

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

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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

15Feb2017... 0076h
23Mar2017... 0850h

2017 SESSION

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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

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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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. Adequate education grants
6 disbursed pursuant to this act shall be a charge against the education trust fund established in RSA
7 198:39, shall be for the use of the municipality's school district or districts, and shall not be
8 considered unanticipated revenue. Acceptance of a disbursement by a municipality under this act
9 shall constitute a waiver and full release of any and all claims it may have against the state of New
10 Hampshire, its agencies, officers, employees, or agents arising out of the state's adequate education
11 payments between September 1, 2008 and June 30, 2016. Notwithstanding RSA 198:42, the
12 commissioner of the department of education shall disburse a lump sum to each municipality as
13 follows:

14	Atkinson	\$46,558
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HB 354-FN-A-LOCAL - AS AMENDED BY THE HOUSE
- Page 2 -

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9	2 Effective Date. This act shall take effect upon its passage.	

HB 354-FN-A-LOCAL- FISCAL NOTE
 AS AMENDED BY THE HOUSE (AMENDMENT #2017-0850h)

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
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

LOCAL:

Revenue	\$9,065,044	\$0	\$0	\$0
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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 and states acceptance of such disbursement shall constitute a waiver and full release of any and all claims the municipality may have against the State of New Hampshire arising out of adequate education payments between September 1, 2008 and June 30, 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."

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AGENCIES CONTACTED:

Department of Education

HB 354-FN-A-LOCAL - VERSION ADOPTED BY BOTH BODIES

15Feb2017... 0076h
23Mar2017... 0850h

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

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Department of Education

CHAPTER 28
HB 354-FN-A-LOCAL - FINAL VERSION

15Feb2017... 0076h
23Mar2017... 0850h

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

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CHAPTER 28
HB 354-FN-A-LOCAL - FINAL VERSION

15Feb2017... 0076h
23Mar2017... 0850h

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

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6	Surry	\$764
7	Sutton	\$92,646
8	Windham	\$2,829,003
9	28:2 Effective Date. This act shall take effect upon its passage.	

Approved: April 27, 2017
Effective Date: April 27, 2017

Committee Minutes

ATTENDANCE

SENATE CALENDAR NOTICE

Finance

- ✓ Sen Gary Daniels, Chair
- ✓ Sen John Reagan, Vice Chair
- ✗ Sen Bob Giuda, Member
- ✓ Sen Chuck Morse, Member
- ✓ Sen Lou D'Allesandro, Member
- ✓ Sen Dan Feltes, Member

START: 1:02 pm

STOP: 1:15 pm

Date: March 29, 2017

HEARING

Tuesday

04/04/2017

(Day)

(Date)

Finance

SH 103

1:00 p.m.

(Name of Committee)

(Place)

(Time)

1:00 p.m.

~~HB 354-FN-A-LOCAL~~

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

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 354-FN-A-LOCAL

Rep. Bates

Rep. Spillane

Rep. Hoell

Rep. Gould

Rep. Eaton

Rep. Lovejoy

Rep. Murphy

Rep. G. Smith

Rep. R. Gordon

Rep. Abrami

Deb Martone 271-4980

Gary L. Daniels
Chairman

Senate Finance Committee

Deb Martone 271-4980

HB 354-FN-A-LOCAL, making an appropriation to the department of education to provide additional adequate education grant payments to certain municipalities.

Hearing Date: April 4, 2017

Time Opened: 1:02 p.m.

Time Closed: 1:15 p.m.

Members of the Committee Present: Senators Daniels, Reagan, Morse, D'Allesandro and Feltes.

Members of the Committee Absent: Senator Giuda

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

Sponsors:

Rep. Bates

Rep. Gould

Rep. Murphy

Rep. R. Gordon

Rep. Spillane

Rep. Eaton

Rep. G. Smith

Rep. Abrami

Rep. Hoell

Rep. Lovejoy

Who supports the bill: Representatives Bates and Horrigan.

Who opposes the bill: Joseph Haas, Vocals, Inc.; Daryl Perry, Liberty Lobby LLC.

Summary of testimony presented in support:

Representative Bates, Prime Sponsor:

- HB 354-FN-A-LOCAL makes appropriations to 24 communities that did not receive full funding for the education adequacy payments in FY 2016.
- At the time there was a 108 percent cap in place on increases to education funding.
- In the current biennium in HB 2-FN-A-L, that language on the cap was repealed effective July 1, 2017.
- Subsequent to that, the City of Dover filed a lawsuit, and the court ruled the cap unconstitutional.
- The Attorney General entered into a Stipulation Agreement on behalf of the state, with the plaintiffs and the court. Whatever the ruling in the case, it would be applicable to the other 24 communities, which were not parties to the lawsuit, but affected by the cap.

- It is universally agreed this is an obligation the state must pay. The money has already been set aside to disburse to the communities, and there is no impact to the future budget the Legislature is attempting to create.
- This bill is the appropriation mechanism to provide payment to the 24 communities.
- Representative Bates provided committee members with additional written information.
- Senator Reagan inquired if HB 354-FN-A-LOCAL resolves everything. Representative Bates assured him it does. The bill includes additional language that stipulates any community that accepts these funds will be waiving any and all claims against the state for prior under-funding.
- Senator Morse asked about the companion Senate bill on this matter. Representative Bates stated that bill is waiting to be scheduled in the House.
- Senator Daniels requested an explanation of the language in Lines 7 and 8 of the bill, "...shall be for the use of the municipality's school district or districts, and shall not be considered unanticipated revenue..." Representative Bates indicated this particular language is the only difference between HB 354-FN-A-LOCAL, and the companion Senate bill, SB 56-FN-A-LOCAL. The objective of the language is to make it crystal clear that these funds are adequacy payments and are to be used exclusively for education. Towns cannot merely accept these funds and then use it for other purposes. These are part of the education trust funds and have to be used for education only.
- Senator Daniels noted two other differences in the two bills. HB 354-FN-A-LOCAL takes the money from 2017 funds, and is effective upon passage. SB 56-FN-A-LOCAL utilizes 2018 funds and is effective July 1, 2017. Representative Bates believes the funds should be disbursed as soon as possible.

Summary of testimony presented in opposition:

Joseph Haas, Vocals, Inc:

- This bill is based upon RSA 198:41, which is the education tax warrant sent out from DRA each December.
- Mr. Haas sued the Town of Boscawen in Merrimack County Superior Court, as the tax put upon his property is unlawful. He inquired as to where the required advise and consent was given before the warrant was sent out.
- This bill is based on an unlawful premise. "It is tainted with unlawfulness."
- "To have this money go to these towns, without them asking for it..."
- Gilmanton, where Mr. Haas resides, would receive \$100,530.
- This bill might be right, based on the statute. But the statute itself is unconstitutional, based on Londonderry court cases in 2006 and 2008.

Action: Ought to Pass

Speakers

Testimony

HB 354-Ref.
Bates

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

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

STATE OF NEW HAMPSHIRE
 COMPARATIVE STATEMENT OF UNDESIGNATED SURPLUS
 GENERAL AND EDUCATION FUNDS
 GAAP BASIS
 (Expressed in millions of \$)

	PROJECTED								
	FY 2017			FY 2018			FY 2019		
	General	Education	Total	General	Education	Total	General	Education	Total
Balance, July 1 (GAAP)	88.5	-	88.5	-	-	-	(3.4)	-	(3.4)
Additions:									
Unrestricted Revenue	1,501.2	916.9	2,418.1	1,538.7	925.4	2,464.1	1,572.7	934.3	2,507.0
Additional Revenue									
Total Additions	1,501.2	916.9	2,418.1	1,538.7	925.4	2,464.1	1,572.7	934.3	2,507.0
Deductions:									
Appropriations Per Section 1	(1,441.0)	(971.6)	(2,412.6)	(1,542.1)	(974.1)	(2,516.2)	(1,573.1)	(974.0)	(2,547.1)
Medicaid estimate reconciliation	(50.1)		(50.1)						
Dairy drought bill	(2.0)		(2.0)						
Education Lawsuit payment	(9.1)		(9.1)						
Judicial Council	(0.8)		(0.8)						
RSA 122:4 flood control	(0.6)		(0.6)						
	-	-	-	-	-	-	-	-	-
Total Net Appropriations	(1,503.6)	(971.6)	(2,475.2)	(1,542.1)	(974.1)	(2,516.2)	(1,573.1)	(974.0)	(2,547.1)
Less Lapses	47.0	13.0	60.0	48.7	-	48.7	50.0	-	50.0
Total Net Appropriations	(1,456.6)	(958.6)	(2,415.2)	(1,493.4)	(974.1)	(2,467.5)	(1,523.1)	(974.0)	(2,497.1)
GAAP & Other Adjustments			-						-
Current Year Balance	44.6	(41.7)	2.9	45.3	(48.7)	(3.4)	49.6	(39.7)	9.9
Fund Balance Transfers (To)/From:									
Rainy Day Fund	(7.0)		(7.0)						
Fish & Game Fund (FY17 0.7 transfer incl in Approp)									
Education Trust Fund	(41.7)	41.7	-	(48.7)	48.7	-	(39.7)	39.7	-
Infrastructure Revitalization Fund	(84.4)		(84.4)						
Balance, June 30	0.0	(0.0)	-	(3.4)	-	(3.4)	6.5	-	6.5
Reserved for Rainy Day Account	100.0		100.0	100.0		100.0	100.0		100.0
Reserved for Infrastructure Revitalization Acct	84.4		84.4	84.4		84.4	84.4		84.4
Balance, June 30 (GAAP)	184.4	(0.0)	184.4	181.0	-	181.0	190.9	-	190.9

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Tuesday, April 4, 2017

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, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 5-0

Senator Gary Daniels
For the Committee

Deb Martone 271-4980

New Hampshire General Court - Bill Status System

Docket of HB354

Docket Abbreviations

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

Official Docket of HB354:

Date	Body	Description
1/10/2017	H	Introduced 01/05/2017 and referred to Education HJ 3 P. 9
1/18/2017	H	Public Hearing: 01/24/2017 10:00 AM LOB 207
1/25/2017	H	Executive Session: 02/07/2017 01:00 PM LOB 207
2/10/2017	H	Committee Report: Ought to Pass with Amendment #2017-0076h for 02/15/2017 (Vote 18-0; RC) HC 11 P. 17
2/15/2017	H	Amendment #2017-0076h : AA VV 02/15/2017 HJ 7 P. 25
2/15/2017	H	Ought to Pass with Amendment 0076h: MA VV 02/15/2017 HJ 7 P. 25
2/15/2017	H	Referred to Finance 02/15/2017 HJ 7 P. 25
2/21/2017	H	Division II Work Session: 02/28/2017 01:30 PM LOB 209
2/21/2017	H	Division II Work Session: 03/02/2017 03:00 PM LOB 209
3/1/2017	H	Executive Session: 03/13/2017 10:00 AM LOB 210-211
3/15/2017	H	Committee Report: Ought to Pass with Amendment #2017-0850h for 03/23/2017 (Vote 26-0; RC) HC 16 P. 5
3/23/2017	H	Amendment #2017-0850h : AA VV 03/23/2017 HJ 11 P. 16
3/23/2017	H	Ought to Pass with Amendment 0850h: MA VV 03/23/2017 HJ 11 P. 16
3/29/2017	S	Introduced 03/23/2017 and Referred to Finance; SJ 11
3/29/2017	S	Hearing: 04/04/2017, Room 103, SH, 01:00 pm; SC 17
4/5/2017	S	Committee Report: Ought to Pass, 04/20/2017; SC 19
4/20/2017	S	Ought to Pass: MA, VV; OT3rdg; 04/20/2017; SJ 14
4/26/2017	S	Enrolled (In recess 04/20/2017); SJ 14
4/26/2017	H	Enrolled 04/20/2017
4/27/2017	H	Signed by Governor Sununu 04/27/2017; Chapter 28; Eff. 4/27/2017

NH House

NH Senate

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HB 354-FN-A-L 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

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

___ - AMENDMENT # _____ - AMENDMENT # _____
___ - AMENDMENT # _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

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

ADOPTED BY BOTH BODIES

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

PLEASE INCLUDE THE COMMITTEE OF CONFERENCE REPORT HERE IF IT IS SIGNED BY ALL.

DATE DELIVERED TO SENATE CLERK

06/27/27

By:

Debra Q. Martone
COMMITTEE AIDE