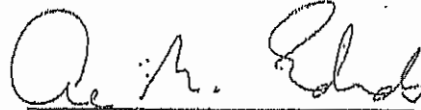
5. Further, in the interests of judicial economy and based on the fact that this is a constitutional challenge to a systematic statewide payment, the State agrees that it will be bound by any rulings issued in this matter regarding the constitutionality of the cap contained in R.S.A. 198:41, III (b) as it applies to all other school districts in the state and that other school districts shall not be required to intervene or join this action, or file separate actions to benefit from any injunctive or declaratory order issued herein. The State reserves the right, when retrospective relief is considered, to challenge facts relating to each school district's claim of retrospective payments as they relate to any defenses raised by the State. As a result, school districts will be required to provide document and testimonial discovery and evidence if requested by the State.

Wherefore, intending to be bound by this Agreement and Stipulation, the parties, through their counsel, note their approval by signing below and request that the Court schedule this matter for a preliminary hearing in due course, but not necessarily before September 1, 2015.

Respectfully submitted,

The State of New Hampshire,

By its attorney,  
Joseph Foster  
Attorney General

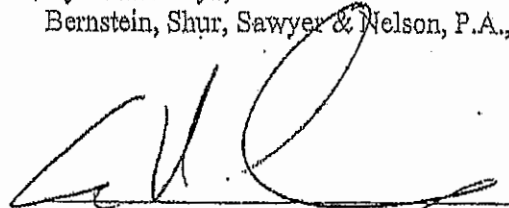


Anne M. Edwards, No. 6826  
Associate Attorney General  
33 Capitol Street  
Concord, NH 03301  
anne.edwards@doj.nh.gov  
(603) 271-3650

Date: August 26, 2015

City of Dover

By its attorneys,  
Bernstein, Shur, Sawyer & Nelson, P.A.,



Andru H. Volinsky, Esq. # 2604  
Talesha L. Saint-Marc, Esq. # 19528  
670 No. Commercial Street, Suite 108  
PO Box 1120  
Manchester, NH 03105-112  
avollnsky@bernsteinshur.com  
(603) 623-8700

Date: August 5/, 2015

# **Fiscal Note**



HB 354-FN-A-LOCAL- FISCAL NOTE  
 AS INTRODUCED

AN ACT making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
Appropriation	\$9,065,044	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$9,065,044	\$0	\$0	\$0
Funding Source:	<input type="checkbox"/> General	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

LOCAL:

Revenue	\$9,065,044	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0

METHODOLOGY:

This bill appropriates \$9,065,044 from the education trust fund to the Department of Education for the purpose of providing additional adequate education grants to 24 municipalities equal to the amount their grant was capped in FY 2016.

Relative to the case titled "City of Dover v. State of New Hampshire", the New Hampshire Comprehensive Annual Financial Report for FY 2016 included the following statement on page 89 of said report –

*"On September 6, 2016, the Superior Court issued a final order ruling that the cap is unconstitutional but limiting Dover to prospective relief. In effect, this ruling entitles Dover to the \$1.377 million it would have received but for the cap in fiscal year 2016. It is the State's position that this ruling also entitles the twenty-four other municipalities to the difference between the amount they would have received in fiscal year 2016 and the amount they actually received due to the cap; in total, the amount for the other municipalities is approximately \$9.065 million. On September 26, 2016, the State agreed to settle the lawsuit with Dover by paying the \$1.377 million. The approximately \$9.065 million for the other municipalities will have to be appropriated by the Legislature in accordance with RSA 14:35-b. A bill will be submitted for the 2017 legislative session. The entire \$10.44 million withheld due to the cap was recorded as an expense and liability in the accompanying financial statements."*

Since the combined General and Education Trust Fund balance at the end of FY 2016 has already been reduced by the amounts appropriated in the proposed bill, this bill will have no further impact on the combined General and Education Trust Fund balance.

**AGENCIES CONTACTED:**

Department of Education

Bill as  
Introduced

HB 354-FN-A-LOCAL - AS INTRODUCED

2017 SESSION

17-0264  
04/10

HOUSE BILL            ***354-FN-A-LOCAL***

AN ACT                making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

SPONSORS:            Rep. Bates, Rock. 7; Rep. Gould, Hills. 7; Rep. Murphy, Hills. 7; Rep. R. Gordon, Rock. 35; Rep. Spillane, Rock. 2; Rep. Eaton, Ches. 3; Rep. G. Smith, Hills. 37; Rep. Abrami, Rock. 19; Rep. Hoell, Merr. 23; Rep. Lovejoy, Rock. 36

COMMITTEE:          Education

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ANALYSIS

This bill appropriates funds for additional adequate education grants to certain municipalities for costs incurred in the 2016 fiscal year.

.....

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 354-FN-A-LOCAL - AS INTRODUCED

17-0264  
04/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Seventeen*

AN ACT making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

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

1       1 Appropriation; Additional Adequate Education Grants to Certain Municipalities. The sum of  
2 \$9,065,044 for the fiscal year ending June 30, 2018 is hereby appropriated to the department of  
3 education for the purpose of providing additional adequate education grants to certain  
4 municipalities as calculated in RSA 198:40-a and 198:41 for the fiscal year ending June 30, 2016,  
5 which were not distributed to those municipalities in that fiscal year. Said sum shall be a charge  
6 against the education trust fund established in RSA 198:39. Notwithstanding RSA 198:42, the  
7 commissioner of the department of education shall disburse a lump sum to each municipality as  
8 follows:

9	Atkinson	\$46,558
10	Bedford	\$4,287,533
11	Chatham	\$21,547
12	Dublin	\$17,327
13	Dunbarton	\$146,459
14	Durham	\$1,778
15	East Kingston	\$39,421
16	Ellsworth	\$7,437
17	Gilmanton	\$100,530
18	Grantham	\$505,094
19	Greenland	\$3,270
20	Hampton Falls	\$137,679
21	Hooksett	\$224,712
22	Kensington	\$176,976
23	Newfields	\$6,220
24	Nottingham	\$49,371
25	Orford	\$9,262
26	Pelham	\$73,521
27	South Hampton	\$20,444
28	Stoddard	\$22,879
29	Stratham	\$244,613
30	Surry	\$764

HB 354-FN-A-LOCAL - AS INTRODUCED  
- Page 2 -

1	Sutton	\$92,646
2	Windham	\$2,829,003
3	2 Effective Date. This act shall take effect July 1, 2017.	

**HB 354-FN-A-LOCAL- FISCAL NOTE  
AS INTRODUCED**

**AN ACT** making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
<b>Appropriation</b>	\$9,065,044	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$9,065,044	\$0	\$0	\$0
<b>Funding Source:</b>	<input type="checkbox"/> General <input checked="" type="checkbox"/> Education <input type="checkbox"/> Highway <input type="checkbox"/> Other			

**LOCAL:**

<b>Revenue</b>	\$9,065,044	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0

**METHODOLOGY:**

This bill appropriates \$9,065,044 from the education trust fund to the Department of Education for the purpose of providing additional adequate education grants to 24 municipalities equal to the amount their grant was capped in FY 2016.

**AGENCIES CONTACTED:**

Department of Education

# Committee Report



**REGULAR CALENDAR**

**March 15, 2017**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Finance to which was referred HB  
354-FN-A-LOCAL,**

**AN ACT making an appropriation to the department of  
education to provide additional adequate education  
grant payments to certain municipalities. Having  
considered the same, report the same with the following  
amendment, and the recommendation that the bill  
OUGHT TO PASS WITH AMENDMENT.**

**Rep. Kenneth Weyler**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	Finance
Bill Number:	HB 354-FN-A-LOCAL
Title:	making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.
Date:	March 15, 2017
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 0850h

### STATEMENT OF INTENT

The education adequacy laws limited the increases in funds as some towns saw student enrollment increase beyond the established limit. A law suit, brought by Dover, resulted in a payment by the state for the adequacy payments for students who were not covered under the stabilization limit. That decision also mentioned that there were additional districts that were equally qualified for the makeup payments. This legislation takes care of those 24 districts with a total payment of \$9,065,044. We hope to fast-track this legislation so that these funds will come from the current biennium and will likely have the effect of lowering the property taxes in those districts.

Vote 26-0.

Rep. Kenneth Weyler  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Finance

**HB 354-FN-A-LOCAL**, making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Kenneth Weyler for Finance. The education adequacy laws limited the increases in funds as some towns saw student enrollment increase beyond the established limit. A law suit, brought by Dover, resulted in a payment by the state for the adequacy payments for students who were not covered under the stabilization limit. That decision also mentioned that there were additional districts that were equally qualified for the makeup payments. This legislation takes care of those 24 districts with a total payment of \$9,065,044. We hope to fast-track this legislation so that these funds will come from the current biennium and will likely have the effect of lowering the property taxes in those districts. **Vote 26-0.**

Original: House Clerk  
Cc: Committee Bill File

Amendment to HB 354-FN-A-LOCAL

1 Amend the introductory paragraph of section 1 of the bill by replacing it with the following:

2

3       1 Appropriation; Additional Adequate Education Grants to Certain Municipalities. The sum of  
4 \$9,065,044 for the fiscal year ending June 30, 2017 is hereby appropriated to the department of  
5 education for the purpose of providing additional adequate education grants to certain  
6 municipalities as calculated in RSA 198:40-a and 198:41 for the fiscal year ending June 30, 2016,  
7 which were not distributed to those municipalities in that fiscal year. Adequate education grants  
8 disbursed pursuant to this act shall be a charge against the education trust fund established in RSA  
9 198:39, shall be for the use of the municipality's school district or districts, and shall not be  
10 considered unanticipated revenue. Acceptance of a disbursement by a municipality under this act  
11 shall constitute a waiver and full release of any and all claims it may have against the state of New  
12 Hampshire, its agencies, officers, employees, or agents arising out of the state's adequate education  
13 payments between September 1, 2008 and June 30, 2016. Notwithstanding RSA 198:42, the  
14 commissioner of the department of education shall disburse a lump sum to each municipality as  
15 follows:

HB 354-FN-A-L

OTP/A

26-0

Rep. Weyler

Regular Calendar

*adequacy laws dealing with stabilization*

The ~~Education Stabilization Law~~ limited the increases in funds as some towns saw student enrollment increase beyond the established limit. A law suit, brought by Dover, resulted in a payment by the state for the adequacy payments for students who were not covered under the stabilization limit. That decision also mentioned that there were additional districts that were equally qualified for the makeup payments. This legislation takes care of those 24 districts with a total payment of \$9,065,044. We hope to fast-track this legislation so that these funds will come from the current biennium and will likely have the effect of lowering the property taxes in those districts.

*WMB  
3/5/14*

HB 354

The Education Stabilization Law limited the increases in funds as some towns saw student enrollment increase beyond the established limit. A lawsuit, brought by Dover, resulted in a payment by the state for the adequacy payments for students who were not covered under the stabilization limit. That decision also mentioned that there were additional districts that were equally qualified for the makeup payments. This legislation takes care of those 24 districts with a total payment of \$9,065,044.00. We hope to fast-track this legislation so that these funds will come from the current biennium and will likely have the effect of lowering the property taxes in those districts.

Weyler

# Voting Sheets





HOUSE COMMITTEE ON FINANCE

EXECUTIVE SESSION on HB 354-FN-A-LOCAL

BILL TITLE: making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

DATE: ~~2/28~~ 3/13

LOB ROOM: 210-211

MOTION: (Please check one box)

OTP       ITL       Retain (1st year)       Adoption of Amendment # 0650  
(if offered)

Moved by Rep. Weyler      Seconded by Rep. Allen      Vote: 6/0  
Lialon      25-0

MOTION: (Please check one box)

OTP       OTP/A       ITL       Retain (1st year)       Adoption of Amendment # \_\_\_\_\_  
(if offered)

Moved by Rep. Weyler      Seconded by Rep. Allen      Vote: 26-0  
Lialon

MOTION: (Please check one box)

OTP       OTP/A       ITL       Retain (1st year)       Adoption of Amendment # \_\_\_\_\_  
(if offered)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

MOTION: (Please check one box)

OTP       OTP/A       ITL       Retain (1st year)       Adoption of Amendment # \_\_\_\_\_  
(if offered)

Moved by Rep. \_\_\_\_\_      Seconded by Rep. \_\_\_\_\_      Vote: \_\_\_\_\_

CONSENT CALENDAR:    YES     NO

Minority Report?    Yes    No    If yes, author, Rep: \_\_\_\_\_ Motion \_\_\_\_\_

Respectfully submitted: Kenneth L. Weyler  
Rep Kenneth Weyler, Clerk



STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK

1/10/2017 9:35:35 AM  
Roll Call Committee Registers  
Report

2017 SESSION

FINANCE

Bill #: HB 354

Title: making an appropriation to the DOE to provide additional adequate education grant payments to certain municipalities

PH Date: 1/11/17

Exec Session Date: 7/13/17

Motion: OTP-A

Amendment #: 0650

MEMBER	YEAS	NAYS
Kurk, Neal M. Chariman	26	
Ober, Lynne M. Vice Chairman	1	
Weyler, Kenneth L. Clerk	2	
Allen, Mary M.	3	
Umberger, Karen C.	4	
McKinney, Betsy	5	
Twombly, Timothy L.	6	
Byron, Frank A.	7	
Danielson, David J.	8	
Emerick, J. Tracy	9	
Spanos, Peter J.	10	
Bates, David M.	11	
Hennessey, Erin T.	12	
Vaillancourt, Steve	13	
Griffin, Gerald	14	
Wallner, Mary Jane	15	
Nordgren, Sharon	16	
Eaton, Daniel A.	17	
Smith, Marjorie K.	18	
Rosenwald, Cindy <i>Heath</i>	19	
Leishman, Peter R.	20	
Buco, Thomas L.	21	
Hatch, William A.	22	
Rogers, Katherine D.	23	
Walsh, Robert M.	24	
Lovejoy, Patricia T.	25	
<b>TOTAL VOTE:</b>	<b>26</b>	<b>0</b>

Rep. Bates, Rock. 7  
Rep. Eaton, Ches. 3  
February 28, 2017  
2017-0650h  
04/01



Amendment to HB 354-FN-A-LOCAL

1 Amend the introductory paragraph of section 1 of the bill by replacing it with the following:

2

3 1 Appropriation; Additional Adequate Education Grants to Certain Municipalities. The sum of  
4 \$9,065,044 for the fiscal year ending June 30, 2017 is hereby appropriated to the department of  
5 education for the purpose of providing additional adequate education grants to certain  
6 municipalities as calculated in RSA 198:40-a and 198:41 for the fiscal year ending June 30, 2016,  
7 which were not distributed to those municipalities in that fiscal year. Adequate education grants  
8 disbursed pursuant to this act shall be a charge against the education trust fund established in RSA  
9 198:39, shall be for the use of the municipality's school district or districts, and shall not be  
10 considered unanticipated revenue. Acceptance of a disbursement by a municipality under this act  
11 shall constitute a waiver and full release of any and all claims it may have against the state of New  
12 Hampshire, its agencies, officers, employees, or agents arising out of the state's adequate education  
13 payments between September 1, 2008 and June 30, 2016. Notwithstanding RSA 198:42, the  
14 commissioner of the department of education shall disburse a lump sum to each municipality as  
15 follows:

Division II  
Work Session  
Minutes

HOUSE COMMITTEE ON Finance

DIVISION II WORK SESSION ON HB 354-FN-A-LOCAL

**BILL TITLE:** making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

**DATE:** February 28, 2017

**ROOM:** 209 Time Work Session Called to Order: <<Start Time>>

Time Adjourned: <<End Time>>

(please circle if present)

**Committee Members:** Umberger, Weyler, Allen, Kurk, Vaillancourt, Eaton, M. Smith and Buco

**Bill Sponsors:**

Rep. Bates  
Rep. R. Gordon  
Rep. G. Smith  
Rep. Lovejoy

Rep. Gould  
Rep. Spillane  
Rep. Abrami

Rep. Murphy  
Rep. Eaton  
Rep. Hoell

**TESTIMONY**

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

Motion of OTP on amendment # 2017-0650h made by **Rep. Weyler**, seconded by **Rep. Allen**. Motion adopted 6-0.

Respectfully submitted,

Clerk, Division II



STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK

1/11/2017 8:55:10 AM  
Roll Call Committee Registers  
Report

2017 SESSION

FIN-DIV2

Bill #: 354

Title: Appropriation to the DOE - adequate educ. grant payments to certain municipalities

PH Date:      /      /     

Exec Session Date: 2 / 28 / 17

Motion: O.T.P.

Amendment #: 2017-0650h

<u>MEMBER</u>	<u>YEAS</u>	<u>NAYS</u>
Umberger, Karen C. Chariman	✓	
Weyler, Kenneth L. Vice Chairman	✓	
Allen, Mary M. Clerk	✓	
Kurk, Neal M.		
Vaillancourt, Steve	✓	
Eaton, Daniel A.	✓	
Smith, Marjorie K.	abs	
Buco, Thomas L.	✓	
<b>TOTAL VOTE:</b>	<u>6</u>	<u>0</u>

Weyler made motion  
Allen seconder

## Fiscal Year 2016 Operations

The fiscal year 2016 budget as adopted in 2015 (the “fiscal year 2016 budget”) assumed the State would start the year with an unassigned general fund surplus of \$49.0 million and a Revenue Stabilization Fund (“Rainy Day Fund”) balance of \$23.8 million. Fiscal year 2016 did begin with the projected balance of \$49.0 million, but the Rainy Day Fund balance was short of the estimate by \$1.5 million, at \$22.3 million. The results of revenue, expenditures and other estimates for fiscal year 2016 were expected to bring the unassigned General Fund surplus down by \$15.5 million, to \$32.9 million, with the Rainy Day Fund balance expected to remain unchanged during fiscal year 2016. However, the fiscal year ended with an unassigned General Fund surplus of \$88.5 million and a Rainy Day Fund balance of \$93.0 million, for a total unassigned fund balance of \$181.5 million. Overall, the major factors driving the increase in total unassigned fund balance were the savings of fiscal year 2016 appropriations and, to an even greater extent, revenues coming in higher than budgeted by \$150.5 million. Within the unassigned fund balance, the Rainy Day Fund increased \$70.7 million over the prior year, as a result of legislation requiring a portion of the revenues over plan being transferred directly to the Rainy Day Fund, as well as the addition of \$30.7 million representing ten percent of judgments received from environmental litigation discussed below.

Traditional unrestricted revenue for the General and Education Trust Funds received during fiscal year 2016 totaled \$2,457.6 million which was above the fiscal year 2016 Plan of \$2,291.1 million by 7.3%. The favorable results as compared to the fiscal year 2016 budget resulted, in part, from the following taxes which performed better than expected: Business Taxes by \$132.8 million (23.4%); Meal and Rentals Taxes by \$9.8 million (3.3%); Insurance Taxes by \$5.1 million (4.3%); Tobacco Taxes by \$4.3 million (1.9%); and Real Estate Transfer Taxes by \$16.2 million (13.7%). Interest and Dividends Taxes were below the fiscal year 2016 budget by approximately \$3.8 million (4.1%) and Communications Taxes were below the fiscal year 2016 budget by \$5.7 million (9.8%). The State’s other remaining revenue sources combined were approximately \$7.8 million above the fiscal year 2016 budget.

Impacting the positive variances noted above were the State’s revenue collections under the tax amnesty program conducted during a portion of fiscal year 2016 for all taxes collected by the Department of Revenue Administration. Although not incorporated into the State’s revenue plan, the program was expected to generate \$16 million above traditional revenue collections. Actual receipts were approximately \$19 million, or \$3 million more than originally estimated. Also, not reflected in the traditional unrestricted revenue total above is a one-time settlement received during the year of \$307.2 million from the MtBE settlement (see Note 14 to the Financial Statements). Of this, \$30.7 million was transferred to the Rainy Day Fund in accordance with RSA 7:6-e, and the remaining \$276.5 million will be held as a component of restricted fund balance, to be administered as the newly established NH Drinking Water and Groundwater Trust fund in accordance with Senate Bill 380 (Chapter 11, 2016 session).

Net General Fund and Education Fund appropriations exceeded the fiscal year 2016 budget estimates by \$16.5 million (0.7%). The fiscal year 2016 budgeted net appropriations of \$2,327.9 million included approximately \$46.7 million in anticipated lapses all of which were not achieved during the fiscal year, with actual lapses coming in at \$40.3 million for a difference of \$6.4 million. Appropriations authorized after the passage of the fiscal year 2016 budget via new legislation or existing laws made up the remainder of the increase in net appropriations.

Net unfavorable closing adjustments made in accordance with GAAP to bring the budgetary accounting basis to the modified accrual accounting basis totaled \$36.7 million for fiscal year 2016. GAAP and other adjustments were not budgeted in fiscal year 2016. The most significant of the GAAP and other adjustments affecting fiscal year 2016 was the recording of the \$10.4 million liability and expense as a result of the expected resolution of the City of Dover v. State of New Hampshire litigation, representing payment of the entire amount of education adequacy aid withheld due to the cap. Also significant was the increase in the State’s share of Medicaid liability required as of June 30, 2016. A General Fund GAAP adjustment of approximately \$9.6 million was required to recognize liabilities that have been reported or billed and not yet paid to providers and managed care organizations, as well as liabilities incurred by the same providers and organizations during the same period but not yet reported. The remainder of this unfavorable variance was due to smaller scale increases in other areas, including accounts payable and accrued payroll, due largely to the timing of payments.

As noted above, the total unassigned General Fund balance at the close of fiscal year 2016 was \$181.5 million, consisting of \$88.5 million of undesignated fund balance and \$93.0 million in the Rainy Day Fund. Per Ch. 264:5, Laws of 2016, to the extent that fiscal year 2016 audited unrestricted General Fund and Education Trust Fund revenues exceed plan, an amount not to exceed \$40 million shall be transferred to the Rainy Day Fund, thereby contributing to the increase to \$93.0 million. This transfer resulted in the unassigned portion of fund balance decreasing to \$88.5 million, exceeding the anticipated budget balance of \$32.9 million by \$55.6 million.

### Highway Fund

The Highway Fund ended the year with an operating surplus of approximately \$35.4 million as compared to the fiscal year 2016 balance assumed in the budget of \$5.0 million. The highway fund balance at the start of fiscal year 2015 was \$16.2 million, which was \$4.6 million higher than the beginning balance of \$11.6 million assumed in the fiscal year 2015 budget. The actual highway fund revenues were higher than those in the fiscal year 2016 budget by \$10.1 million. The fiscal year 2016 unrestricted highway fund revenues were approximately \$41.4 million lower than Fiscal Year 2015. The Fiscal Year 2015 revenues included approximately \$14 million of installment revenue from the Turnpike System related to the I-95 sale transaction that took place back in 2010, while in fiscal year 2016 the payment related to that transaction, which represents the final payment, was only \$0.4 million. Also contributing to this negative revenue variance as compared to the prior year was a change in the treatment of the revenue associated with the recovery of the cost of the collection and administration of that revenue. In the prior year, over \$25 million of revenue was classified as unrestricted, but in the current year it is classified as restricted. Fiscal year 2016 net appropriations of \$198 million were \$11.1 million lower than those assumed in the budget, with this positive variance being driven mostly by the lapse being \$13.1 million greater than assumed in the budget. Fiscal year 2016 net appropriations were also almost \$70 million lower than the prior year, with this variance being caused by the change in appropriations for the cost of collecting Highway Fund revenue being converted from unrestricted to restricted, as well as by the increased reliance on General Fund and other appropriations in areas that were funded with Highway Fund appropriations in the prior year.

pensatory and punitive damages. On September 12, 2016, the State filed a motion for summary judgment on all claims. Trial was scheduled for February 2017. The plaintiff has since voluntarily non-suited the ADA claim with prejudice. The state has filed a notice of its intent to ask for fees and costs on the basis that it was a frivolous claim that the plaintiff failed to prosecute. Given the pending summary judgment motion, certain deadlines have been extended until after the issuance of a summary judgment order and the February trial has been suspended pending the outcome of an order on summary judgment. It is not possible to predict the outcome of this case at this time.

***City of Dover v. State of New Hampshire***

In this case, filed August 20, 2015, the City of Dover challenges the State's distribution of education aid to municipalities as a violation of the state constitutional entitlement to an adequate education, insofar as the statutory distribution scheme imposes a "cap" limiting the aid that a particular municipality can receive in a particular year to 108% of the aid it received in the prior year. The suit seeks both prospective and retrospective relief against the cap, which has been in effect since 2009. If the request for prospective relief is successful, it will require a restructuring of the State's formula for distributing education aid to municipalities. If the request for retrospective relief is successful, it would require paying the City of Dover the difference between the aid they received in each of those years and the aid they would have otherwise gotten, but for the cap. While the aggregate amount of that potential exposure has not yet been calculated for all fiscal years at issue, the total amount of aid to all municipalities withheld on the basis of the cap for fiscal year 2016 will be approximately \$10.44 million. Shortly after the suit was filed, the State entered into a stipulation agreeing that any final rulings regarding the constitutionality of the cap would apply not only to Dover, but to all other municipalities affected by the cap.

On September 6, 2016, the Superior Court issued a final order ruling that the cap is unconstitutional but limiting Dover to prospective relief. In effect, this ruling entitles Dover to the \$1.377 million it would have received but for the cap in fiscal year 2016. It is the State's position that this ruling also entitles the twenty-four other municipalities to the difference between the amount they would have received in fiscal year 2016 and the amount they actually received due to the cap; in total, the amount for the other municipalities is approximately \$9.065 million. On September 26, 2016, the State agreed to settle the lawsuit with Dover by paying the \$1.377 million. The approximately \$9.065 million for the other municipalities will have to be appropriated by the Legislature in accordance with RSA 14:35-b. A bill will be submitted for the 2017 legislative session. The entire \$10.44 million withheld due to the cap was recorded as an expense and liability in the accompanying financial statements.

***Bedford School District and William Foote v. State of New Hampshire, et. al.***

The Bedford School District and Mr. Foote, a taxpayer in Bedford, sued the State arguing that Bedford did not receive all of the education adequacy payments for fiscal year 2016 and would not receive all of the education adequacy payments for fiscal year 2017. A hearing was held on June 29, 2016, where Bedford's request for a preliminary injunction was denied. The State filed an Answer objecting to Bedford's claim for adequacy payments from fiscal year 2016 as being untimely filed thus barring it by sovereign immunity. Bedford will receive its fiscal year 2017 adequacy payments in the ordinary course from funds already appropriated for that purpose. Bedford has filed a motion for summary judgment arguing that the State should be ordered to make the 2016 adequacy payments. The State has objected to that motion, which is currently pending. It is not possible to predict the outcome of this case at this time.

***Xerox State and Local Solutions, Inc. v. Department of Transportation et al***

In this case, filed in October 2015, Xerox, is suing the Department of Transportation ("DOT") to challenge the selection of another vendor for the contract award of the operation of the back office systems for the E-Z Pass program in New Hampshire. Xerox is the current vendor and was not the winning bidder for the new contract that was awarded on October 7, 2015. The contract award was to Cubic for design, testing, installation and maintenance services for the operation of the NH E-Z Pass Back Office for the Turnpike System, in the amount of \$51,889,725. Xerox alleges the bidding process was flawed and is seeking to void the contract, to enjoin the DOT from continuing implementation of the contract with Cubic, and damages. Xerox has provided an expert opinion opining that as a result of the loss of the procurement at issue in this case, Xerox incurred damages in the amount of \$238,499 for bid preparation and \$2,110,645 in lost profits. The Court dismissed the counts seeking equitable relief leaving only the counts seeking damages. It is anticipated that DOT will file a motion for summary judgment on the remaining claims by February 2017. Trial is scheduled for May 2017. It is not possible to predict the outcome of this case at this time.

***State v. Volkswagen, et al***

In September of 2015, a number of states engaged Volkswagen and related companies to discuss litigation related to the company's "defeat devices". These devices disabled the emissions control systems on all affected vehicles during normal, "on road" conditions. As part of a settlement between Volkswagen, the California Air Resources Board (CARB) and the U.S. EPA, New Hampshire opted-in to provisions which will provide it approximately \$6 million to resolve state consumer claims and \$29 million in environmental mitigation (restitution to owners was covered separately through the plaintiffs' steering committee and will result in recalls, buybacks, and cash payments). On September 15, 2016, the State sued Volkswagen for the one remaining issue, environmental penalties. Possible liability for Volkswagen is more than \$2 million, but a likely litigation or settlement result is, at this point, unknown.

***Conservation Law Foundation, Inc. v. Pease Development Authority, et al and Notice of Intent to File Suit Against Pease Development Authority***

On September 8, 2016, the Conservation Law Foundation (CLF) gave notice to the Pease Development Authority (PDA) that it intends to file suit pursuant to Section 7002 of the Resource Conservation and Recovery Act (RCRA) for violations related to PDA's storage and disposal of perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). CLF alleges that PDA is discharging stormwater to the waters of the United States which convey discarded PFOA and PFOS into the waters thereby jeopardizing the health of individuals, wildlife, and the environment in the vicinity of the waters into which PDA discharged the PFOA and PFOS. CLF will seek injunctive relief to remediate the effects of the PFOA and PFOS in and around Pease, including removal of PFOA and PFOS from the site; containment of PFOA and PFOS present on-site so that stormwater runoff and groundwater cannot be contaminated; and any and all other legal and equitable relief that may be necessary to



## LITIGATION

The State and certain of its agencies and employees are defendants in numerous lawsuits that assert claims regarding social welfare program funding, breach of contract, negligence, and 42 U.S.C. §1983. Although the Attorney General is unable to predict the ultimate outcome of the majority of these suits, the State believes that the likelihood of such litigation resulting, either individually or in the aggregate, in final judgments against the State which would materially affect its financial position is remote. Accordingly, no provision for the ultimate liability, if any, has been made in the State's financial statements.

Except as otherwise noted below, the following matters are currently pending and at this time it is not possible to predict the outcome of these matters:

*State of New Hampshire v. Philip Morris USA, RJ Reynolds, Inc. and Lorillard Tobacco Company.* This matter is a petition for a declaratory order. Defendants are signatories to the Tobacco Master Settlement Agreement under which Defendants are required to make annual payments to all of the states, including the State of New Hampshire. The annual payments received since 2006 have been approximately \$5 million below the required amount. On June 5, 2006, the Superior Court ordered the case to arbitration under the terms of the Master Settlement Agreement. A notice of appeal was filed to the New Hampshire Supreme Court on August 11, 2006. Briefs were filed and oral argument occurred in March, 2007. The Supreme Court affirmed the ruling of the Superior Court on June 22, 2007. The arbitration process for all states began on July 1, 2010, and is expected to last at least two years. The tobacco companies are seeking recovery of up to the entire annual payment of approximately \$50 million made to the State under the MSA. The tobacco companies have identified thirty-five states they claim failed to "diligent enforce" their obligations under the MSA, including New Hampshire. The arbitration will begin April 23, 2012 with a presentation of facts and issues common to all the individual state cases. Individual state hearings are scheduled to begin May 21, 2012 and will continue at least through 2012. New Hampshire's hearing, scheduled for November, 2012, was postponed. Since that time, some states, including New Hampshire, have joined in a settlement agreement which has been submitted to the New Hampshire Legislature and was approved in March 2013. The settlement resolves the diligent enforcement dispute with the settling states through 2015. Under the terms of the settlement, the tobacco companies accepted a reduction in their claim for a non-participating manufacturer (NPM) adjustment against the settling states. The settlement resulted in the release by the tobacco companies of approximately \$63.2 million to New Hampshire from the disputed payments account. In exchange, New Hampshire's 2013 annual tobacco payment was reduced by approximately \$42.4 million, and its annual payment will be reduced through 2017 by approximately \$4 million, as payment for its share of the settlement agreement. This matter is now concluded.

*Professional Fire Fighters of New Hampshire, et al v. State of New Hampshire ("Firefighters II").* This suit challenges other portions of HB 2 that affect the State Retirement System. Petitioners challenge Section 161 (definition of Earnable Compensation), Section 163 (definition of Average Final Compensation), Section 164 (Maximum Retirement Benefit), Section 166 (Age Multiplier to calculate benefit), and Section 186 (repeal of disability exception from the gainful occupation reduction provision) of HB 2. Petitioners seek an order finding HB 2 is unconstitutional under the Contracts and Takings Clauses of both the New Hampshire Constitution and the United States Constitution. Petitioners also sought injunctive relief, payment of damages and attorneys' fees. The issues raised in this lawsuit are similar to the issues raised in *Firefighters I* (see *Professional Firefighters, et al v. State of New Hampshire (Firefighters I)* above). The trial court issued a preliminary order in May 2013, which held that employees have a contractual interest in their retirement benefit when they become "permanent employees" (approximately 1 year into employment). The Court found there is a factual question on whether the changes to the law resulted in a "substantial impairment" and did not issue an injunction. In light of the Supreme Court's decisions in *Firefighters I* and *American Federation of Teachers*, the trial court vacated this ruling and ordered the state to file a motion seeking judgment in its favor on the grounds that the former pension laws created no protectable contractual rights. In February 2016, the court granted this motion, resulting in dismissal of the case. On appeal, the New Hampshire Supreme Court summarily affirmed the superior court's order dismissing the case. Litigation of this matter is concluded.

*City of Dover v. State of New Hampshire.* In this case, filed August 20, 2015, the City of Dover challenges the State's distribution of education aid to municipalities as a violation of the state constitutional entitlement to an adequate education, insofar as the statutory distribution scheme imposes a "cap" limiting the aid that a particular

municipality can receive in a particular year to 108% of the aid it received in the prior year. The suit seeks both prospective and retrospective relief against the cap, which has been in effect since 2009. If the request for prospective relief is successful, it will require a restructuring of the State's formula for distributing education aid to municipalities. If the request for retrospective relief is successful, it would require paying the City of Dover the difference between the aid they received in each of those years and the aid they would have otherwise gotten, but for the cap. While the aggregate amount of that potential exposure has not yet been calculated for all fiscal years at issue, the total amount of aid to all municipalities withheld on the basis of the cap for fiscal year 2016 will be approximately \$10.44 million. Shortly after the suit was filed, the state entered into a stipulation agreeing that any final rulings regarding the constitutionality of the cap would apply not only to Dover, but to all other municipalities affected by the cap.

On September 6, 2016, the superior court issued a final order ruling that the cap is unconstitutional but limiting Dover to prospective relief. In effect, this ruling entitles to Dover to the \$1.377 million it would have received but for the cap in fiscal year 2016. It is the state's position that this ruling also entitles the 24 other municipalities to be paid the difference between the amount they would have received in fiscal year 2016 and the amount they actually received due to the cap; in total, that amount for the other municipalities is approximately \$9.065 million. On September 26, 2016, the State agreed to settle the lawsuit with Dover by paying the \$1.377 million. The approximately \$9.065 million for the other municipalities would have to be appropriated by the Legislature in accordance with RSA 14:35-b before the other municipalities could receive their amounts. A bill will be submitted for the 2017 legislative session. The plaintiffs and the State have agreed to a settlement which ends this case.

*Bedford School District and William Foote v. State of New Hampshire, et. al.* The Bedford School District and Mr. Foote, a taxpayer in Bedford, sued the State arguing that Bedford did not receive all of the education adequacy payments for fiscal year 2016 and would not receive all of the education adequacy payments for fiscal year 2017. A hearing was held on June 29, 2016, where Bedford's request for a preliminary injunction was denied. The State filed an Answer objecting to Bedford's claim for adequacy payments from fiscal year 2016 as being untimely filed thus barring it by sovereign and requesting that the claim for fiscal year 2017's adequacy payments be stayed pending the order in the *City of Dover v. Department of Education* litigation. The State is currently awaiting the scheduling of a compliance hearing.

*Dartmouth Hitchcock, et al v. Toumpas.* In August 2011, 10 of New Hampshire's 13 non-critical access hospitals and a "John Doe" individual Medicaid recipient filed a lawsuit in the Federal District Court for the District of New Hampshire against the Commissioner of the DHHS. The lawsuit challenges a number of legislative and agency actions since 2005 that have reduced the reimbursement rates for Medicaid in-patient and out-patient services and eliminated disproportionate share payments to non-critical access hospitals in the State budget for fiscal years 2012-2013. The claims are brought under the supremacy clause of the United States Constitution related to the Medicaid statute, 42 U.S.C. § 1396a(a)(30)(A) and 42 U.S.C. § 1396a(a)(13)(a), alleging that the changes are contrary to the intent of the Medicaid statute as the resulting payments are insufficient to ensure access to services to Medicaid clients, and further alleging that the changes cannot be implemented because the State did not give notice or do a state plan amendment regarding each change. A motion for preliminary injunction requesting that the Court enjoin each of the changes and require the State to revert to prior payments levels was filed at the same time. The response to the complaint and the motion for preliminary injunction were filed on September 23, 2011. The potential impact on the State's General Fund could be in excess of \$100 million. It is not possible at this time to provide a more precise estimate of potential exposure for the State. Additional pleadings have been filed answering the complaint, moving to dismiss the 42 U.S.C. § 1396a(a)(30)(A) claims (Counts I-IV) and briefing the legal and evidentiary issues raised in the plaintiffs' motion for preliminary injunction. On December 8, 2011 the court heard oral argument on the legal standing issues raised in the motion to dismiss and the preliminary injunction. There was a further evidentiary hearing on the motion for preliminary injunction held on January 10-12, 2012. On March 2, 2012, the Court issued a preliminary injunction ordering the State to provide notice of the current rates and its intention to continue those rates. The Court's order also requires the State to allow for submission of comments for no less than 30 days. All other issues are still pending with the Court. The notice required by the preliminary injunction order was published, comments were received, and a notice of intent to continue to use the rates at the current level was published. The further briefing ordered by the Court regarding the ability to bring the access claims under the Supremacy clause in light of the 2012 United States Supreme Court decision in *Douglas v. Indep. Living Ctr. of So. Calif.* has been filed and supplements have been submitted regarding access reports and monitoring activity related to access between the State and CMS. On September 27, 2012, the Court issued an order

Rep. Bates, Rock. 7  
Rep. Eaton, Ches. 3  
February 28, 2017  
2017-0650h  
04/01



Amendment to HB 354-FN-A-LOCAL

1 Amend the introductory paragraph of section 1 of the bill by replacing it with the following:

2

3 1 Appropriation; Additional Adequate Education Grants to Certain Municipalities. The sum of  
4 \$9,065,044 for the fiscal year ending June 30, 2017 is hereby appropriated to the department of  
5 education for the purpose of providing additional adequate education grants to certain  
6 municipalities as calculated in RSA 198:40-a and 198:41 for the fiscal year ending June 30, 2016,  
7 which were not distributed to those municipalities in that fiscal year. Adequate education grants  
8 disbursed pursuant to this act shall be a charge against the education trust fund established in RSA  
9 198:39, shall be for the use of the municipality's school district or districts, and shall not be  
10 considered unanticipated revenue. Acceptance of a disbursement by a municipality under this act  
11 shall constitute a waiver and full release of any and all claims it may have against the state of New  
12 Hampshire, its agencies, officers, employees, or agents arising out of the state's adequate education  
13 payments between September 1, 2008 and June 30, 2016. Notwithstanding RSA 198:42, the  
14 commissioner of the department of education shall disburse a lump sum to each municipality as  
15 follows:

**HB 354-FN-A-LOCAL- FISCAL NOTE**  
AS AMENDED BY THE HOUSE (AMENDMENT #2017-0076h)

AN ACT making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

FISCAL IMPACT:     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2017	FY 2018	FY 2019	FY 2020
Appropriation	\$9,065,044	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$9,065,044	\$0	\$0	\$0
<i>Funding Source:</i>	<input type="checkbox"/> General	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**LOCAL:**

Revenue	\$9,065,044	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0

**METHODOLOGY:**

This bill appropriates \$9,065,044 in FY 2017 from the education trust fund to the Department of Education for the purpose of providing additional adequate education grants to 24 municipalities equal to the amount their grant was capped in FY 2016.

Relative to the case titled "City of Dover v. State of New Hampshire", the New Hampshire Comprehensive Annual Financial Report for FY 2016 included the following statement on page 89 of said report –

*"On September 6, 2016, the Superior Court issued a final order ruling that the cap is unconstitutional but limiting Dover to prospective relief. In effect, this ruling entitles Dover to the \$1.377 million it would have received but for the cap in fiscal year 2016. It is the State's position that this ruling also entitles the twenty-four other municipalities to the difference between the amount they would have received in fiscal year 2016 and the amount they actually received due to the cap; in total, the amount for the other municipalities is approximately \$9.065 million. On September 26, 2016, the State agreed to settle the lawsuit with Dover by paying the \$1.377 million. The approximately \$9.065 million for the other municipalities will have to be appropriated by the Legislature in accordance with RSA 14:35-b. A bill will be submitted for the 2017 legislative session. The entire \$10.44 million withheld due to the cap was recorded as an expense and liability in the accompanying financial statements."*

Since the combined General and Education Trust Fund balance at the end of FY 2016 has already been reduced by the amounts appropriated in the proposed bill, this bill will have no further impact on the combined General and Education Trust Fund balance.

**AGENCIES CONTACTED:**

Department of Education

Bill  
as  
Amended  
by the  
House

HB 354-FN-A-LOCAL - AS AMENDED BY THE HOUSE

15Feb2017... 0076h

2017 SESSION

17-0264  
04/10

HOUSE BILL            ***354-FN-A-LOCAL***

AN ACT                making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

SPONSORS:            Rep. Bates, Rock. 7; Rep. Gould, Hills. 7; Rep. Murphy, Hills. 7; Rep. R. Gordon, Rock. 35; Rep. Spillane, Rock. 2; Rep. Eaton, Ches. 3; Rep. G. Smith, Hills. 37; Rep. Abrami, Rock. 19; Rep. Hoell, Merr. 23; Rep. Lovejoy, Rock. 36

COMMITTEE:          Education

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ANALYSIS

This bill appropriates funds for additional adequate education grants to certain municipalities for costs incurred in the 2016 fiscal year.

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

HB 354-FN-A-LOCAL - AS AMENDED BY THE HOUSE

15Feb2017... 0076h

17-0264

04/10

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Seventeen*

AN ACT making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

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

1       1 Appropriation; Additional Adequate Education Grants to Certain Municipalities. The sum of  
2 \$9,065,044 for the fiscal year ending June 30, 2017 is hereby appropriated to the department of  
3 education for the purpose of providing additional adequate education grants to certain  
4 municipalities as calculated in RSA 198:40-a and 198:41 for the fiscal year ending June 30, 2016,  
5 which were not distributed to those municipalities in that fiscal year. Said sum shall be a charge  
6 against the education trust fund established in RSA 198:39. Notwithstanding RSA 198:42, the  
7 commissioner of the department of education shall disburse a lump sum to each municipality as  
8 follows:

9	Atkinson	\$46,558
10	Bedford	\$4,287,533
11	Chatham	\$21,547
12	Dublin	\$17,327
13	Dunbarton	\$146,459
14	Durham	\$1,778
15	East Kingston	\$39,421
16	Ellsworth	\$7,437
17	Gilmanton	\$100,530
18	Grantham	\$505,094
19	Greenland	\$3,270
20	Hampton Falls	\$137,679
21	Hooksett	\$224,712
22	Kensington	\$176,976
23	Newfields	\$6,220
24	Nottingham	\$49,371
25	Orford	\$9,262
26	Pelham	\$73,521
27	South Hampton	\$20,444
28	Stoddard	\$22,879
29	Stratham	\$244,613
30	Surry	\$764



**HB 354-FN-A-LOCAL - AS AMENDED BY THE HOUSE**

**- Page 2 -**

- 1        Sutton                                \$92,646
- 2        Windham                                \$2,829,003
- 3        2 Effective Date. This act shall take effect upon its passage.

**HB 354-FN-A-LOCAL- FISCAL NOTE**  
**AS INTRODUCED**

AN ACT making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
<b>Appropriation</b>	\$9,065,044	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$9,065,044	\$0	\$0	\$0
<b>Funding Source:</b>	<input type="checkbox"/> General	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**LOCAL:**

<b>Revenue</b>	\$9,065,044	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0

**METHODOLOGY:**

This bill appropriates \$9,065,044 from the education trust fund to the Department of Education for the purpose of providing additional adequate education grants to 24 municipalities equal to the amount their grant was capped in FY 2016.

Relative to the case titled "City of Dover v. State of New Hampshire", the New Hampshire Comprehensive Annual Financial Report for FY 2016 included the following statement on page 89 of said report –

*"On September 6, 2016, the Superior Court issued a final order ruling that the cap is unconstitutional but limiting Dover to prospective relief. In effect, this ruling entitles Dover to the \$1.377 million it would have received but for the cap in fiscal year 2016. It is the State's position that this ruling also entitles the twenty-four other municipalities to the difference between the amount they would have received in fiscal year 2016 and the amount they actually received due to the cap; in total, the amount for the other municipalities is approximately \$9.065 million. On September 26, 2016, the State agreed to settle the lawsuit with Dover by paying the \$1.377 million. The approximately \$9.065 million for the other municipalities will have to be appropriated by the Legislature in accordance with RSA 14:35-b. A bill will be submitted for the 2017 legislative session. The entire \$10.44 million withheld due to the cap was recorded as an expense and liability in the accompanying financial statements."*

Since the combined General and Education Trust Fund balance at the end of FY 2016 has already been reduced by the amounts appropriated in the proposed bill, this bill will have no further impact on the combined General and Education Trust Fund balance.

**AGENCIES CONTACTED:**

Department of Education