
Committee Report

CONSENT CALENDAR

March 13, 2019

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Executive Departments and Administration to which was referred HB 468-FN-LOCAL,

AN ACT relative to the inclusion of attendance stipends as earnable compensation in the retirement system.

Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Jeffrey Goley

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Executive Departments and Administration
Bill Number:	HB 468-FN-LOCAL
Title:	relative to the inclusion of attendance stipends as earnable compensation in the retirement system.
Date:	March 13, 2019
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2019-0888h

STATEMENT OF INTENT

This bill as amended clarifies the definition of earnable compensation for the NH Retirement System to include annual cash payments in the form of an attendance stipend or bonus paid pursuant to a collective bargaining agreement, personnel policy, or other agreement applicable to substantially all employees, the amount of which is determined by reference to the amount of sick days an employee used in the calendar or fiscal year. The reason for clarification is that after the changes to the definition of earnable compensation in 2011, there were municipalities that believed attendance stipends should be included and, because of their interpretation, both employer and employee were paying for the benefit to the retirement system. After conducting an audit, the NH Retirement System notified the municipalities that their interpretation of the law was that annual cash payments such as attendance stipends should not be included as earnable compensation. The committee believes that this change was unintended in the 2011 revisions to RSA 100-A and this bill, with the amendment, restores these attendance stipends as earnable compensation.

Vote 19-0.

Rep. Jeffrey Goley
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Executive Departments and Administration

HB 468-FN-LOCAL, relative to the inclusion of attendance stipends as earnable compensation in the retirement system. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Jeffrey Goley for Executive Departments and Administration. This bill as amended clarifies the definition of earnable compensation for the NH Retirement System to include annual cash payments in the form of an attendance stipend or bonus paid pursuant to a collective bargaining agreement, personnel policy, or other agreement applicable to substantially all employees, the amount of which is determined by reference to the amount of sick days an employee used in the calendar or fiscal year. The reason for clarification is that after the changes to the definition of earnable compensation in 2011, there were municipalities that believed attendance stipends should be included and, because of their interpretation, both employer and employee were paying for the benefit to the retirement system. After conducting an audit, the NH Retirement System notified the municipalities that their interpretation of the law was that annual cash payments such as attendance stipends should not be included as earnable compensation. The committee believes that this change was unintended in the 2011 revisions to RSA 100-A and this bill, with the amendment, restores these attendance stipends as earnable compensation. **Vote 19-0.**

Original: House Clerk

Cc: Committee Bill File

From: Jeff <jgoley03104@yahoo.com>
Sent: Wednesday, March 13, 2019 2:14 PM
To: Simmons, Miriam
Subject: HB468

This bill as amended clarifies the definition of earnable compensation for the NH Retirement System to include annual cash payments in the form of attendance stipend or bonus paid pursuant to collective bargaining agreement, personnel policy, or other agreement applicable to substantially all employees, the amount of which is determined by reference to the amount of sick days an employee used in the calendar or fiscal year. The reason for clarification is after the changes to the definition of earnable compensation in 2011 that there were municipalities that believed attendance stipends should be included and because of their interpretation both employer and employee were paying for the benefit to the retirement system. Upon doing an audit the NH Retirement System notified the municipalities that their interpretation of the law was that annual cash payments such as attendance stipends should not be included as earnable compensation. The committee believes that this change was unintended in the 2011 changes and HB468/A restores these attendance stipends as earnable compensation.

Rep. Jeff Goley

Sent from my iPad

Amendment to HB 468-FN-LOCAL

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

2

3 1 Intent. The general court intends that this act revise the definition of earnable compensation
4 for the New Hampshire retirement system to include annual cash payments in the form of an
5 attendance stipend or bonus paid pursuant to a collective bargaining agreement, personnel policy,
6 or other agreement applicable to substantially all employees, the amount of which is determined by
7 reference to the amount of sick days an employee used in the calendar or fiscal year.

8 2 Retirement System; Earnable Compensation; Annual Attendance Stipend or Bonus. Amend
9 RSA 100-A:1, XVII(a) and (b)(1) to read as follows:

10 (a) For members who have attained vested status prior to January 1, 2012 the full base
11 rate of compensation paid, as determined by the employer, plus any overtime pay, holiday and
12 vacation pay, sick pay, longevity or severance pay, cost of living bonus, *annual attendance*
13 *stipend or bonus*, additional pay for extracurricular and instructional activities for full-time
14 teachers and full-time employees who are employed in paraprofessional or support position, and any
15 military differential pay, plus the fair market value of non-cash compensation paid to, or on behalf
16 of, the member for meals or living quarters if subject to federal income tax, but excluding other
17 compensation except cash incentives paid by an employer to encourage members to retire,
18 supplemental pay paid by the employer while the member is receiving workers' compensation, and
19 teacher development pay that is not part of the contracted annual salary. Compensation for extra
20 and special duty, as reported by the employer, shall be included but limited during the highest 3
21 years of creditable service as provided in paragraph XVIII. However, earnable compensation in the
22 final 12 months of creditable service prior to termination of employment shall be limited to 1-1/2
23 times the higher of the earnable compensation in the 12-month period preceding the final 12
24 months or the highest compensation year as determined for the purpose of calculating average final
25 compensation, but excluding the final 12 months. Any compensation received in the final 12
26 months of employment in excess of such limit shall not be subject to member or employer
27 contributions to the retirement system and shall not be considered in the computation of average
28 final compensation. Provided that, the annual compensation limit for members of governmental
29 defined benefit pension plans under section 401(a)(17) of the United States Internal Revenue Code
30 of 1986, as amended, shall apply to earnable compensation for all employees, teachers, permanent
31 firemen, and permanent policemen who first become eligible for membership in the system on or
32 after July 1, 1996. Earnable compensation shall not include compensation in any form paid later

Amendment to HB 468-FN-LOCAL

- Page 2 -

1 than 120 days after the member's termination of employment from a retirement eligible position,
2 with the limited exceptions of disability related severance pay paid to a member or retiree no later
3 than 120 days after a decision by the board of trustees granting the member or retiree disability
4 retirement benefits pursuant to RSA 100-A:6 and of severance pay which a member was entitled to
5 be paid within 120 days after termination but which, without the consent of the member and not
6 through any fault of the member, was paid more than 120 days after the member's termination.
7 The member shall have the burden of proving to the board of trustees that any severance payment
8 paid later than 120 days after the member's termination of employment is earnable compensation
9 and meets the requirements of an asserted exception to the 120-day post-termination payment
10 requirement.

11 (b)(1) For members who have not attained vested status prior to January 1, 2012, the
12 full base rate of compensation paid, as determined by the employer, plus compensation over base
13 pay. Compensation over base pay shall include as applicable, subject to subparagraphs (2), (3), and
14 (4), any overtime pay, cost of living bonus, *annual attendance stipend or bonus*, annual
15 longevity pay, additional pay for extracurricular and instructional activities for full-time teachers
16 and full-time employees who are employed in paraprofessional or support position, compensation for
17 extra and special duty, and any military differential pay, plus the fair market value of non-cash
18 compensation paid to, or on behalf of, the member for meals or living quarters if subject to federal
19 income tax, but excluding other compensation except supplemental pay paid by the employer while
20 the member is receiving workers' compensation and teacher development pay that is not part of the
21 contracted annual salary.

22 3 Effective Date. This act shall take effect 60 days after its passage.

Amendment to HB 468-FN-LOCAL

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2019-0888h

AMENDED ANALYSIS

This bill includes attendance stipends or bonuses paid as earnable compensation in the New Hampshire retirement system.

Voting Sheets

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 468-FN-LOCAL

BILL TITLE: relative to the inclusion of attendance stipends as earnable compensation in the retirement system.

DATE: 3/13/19

LOB ROOM: 306

MOTION: (Please check one box)

Options: OTP, ITL, Retain (1st year), Interim Study (2nd year), Adoption of Amendment # 06884 (if offered)

Moved by Rep. COOLEY, Seconded by Rep. GROTE, Vote: 18-7

MOTION: (Please check one box)

Options: OTP, OTP/A, ITL, Retain (1st year), Interim Study (2nd year), Adoption of Amendment # (if offered)

Moved by Rep. COOLEY, Seconded by Rep. SCHWETT, Vote: 19-0

MOTION: (Please check one box)

Options: OTP, OTP/A, ITL, Retain (1st year), Interim Study (2nd year), Adoption of Amendment # (if offered)

Moved by Rep. _____, Seconded by Rep. _____, Vote: _____

MOTION: (Please check one box)

Options: OTP, OTP/A, ITL, Retain (1st year), Interim Study (2nd year), Adoption of Amendment # (if offered)

Moved by Rep. _____, Seconded by Rep. _____, Vote: _____

CONSENT CALENDAR: X YES ___ NO

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

Respectfully submitted: [Signature] Rep John Sytek, Clerk



2019 SESSION

G/C
Executive Departments and Administration

Bill #: HB 468 Motion: ADOPT AMENDS AM #: 0888h Exec Session Date: 3-13-19

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Goley, Jeffrey P. Chairman	X		
Schuett, Dianne E. Vice Chairman	X		
Jeudy, Jean L.			
Schmidt, Peter B.	X		
Schultz, Kristina M.	X		
Fontneau, Timothy J.	X		
Desjardin, Kathy J.	X		
Fellows, Sallie D.	X		
Fox, Samantha L.	X		
Grote, Jaci L.	X		
Merchant, Gary	X		
Pimentel, Roderick L.	X		
McGuire, Carol M.	X		
Sytek, John Clerk		X	
Beaudoin, Steven P.	X		
Proulx, Mark L.	X		
Panasiti, Reed A.	X		
Pearson, Stephen C. <i>Rep. JAVORIN</i>	X		
Roy, Terry	X		
Yakubovich, Michael	X		
TOTAL VOTE:			



2019 SESSION

G/Schul
Executive Departments and Administration

Bill #: HB 468 Motion: OTR/A AM #: 09884 Exec Session Date: 2/13/19

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Goley, Jeffrey P. Chairman	X		
Schuett, Dianne E. Vice Chairman	X		
Jeudy, Jean L.			
Schmidt, Peter B.	X		
Schultz, Kristina M.	X		
Fontneau, Timothy J.	X		
Desjardin, Kathy J.	X		
Fellows, Sallie D.	X		
Fox, Samantha L.	X		
Grote, Jaci L.	X		
Merchant, Gary	X		
Pimentel, Roderick L.	X		
McGuire, Carol M.	X		
Sytek, John Clerk	X		
Beaudoin, Steven P.	X		
Proulx, Mark L.	X		
Panasiti, Reed A.	X		
Rearson, Stephen C. JANVRIN	X		
Roy, Terry	X		
Yakubovich, Michael	X		
TOTAL VOTE:			

Amendment to HB 468-FN-LOCAL

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

2

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4 for the New Hampshire retirement system to include annual cash payments in the form of an
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14 teachers and full-time employees who are employed in paraprofessional or support position, and any
15 military differential pay, plus the fair market value of non-cash compensation paid to, or on behalf
16 of, the member for meals or living quarters if subject to federal income tax, but excluding other
17 compensation except cash incentives paid by an employer to encourage members to retire,
18 supplemental pay paid by the employer while the member is receiving workers' compensation, and
19 teacher development pay that is not part of the contracted annual salary. Compensation for extra
20 and special duty, as reported by the employer, shall be included but limited during the highest 3
21 years of creditable service as provided in paragraph XVIII. However, earnable compensation in the
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27 contributions to the retirement system and shall not be considered in the computation of average
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29 defined benefit pension plans under section 401(a)(17) of the United States Internal Revenue Code
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Amendment to HB 468-FN-LOCAL

- Page 2 -

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4 retirement benefits pursuant to RSA 100-A:6 and of severance pay which a member was entitled to
5 be paid within 120 days after termination but which, without the consent of the member and not
6 through any fault of the member, was paid more than 120 days after the member's termination.
7 The member shall have the burden of proving to the board of trustees that any severance payment
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12 full base rate of compensation paid, as determined by the employer, plus compensation over base
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14 (4), any overtime pay, cost of living bonus, *annual attendance stipend or bonus*, annual
15 longevity pay, additional pay for extracurricular and instructional activities for full-time teachers
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Amendment to HB 468-FN-LOCAL
- Page 3 -

2019-0888h

AMENDED ANALYSIS

This bill includes attendance stipends or bonuses paid as earnable compensation in the New Hampshire retirement system.

UNAPPROVED

Hearing Minutes

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON HB 468-FN-LOCAL

BILL TITLE: relative to the inclusion of attendance stipends as earnable compensation in the retirement system.

DATE: January 22, 2019

LOB ROOM: 306 **Time Public Hearing Called to Order:** 1:00 p.m.
Time Adjourned: 1:40 p.m.

Committee Members: Reps. Goley, Sytek, Jeudy, P. Schmidt, Schultz, Desjardin, Fellows, Fox, Grote, Merchant, Pimental, McGuire, Proulx, Panasiti and Roy

Bill Sponsors:
Rep. P. Schmidt

TESTIMONY

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

1. **Rep. Schmidt, Strafford district 19, sponsor, introduced the bill** and said that Rep. Sytek would provide details.
2. **Rep. Sytek, Rockingham district 8, in support of bill.**
Rep. Sytek described the situation and what the bill sought to do. He retired nearly 8 years ago and several months ago, he (and similarly situated teachers) received notice that their "attendance stipend" would not be considered as earnable compensation, that is, income treated towards retirement. This income had been so considered for those nearly 8 years and during the time that the attendance stipend was being earned, contributions towards retirement had been paid into the system. For it not to be considered earnable is something that would have a small negative effect on pensions. He said that this should be considered in that it is directly related to teachers' efforts in teaching their classes. The committee had many questions regarding the mechanism of the stipend.
3. **Dr. Michael Delahanty, Superintendent of the Salem School District, spoke in favor.** He said that this modest stipend was an incentive for teachers. He described the importance of having the classroom teacher in class as opposed to a substitute in maintaining the quality of education.
- *4. **Marty Karlon, Public Information officer of NHRS - speaking as informational.**
Although the NHRS was not taking a position he indicated that there could be problems. He described the history of how earnable compensation was determined for teachers. He was concerned that the police who have a version of this or state employees who earn time off for attendance could complicate the issue.
5. **Rep. Schmidt returned** and said that his own personal experience being a substitute teacher for a time was that in many situations involving well-meaning but incompetent subs, the students considered it as a day off.

Respectfully submitted by
Rep. John Sytek Committee Clerk



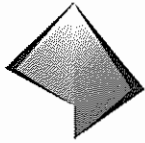
HB-468. Relative to the Inclusion of Attendance Stipends As Earnable Compensation in the Retirement System. The hearing opened at 1:00 PM and closed at 1:40 PM.

- 1 Rep. Schmidt, sponsor, introduced the bill and said that Rep. Sytek would provide details.
- 2 Rep. Sytek described the situation and what the bill sought to do. He retired nearly 8 years ago and several months ago, he (and similarly situated teachers) received notice that their “attendance stipend” would not be considered as earnable compensation, that is, income treated towards retirement. This income had been so considered for those nearly 8 years and during the time that the attendance stipend was being earned, contributions towards retirement had been paid into the system. For it not to be considered earnable is something that would have a small negative effect on pensions. He said that this should be considered in that it is directly related to teachers’ efforts in teaching their classes. The committee had many questions regarding the mechanism of the stipend.
- 3 Dr. Michael Delahanty, Superintendent of the Salem School District, spoke in favor. He said that this modest stipend was an incentive for teachers. He described the importance of having the classroom teacher in class as opposed to a substitute in maintaining the quality of education.
- 4 Marty Karlon, Public Information officer of NHRS spoke. Although the NHRS was not taking a position he indicated that there could be problems. He described the history of how earnable compensation was determined for teachers. He was concerned that the police who have a version of this or state employees who earn time off for attendance could complicate the issue.
- 5 Rep. Schmidt returned and said that his own personal experience being a substitute teacher for a time was that in many situations involving well-meaning but incompetent subs, the students considered it as a day off.

Sytek

Testimony

#4



NHRS
New Hampshire Retirement System

New Hampshire Retirement System
54 Regional Drive, Concord, NH 03301
Phone: (603) 410-3500 - Fax: (603) 410-3501
Website: www.nhrs.org - Email: info@nhrs.org

January 22, 2019

NHRS Testimony on House Bill 468

The New Hampshire Retirement System Board of Trustees has not taken a position on this legislation.

This bill would add attendance stipends paid to full-time teachers and full-time paraprofessional or educational support personnel as a type of earnable compensation to be included for NHRS reporting purposes. The scope of impacted employers, members, and dollars at issue are indeterminable.

From an administrative perspective, the retirement system has the following observations regarding this legislation:

- Such stipends paid in cash (and not as additional days off) have not been eligible for inclusion as earnable compensation under RSA 100-A since 2008, when HB 1645 was enacted. Since that time, when NHRS has become aware of such stipends being reported as earnable compensation it has refunded those attributable contributions to employers and members. In addition, if an attendance bonus is an award of extra days off that can be later cashed in, amounts received upon cashing in would still be excludable for members not vested prior to 7/1/2012 as compensation for unused sick or vacation time.
- Requiring retroactive adjustments at this point would create significant administrative, income tax and budget issues for employers and NHRS to properly identify the stipends and calculate the resulting contributions necessary on behalf of impacted employers and members.
- The NHRS interprets the proposed retroactive language in section 2 to include attendance stipends for current members only and not for any retirees.
- NHRS further interprets the proposed language as including attendance stipends for those members who may have earned such stipends for both their current and prior employers.
- NHRS also notes that some employers also pay such attendance stipends to employees, police and fire members and, as such, this legislation would result in inconsistent treatment across member classes.

Fiscal Note

HB 468-FN-LOCAL- FISCAL NOTE
 AS AMENDED BY THE HOUSE (AMENDMENT #2019-0888h)

AN ACT relative to the inclusion of attendance stipends as earnable compensation in the retirement system.

FISCAL IMPACT: State County Local None

LOCAL:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill adds annual attendance stipends or bonus paid to full-time teachers and full-time paraprofessionals or educational support personnel as a type of earnable compensation to be included for New Hampshire Retirement System reporting purposes. The New Hampshire Retirement System is unable determine the scope of impacted employers, members, and dollars impacted by this bill. Therefore, this bill will increase local government employer retirement expenditures by an indeterminable amount.

AGENCIES CONTACTED:

New Hampshire Retirement System

Bill as Introduced

HB 468-FN-LOCAL - AS INTRODUCED

2019 SESSION

19-0733

10/04

HOUSE BILL **468-FN-LOCAL**

AN ACT relative to the inclusion of attendance stipends as earnable compensation in the retirement system.

SPONSORS: Rep. P. Schmidt, Straf. 19

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill includes attendance stipends paid to teachers and school employees in earnable compensation for the New Hampshire retirement system.

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

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to the inclusion of attendance stipends as earnable compensation in the retirement system.

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

1 1 Retirement System; Earnable Compensation; Attendance Stipend. Amend RSA 100-A:1,
2 XVII(a) and (b)(1) to read as follows:

3 (a) For members who have attained vested status prior to January 1, 2012 the full base
4 rate of compensation paid, as determined by the employer, plus any overtime pay, holiday and
5 vacation pay, sick pay, longevity or severance pay, cost of living bonus, additional pay for
6 extracurricular and instructional activities [~~for~~] *and attendance stipends paid to* full-time
7 teachers and full-time employees who are employed in paraprofessional or support position, and any
8 military differential pay, plus the fair market value of non-cash compensation paid to, or on behalf
9 of, the member for meals or living quarters if subject to federal income tax, but excluding other
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28 than 120 days after a decision by the board of trustees granting the member or retiree disability
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30 be paid within 120 days after termination but which, without the consent of the member and not

HB 468-FN-LOCAL - AS INTRODUCED

- Page 2 -

1 through any fault of the member, was paid more than 120 days after the member's termination.
2 The member shall have the burden of proving to the board of trustees that any severance payment
3 paid later than 120 days after the member's termination of employment is earnable compensation
4 and meets the requirements of an asserted exception to the 120-day post-termination payment
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7 full base rate of compensation paid, as determined by the employer, plus compensation over base
8 pay. Compensation over base pay shall include as applicable, subject to subparagraphs (2), (3), and
9 (4), any overtime pay, cost of living bonus, annual longevity pay, additional pay for extracurricular
10 and instructional activities ~~for~~ *and attendance stipends paid to* full-time teachers and full-time
11 employees who are employed in paraprofessional or support position, compensation for extra and
12 special duty, and any military differential pay, plus the fair market value of non-cash compensation
13 paid to, or on behalf of, the member for meals or living quarters if subject to federal income tax, but
14 excluding other compensation except supplemental pay paid by the employer while the member is
15 receiving workers' compensation and teacher development pay that is not part of the contracted
16 annual salary.

17 2 Application; Attendance Stipends The inclusion of attendance stipends as earnable
18 compensation in RSA 100-A:1, XVII as amended by section 1 of this act shall apply to a member's
19 prior employment with an employer if member contributions were made for such attendance
20 stipends.

21 3 Effective Date. This act shall take effect 60 days after its passage.

HB 468-FN-LOCAL- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the inclusion of attendance stipends as earnable compensation in the retirement system.

FISCAL IMPACT: State County Local None

LOCAL:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Revenue	\$0	\$0	\$0	\$0
Expenditures	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill adds attendance stipends paid to full-time teachers and full-time paraprofessionals or educational support personnel as a type of earnable compensation to be included for New Hampshire Retirement System reporting purposes. The New Hampshire Retirement System is unable determine the scope of impacted employers, members, and dollars impacted by this bill. Therefore, this bill will increase local government employer retirement expenditures by an indeterminable amount.

AGENCIES CONTACTED:

New Hampshire Retirement System