

LEGISLATIVE COMMITTEE MINUTES

**SB136**

# Bill as Introduced

SB 136 - AS INTRODUCED

2019 SESSION

19-0448

04/01

SENATE BILL

**136**

AN ACT

relative to classification of students for tuition purposes in the university system.

SPONSORS:

Sen. Kahn, Dist 10; Sen. Fuller Clark, Dist 21; Rep. Hatch, Coos 6; Rep. McGuire, Merr. 29

COMMITTEE:

Education and Workforce Development

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ANALYSIS

This bill removes the rulemaking requirement for the adoption of criteria by the university system board of trustees governing the classification of students for tuition purposes.

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Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nineteen*

AN ACT relative to classification of students for tuition purposes in the university system.

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

1       1 University System Board of Trustees; Authority of Trustees. Amend RSA 187-A:16, XIX to  
2 read as follows:

3           XIX. ~~[Adopt rules pursuant to RSA 541-A establishing]~~ **Establish** criteria for determining  
4 whether students shall be classified as in-state students or out-of-state students for tuition  
5 purposes, and to delegate the administration of such ~~[rules]~~ **criteria** to a subcommittee or agent.  
6 Any student in the university system who is aggrieved by a final determination of the board of  
7 trustees or of any subcommittee or agent of the board denying in-state status for tuition purposes  
8 may appeal to the superior court in the county in which the particular division of the university  
9 involved is located. Such appeal shall be filed within 30 days after the final determination by the  
10 board of trustees. In the superior court, the burden of proof shall be on the appellant to show that  
11 the determination of the board of trustees is unreasonable or unlawful and all findings by the board  
12 or its properly designated subcommittee or agent shall be deemed to be prima facie lawful and  
13 reasonable. The determination of the board of trustees shall be set aside only if, on all the evidence,  
14 the court is satisfied that it is unlawful or unreasonable according to the ~~[policy]~~ **criteria** as set  
15 forth in this section, and additional criteria as may be established and published, to the student  
16 bodies of the institutions constituting the university system by the board of trustees.

17       2 Effective Date. This act shall take effect 60 days after its passage.

SB 136 - FINAL VERSION

2019 SESSION

19-0448

04/01

SENATE BILL **136**

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CHAPTER 64  
SB 136 - FINAL VERSION

2019 SESSION

19-0448  
04/01

SENATE BILL

**136**

AN ACT

relative to classification of students for tuition purposes in the university system.

SPONSORS:

Sen. Kahn, Dist 10; Sen. Fuller Clark, Dist 21; Rep. Hatch, Coos 6; Rep. McGuire, Merr. 29

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CHAPTER 64  
SB 136 - FINAL VERSION

19-0448  
04/01

STATE OF NEW HAMPSHIRE

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14 satisfied that it is unlawful or unreasonable according to the ~~[policy]~~ **criteria** as set forth in this  
15 section, and additional criteria as may be established and published, to the student bodies of the  
16 institutions constituting the university system by the board of trustees.

64:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: June 05, 2019  
Effective Date: August 04, 2019



# Committee Minutes

# SENATE CALENDAR NOTICE

## Education and Workforce Development

Sen Jay Kahn, Chair  
 Sen Jeanne Dietsch, Vice Chair  
 Sen Jon Morgan, Member  
 Sen Ruth Ward, Member  
 Sen David Starr, Member

Date: January 23, 2019

### HEARINGS

	Tuesday	01/29/2019
	(Day)	(Date)
Education and Workforce Development		LOB 103
(Name of Committee)		(Place)
		9:30 a.m.
		(Time)
9:30 a.m. <b>SB 136</b>		relative to classification of students for tuition purposes in the university system.
9:45 a.m. <b>SB 144</b>		requiring the lottery commission to notify the department of education about revenue.
10:00 a.m. <b>SB 107-FN</b>		relative to extended foster care under the child protection act.
10:15 a.m. <b>SB 196</b>		relative to non-academic surveys administered by a public school to its students.
10:45 a.m. <b>SB 65</b>		relative to the start of the school year.
11:00 a.m. <b>SB 108</b>		relative to eligibility for the governor's scholarship program.

### EXECUTIVE SESSION MAY FOLLOW

**Sponsors:**

<b>SB 136</b>	Sen. Fuller Clark	Rep. Hatch	Rep. McGuire
Sen. Kahn			
<b>SB 144</b>	Sen. Feltes	Sen. Watters	
Sen. Kahn			
<b>SB 107-FN</b>	Sen. Birdsell	Sen. Carson	Sen. Feltes
Sen. Bradley	Sen. Gray	Sen. Hennessey	Sen. Kahn
Sen. Fuller Clark	Sen. Rosenwald	Sen. Soucy	Sen. Ward
Sen. Morgan	Rep. Rice	Rep. Berrien	
Sen. Watters			

**SB 196**

Sen. Watters  
Sen. Chandley

Sen. Kahn  
Sen. Hennessey

Sen. Levesque  
Rep. Kenney

Sen. Rosenwald

**SB 65**

Sen. Fuller Clark  
Rep. Pantelakos

Sen. Sherman  
Rep. Cali-Pitts

Sen. Hennessey  
Rep. Doucette

Sen. Cavanaugh  
Rep. Ward

**SB 108**

Sen. Fuller Clark

Sen. Kahn

Tricia Melillo 271-3077

Jay Kahn  
Chairman

# Senate Education and Workforce Development Committee

*Tricia Melillo 271-3093*

**SB 136**, relative to classification of students for tuition purposes in the university system.

**Hearing Date:** January 29, 2019

**Members of the Committee Present:** Senators Kahn, Dietsch, Morgan, Ward and Starr

**Members of the Committee Absent :** None

**Bill Analysis:** This bill removes the rulemaking requirement for the adoption of criteria by the university system board of trustees governing the classification of students for tuition purposes.

**Sponsors:**

Sen. Kahn  
Rep. McGuire

Sen. Fuller Clark

Rep. Hatch

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**Who supports the bill:** Senator Fuller-Clark, Representative Wendy Chase, Ron Rogers University System of NH

**Who opposes the bill:** None

**Summary of testimony presented in support:**

**Senator Kahn**

- This bill amends the university system statute in RSA 187-A:16.
- He is bringing this forward on behalf of the Joint Legislative Committee on Administrative Rules.
- When this was brought to the Joint Legislative Committee on Administrative Rules we agreed that we would grant the 3<sup>rd</sup> exception in thirty years for the university to set in state tuition policies.
- This is part of an annual review that the University System does.
- Rules expire after ten years and then they are compelled to come back and seek this approval.
- This statute dates to 1983 and a recent Community College statute on the same policies

relative to the establishing of in-state tuition rates waves the requirement of 541: a requiring in-state tuition rules to go before JLCAR.

- This bill is doing the same thing for the University System as what the legislature has previously done for the Community College System and completes the authorization, so they do not need to return every ten years to JLCAR for renewal of rules on this issue.
- Senator Ward asked if anyone else will look at the tuition criteria to decide if they are the right ones or not, or is it left up to the University.
  - The university system board of trustees become the review body as they are right now. Each time the university system has presented to JLCAR they have been granted an exception which states that they are the rule making body for in-state tuition.
- Senator Starr asked what kind of rules criteria are there for determining tuition.
  - Essentially, one must graduate from a New Hampshire high school. Meaning, residency is established prior to your entry into college. Otherwise everyone will have in state tuition.

### **Ronald Rogers – General Counsel for the University System**

- JLCAR invited the board of trustees to seek clarification on its authority to adopt rules for tuition purposes.
- Board of trustees adopts rules only on the standards for determining an in-state or out of state student and nothing else.
- That worked fine for some decades until the legislative requirements around the administrative procedures act evolved.
- They now require several ancillary rules anytime an agency has rulemaking authority such as, structure of agency itself, dispute resolution process, certain forms to be used.
- The University System is relying on the very narrow grant of authority to adopt rules only for in-state or out-of-state classification.
- Legislative services office expressed concerned that the other ancillary rules were not being adopted by the board of trustees.
- Took the position that the rules the University System has adopted have been in place for decades and have worked fine with no legal challenges.
- They classify around 30,000 students every year either in-state or out-of-state.
- There is an internal appeal process built into the rules and students that have questions or concerns can access that process.
- Our position has been that we do not need the ancillary rules because of the approvals in the past.
- JLCAR was concerned that it was not clear in the statute whether the board needed to adopt the ancillary rules.
- Looked at other agencies and the Community College System. The Community College

System charter was modeled on the University System charter.

- In the CC system charter any ambiguity is resolved by leaving the establishment of criteria for determining tuition classification up to the Community College System board of trustees.
- That will work for the University System as well, and will be in the best interest of students and the state of NH to have that same resolution in the University System charter. To remove the rulemaking authority on the criteria.
- SB 136 does that and no more and would solve this issue
- Criteria adopted are numerous about whether a student is in-state or out-of-state, it often comes down to graduation from NH high school.
- The reason for the care that the board of trustees takes is simply, the differential between in state and out of state tuition. There is a lot of money at stake.
- Senator Kahn asked what the end date was for the exception from JLCAR.
  - The affective window closed on Dec 26, 2018 and the board of trustee adopted the rules on January 18<sup>th</sup>. JLCAR has asked us to come back after we sought clarification through this legislation.

**Summary of testimony presented in opposition: None**

TM

Date Hearing Report completed: January 30, 2019

# Speakers





# Testimony

NEW HAMPSHIRE GENERAL COURT  
SENATE EDUCATION AND WORKFORCE DEVELOPMENT COMMITTEE

Legislative Office Building, Room 103  
January 29, 2019  
9:30 AM

SB 136, relative to the classification of students for tuition purposes

Testimony of Ronald Rodgers, General Counsel  
University System of New Hampshire

Good morning. My name is Ronald Rodgers, and I am the General Counsel for the University System of New Hampshire (USNH) and testifying on behalf of the USNH Board of Trustees in support of SB 136.

Last fall, in a rulemaking proceeding under the state's Administrative Procedures Act (APA), the Joint Legislative Committee on Administrative Rules (JLCAR) suggested the USNH Board of Trustees seek legislation to clarify the Board's rulemaking authority under the USNH Charter, RSA 187-A:16, XIX. The Board accepted JLCAR's recommendation and, on that basis, JLCAR allowed the proposed rules to become final. SB 136 would provide the needed clarification.

The ambiguity SB 136 would clarify is about the breadth of the USNH Board of Trustees' rulemaking authority and obligation. Since the 1981 recodification of the USNH legislative charter, RSA 187-A, the Board of Trustees has had final authority to adopt policies on all matters involved in the administration of a public system of higher education with the very narrow exception of the classification of students as in-state or out-of-state for tuition purposes. Those rules must be adopted under the APA. Subsequent to the recodification of USNH's charter, various amendments to the APA and the Administrative Procedures Manual have added a number of ancillary requirements for "agencies" with "rulemaking authority," including the adoption of rules describing the agency, setting a process for contesting decisions, and establishing the forms used by the agency. In the rulemaking proceeding referenced above, USNH took the position that the ancillary rulemaking requirements do not and should not apply to public institutions that do not have plenary rulemaking authority. The Office of Legislative Service, on the other hand, took the position that any rulemaking authority, regardless how narrow, includes the obligation to adopt all of the ancillary rules required of agencies with plenary authority.

USNH, following the suggestion of JLCAR to seek clarification of its rulemaking authority, reviewed the rulemaking authority of the Community College System of New Hampshire (CCSNH), the legislative charter for which is modeled on the USNH charter, and found this ambiguity has been avoided by giving the CCSNH governing board the final authority to adopt all policies including its rules for the classification of students for tuition purposes, without going through the APA. We believe this solution will make good sense for USNH, will be consistent with the Board of Trustees' plenary authority to adopt rules on all other matters relating to the administration of the USNH, and will promote the efficient and effective administration of those public institutions, all to the benefit of the students of USNH and the citizens of the state of New Hampshire.

For those reasons the USNH Board of Trustees respectfully requests this committee to recommend SB 136, "Ought to Pass."

Thank you for this opportunity to testify in support of SB 136.

# Voting Sheets

**Senate Education & Workforce Development  
Committee  
EXECUTIVE SESSION RECORD  
2019 Session**

Bill # 136

Hearing date: 1-29-19

Executive Session date: \_\_\_\_\_

Motion of: OT P Vote: \_\_\_\_\_

Committee Member	Present	Made by	Second	Yes	No
Sen. Kahn, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Dietsch, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Morgan	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Starr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Consent Vote: \_\_\_\_\_

Committee Member	Present	Made by	Second	Yes	No
Sen. Kahn, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Dietsch, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Morgan	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Starr	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

Committee Member	Present	Made by	Second	Yes	No
Sen. Kahn, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Dietsch, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Morgan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Ward	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Starr	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Kahn

Notes: \_\_\_\_\_

# Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Tuesday, January 29, 2019

THE COMMITTEE ON Education and Workforce Development

to which was referred **SB 136**

AN ACT

relative to classification of students for tuition  
purposes in the university system.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 5-0

Senator Jay Kahn  
For the Committee

This bill removes the rulemaking requirement for the adoption of criteria by the university system Board of Trustees when determining if a student is classified as in-state or out-of-state for tuition purposes. The Joint Legislative Committee on Administrative Rules suggested the USNH board seek legislation clarifying their authority under the USNH Charter, RSA 187-A:16 and SB 136 will give that clarification. This authority parallels the statutory authority granted to the NH Community College System.

Tricia Melillo 271-3093

Consent calendar Blurb – SB 136 (relative to classification of students for tuition purposes in the university system) Vote OTP 5-0 Senator Kahn for the Committee

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Stat Authority  
Parallels granted to  
the  
NHCCS



# Docket of SB136

Docket Abbreviations

**Bill Title:** relative to classification of students for tuition purposes in the university system.

Official Docket of **SB136**:

Date	Body	Description
1/18/2019	S	<b>Introduced</b> 01/03/2019 and Referred to Education and Workforce Development; <b>SJ 4</b>
1/23/2019	S	<b>Hearing:</b> 01/29/2019, Room 103, LOB, 09:30 am; <b>SC 8</b>
2/4/2019	S	Committee Report: Ought to Pass, 02/14/2019; Vote 5-0; CC <b>SC 10</b>
2/14/2019	S	<b>Ought to Pass:</b> MA, VV; OT3rdg; 02/14/2019; <b>SJ 5</b>
3/21/2019	H	Introduced 03/20/2019 and referred to Education <b>HJ 11</b> P. 70
3/27/2019	H	Public Hearing: 04/03/2019 10:00 am LOB 207
4/10/2019	H	Executive Session: 04/18/2019 10:00 am LOB 207
4/23/2019	H	Committee Report: Ought to Pass for 05/02/2019 ( <b>Vote 18-2; CC) HC 22</b> P. 4
5/2/2019	H	<b>Ought to Pass:</b> MA VV 05/02/2019 <b>HJ 14</b> P. 4
5/16/2019	H	Enrolled 05/08/2019 <b>HJ 15</b> P. 101
5/16/2019	S	Enrolled (In recess 05/15/2019); <b>SJ 17</b>
6/10/2019	S	Signed by the Governor on 06/05/2019; Chapter 0064; Effective 08/04/2019

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NH House

NH Senate

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# Other Referrals

# Senate Inventory Checklist for Archives

Bill Number: SB 136

Senate Committee: Education + WFD

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

### Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

### Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

Executive Session Sheet

Committee Report

### Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

\_\_\_ - amendment # \_\_\_\_\_      \_\_\_ - amendment # \_\_\_\_\_

### Post Floor Action: (if applicable) {Clerk's Office}

\_\_\_ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

\_\_\_ Enrolled Bill Amendment(s)

\_\_\_ Governor's Veto Message

### All available versions of the bill: {Clerk's Office}

\_\_\_ as amended by the senate      \_\_\_ as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

\_\_\_\_\_  
Committee Aide

\_\_\_\_\_  
Date

Senate Clerk's Office JM