Bill as Introduced

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HB 281-FN - AS INTRODUCED

2021 SESSION

21-0629 10/11

HOUSE BILL**281-FN**AN ACTrelative to the tax expenditure report and relative to delaying the enactment of
the single sales factor under the business profits and business enterprise taxes.SPONSORS:Rep. Abrami, Rock. 19; Rep. Ames, Ches. 9COMMITTEE:Ways and Means

ANALYSIS

This bill removes the consideration of weighted apportionment factors under the business profits tax from inclusion in the tax expenditure report and includes the regional career and technical education center tax credit. The bill also delays the enactment of the single sales factor for determining apportionment under the business profits tax and the business enterprise tax and extends and amends the legislative committee on apportionment.

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removed from current law appears [in brackets and struckthrough.]Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 281-FN - AS INTRODUCED

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the tax expenditure report and relative to delaying the enactment of the single sales factor under the business profits and business enterprise taxes.

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

1 1 Tax Expenditure Report; Weighted Apportionment Factors Removed. Amend RSA 71-C:2 to 2 read as follows:

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10 RSA 77-A:1, I and RSA 77-E:1, III.

Business Profits Tax; Single Sales Factor; Amendment to Prospective Amendment. 2019,
346:426, prospectively amending RSA 77-A:3, I-III, are repealed and reenacted to read as follow:

346:426 Business Profits Tax; Apportionment; 2026. RSA 77-A:3, I-III are repealed and
reenacted to read as follows:

I. A business organization which derives gross business profits from business activity both within and without this state, and which is subject to a net income tax, a franchise tax measured by net income, or a capital stock tax in another state or is subject to the jurisdiction of another state to impose a net income tax or capital stock tax upon it, whether or not such tax is actually imposed, shall apportion its gross business profits so as to allocate to this state a fair and equitable proportion of such business profits. Except as provided in this section, such apportionment shall be made in the following manner:

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(a) For taxable periods ending before December 31, 2026:

(1) The business organization's gross business profits shall be apportioned on thebasis of the following 3 factors:

(A) The percentage of value of the total real and tangible personal property owned, rented and employed by the business organization everywhere as is owned, rented and employed by it in the operation of its business in this state. Property owned by the business organization shall be valued at its original cost. Property rented by the business organization shall be valued at 8 times the net annual rental rate. Net annual rental rate is the annual rental rate and by the business organization less any annual rental rate received by the business organization

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1 from subrentals.

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2	(B) The percentage of total compensation paid by the business organization to
3	employees everywhere as is paid by the business organization to employees for services rendered
4	within this state. Such compensation is deemed to be disbursed for services in this state if the
5	service is performed entirely within this state, or if the service is performed both within and without
6	this state and the service performed without this state is incidental to the service within this state,
7	or some of the service is performed in this state and (i) the base of operations or, if there is no base of
8	operations, the place from which the service is directed or controlled is in this state, or (ii) the base of
9	operations or the place from which the service is directed or controlled is not in any state in which
10	some part of the service is performed, but the individual performing such service resides within this
11	state.
12	(C) The percentage of the total sales, including charges for services, made by the
13	business organization everywhere as is made by it within this state:
14	(i) Sales of tangible personal property are made in this state if the property
15	is delivered or shipped to a purchaser, other than the United States government, within this state
16	regardless of f.o.b. point or other conditions of sale, or the property is shipped from an office, store,
17	warehouse, factory or other place of storage in this state and the purchaser is the United States
18	government, or the business organization is not taxable in the state of the purchaser.
19	(ii) Sales other than sales of tangible personal property are in this state if
20	the business organization's market for the sales is in this state, as follows:
21	1. In the case of sale, rental, lease, or license of real property, if and to
22	the extent the property is located in this state;
23	2. In the case of rental, lease, or license of tangible personal property, if
24	and to the extent the property is located in this state;
25	3. In the case of sale of a service, if and to the extent the service is
26	delivered to a location in this state;
27	4. In the case of sale, rental, lease, or license of intangible property, if
28	and to the extent the property is used in this state;
29	5. In the case of interest income, if and to the extent the debtor or
30	encumbered property is located in this state;
31	6. In the case of dividend income, if and to the extent the business
32	organization's commercial domicile is in this state; and
33	7. In the case of other income, if and to the extent the income is derived
34	from sources in this state.
35	(iii) In the case of sales other than sales of tangible personal property, if the
36	state or states of assignment cannot be determined, the state or states of assignment shall be
37	reasonably approximated.

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(iv) In the case of sales other than sales of tangible personal property, if the 2 taxpayer is not taxable in a state to which a sale is assigned, or if the state of assignment cannot be 3 determined or reasonably approximated, such sale shall be excluded from the denominator of the 4 sales factor.

5 (2) A fraction, the numerator of which shall be the property factor in subparagraph 6 I(a)(1)(A) plus the compensation factor in subparagraph I(a)(1)(B) plus 2 multiplied by the sales 7 factor in subparagraph I(a)(1)(C) and the denominator of which is 4, shall be applied to the total gross business profits (less foreign dividends) of the business organization to ascertain its gross 8 9 business profits in this state.

10 (b) For taxable periods ending on or after December 31, 2026, the business organization's 11 gross business profits shall be apportioned by multiplying the total gross business profits (less 12foreign dividends) of the business organization by the sales factor in subparagraph I(a)(1)(C).

13 II.(a) If the applicable method of apportionment in paragraph I does not fairly represent the 14 business organization's business activity in this state, the business organization may petition for, or the commissioner may require, in respect to all or any part of the business organization's business 1516 activity, if reasonable, the employment of any other method to effect an equitable apportionment of 17 the business organization's gross business profits.

18 (b) For foreign dividends from unitary sources, the following formula shall be used to 19 modify factors relating to included dividends:

(1) Determine a percentage for each dividend payor consisting of dividends paid 20 $\mathbf{21}$ divided by taxable income which has been computed using United States standards.

 $\mathbf{22}$ (2) Apply this percentage to the dividend payor's foreign property, payroll, and sales 23for taxable periods ending before December 31, 2026, or to the dividend payor's foreign sales for $\mathbf{24}$ taxable periods ending on or after December 31, 2026.

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(3) Sum the results in subparagraph (2) for all dividend payors.

26 (4) Add the result in subparagraph (3) to the denominators of the combined water's $\mathbf{27}$ edge group. The numerator will remain the New Hampshire numerator.

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(5) Apply the resulting percentage to the foreign dividends.

29 (6) Add this amount to the amount of New Hampshire taxable business profits 30 computed pursuant to RSA 77-A:3, I.

 $\mathbf{31}$ III. When 2 or more related business organizations are engaged in a unitary business, as 32 defined in RSA 77-A:1, XIV, a part of which is conducted in this state by one or more members of the 33 group, the income attributable to this state shall be determined by means of the applicable combined 34 apportionment factors of the unitary business group in accordance with paragraphs I and II.

35 3 Legislative Committee on Apportionment; Extended; Duties Revised. Amend RSA 77-A:23-a to read as follows: 36

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77-A:23-a Legislative Committee on Apportionment. There is established a committee to study

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1 the apportionment of gross business profits under the business profits tax, [and to authorize the 2 enactment of with special emphasis on the impact on the state's businesses, employment and revenues of moving to the single sales factor for the business profits tax and business 3 4 enterprise tax.

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I. The members of the committee shall be as follows:

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(a) Three members of the senate, appointed by the president of the senate.

7 (b) Four members of the house of representatives, appointed by the speaker of the house 8 of representatives.

9 II. Members of the committee shall receive mileage at the legislative rate when attending to 10 the duties of the committee.

11 III.(a) The committee shall study apportionment among states pursuant to RSA 77-A:3 of 12gross business profits under the business profits tax. The committee shall also monitor the laws and legislation of other states concerning market-based sourcing and single sales factor 13 14 apportionment and may study any other related issues. The committee may solicit input or 15testimony from any person or organization the committee deems relevant to the study.

16 (b) [The committee shall conduct meetings and] Beginning on or before November 1, 17 [2020] 2024, the committee shall examine the data provided by the department of revenue 18 administration on the effects of single sales factor apportionment under the new market rules, and shall [hold at least 2 public hearings on the enactment of the single sales tax provisions 19 20 contained in sections 426-429 of HB 4 FN A LOCAL of the 2019 regular legislative session. In 21 November 2020, the committee shall, by majority vote of the committee, vote on whether to reseind 22 the enactment of the amendments contained in sections 426-429 of HB 4 FN A LOCAL regular legislative session. If the majority of the committee reseinds the enactment of sections 426-429 of 23 $\mathbf{24}$ HB-4-FN A LOCAL regular legislative session, such sections shall not take effect.] by majority 25 vote of the committee, vote on whether to recommend and sponsor legislation to rescind or 26 further delay the change to single sales factor apportionment described in RSA 77:3. The committee shall report on its actions to the chairpersons of the senate and house finance committees, 27 28 the chairpersons of the senate and house ways and means committees, the secretary of state, and the 29 director of the office of legislative services.

30 IV. The members of the committee shall elect a chairperson from among the members. The 31 first meeting shall be called by the first-named [senate] house member. The first meeting of the committee shall be held within 45 days [of the effective date of this section] after May 1, 2024. Four 3233 members of the committee shall constitute a quorum.

V. The committee shall report its findings and any recommendations for proposed legislation 34 35 to the president of the senate, the speaker of the house of representatives, the senate clerk, the 36 house clerk, the governor, and the state library on or before December 1, [2020] 2024.

37 4 Enactment of Single Sales Factor; Date Changed. Amend 2019, 346:432 to read as follows:

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1 346:432 Enactment of Single Sales Factor. Sections 426-429 of this act shall take effect January $\mathbf{2}$ 1, [2022] 2026 unless upon the report of the committee established in RSA 77-A:23-a, as inserted in 3 this act, [that by majority vote of the committee, sections-426-429-are-reseinded] legislation is 4 adopted to rescind or further delay the change to single sales factor apportionment. 5 Repeal of Legislative Committee; Change to Effective Date. Amend 2019, 346:440, XIII to 5 6 read as follows: $\mathbf{7}$

XIII. Section 433 of this act shall take effect December 1, [2020] 2024.

6 Effective Date. This act shall take effect upon its passage. 8

LBA 21-0629 1/4/21

HB 281-FN- FISCAL NOTE AS INTRODUCED

AN ACT relative to the tax expenditure report and relative to delaying the enactment of the single sales factor under the business profits and business enterprise taxes.

FISCAL IMPACT: [X] State [] County [] Local [] None

	Estimated Increase / (Decrease)			
STATE: FY 2021 FY 2022 FY 2023 FY 202				
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	Indeterminable	Indeterminable
Expenditures	\$0	\$0	\$0	\$0
Funding Source:	[X]General	[X] Education] Highway []	Other

METHODOLOGY:

This bill removes the weighted apportionment factors under the business profits tax from and includes the regional career and technical education center tax credit to the tax expenditure report. This bill also delays the enactment of the single sales factor for determining apportionment under the business profits tax.

The Department of Revenue Administration states the changes to the tax expenditure report will have no fiscal impact.

The Department states the change to move the implementation of the single sales factor apportionment methodology under the BPT from taxable periods ending on or after December 31, 2022 to taxable periods ending on or after December 31, 2026 on business profits tax revenue will have an indeterminable fiscal impact beginning in FY 2023. The Department states until it obtains returns from taxpayers utilizing the market based method of sourcing under the business profits tax for taxable periods ending on or after December 31, 2021, the Department is not able to reliably predict the impact of delaying the implementation of single sales factor apportionment.

AGENCIES CONTACTED:

Department of Revenue Administration

Committee Minutes

SENATE CALENDAR NOTICE Ways and Means

Sen Bob Giuda, Chair Sen Lou D'Allesandro, Vice Chair Sen Gary Daniels, Member Sen Erin Hennessey, Member Sen Cindy Rosenwald, Member

Date: March 16, 2021

HEARINGS

	Monday 03/22/2			
	(Day)	(Date)		
Ways and	Means	REMOTE 000	9:00 a.m.	
(Name of C	Committee)	(Place)	(Time)	
9:00 a.m. 9:10 a.m.	HB 354 HB 306	relative to the local option for sports betting. relative to revenue estimates while operating under emergency orders caused by the COVID-19 pandemic.		
9:25 a.m.	HB 281-FN	relative to the tax expenditure report and relative to delaying the enactment of the single sales factor under the business profits an business enterprise taxes.		
9:45 a.m.	HB 324-FN	relative to the administration of certain state taxes by the department of revenue administration.		

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: https://www.zoom.us/j/95852570052

2. To listen via telephone: Dial(for higher quality, dial a number based on your current location):

1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833

3. Or iPhone one-tap: +13017158592,,95852570052# or +13126266799,,95852570052#

4. Webinar ID: <u>958 5257 0052</u>

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5. To view/listen to this hearing on YouTube, use this link:

https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA

6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:

http://gencourt.state.nh.us/remotecommittee/senate.aspx

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: <u>remotesenate@leg.state.nh.us</u> or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

<u>Sponsors</u> : HB 354			
Rep. Lang HB 306	Rep. Pearl	Rep. Moffett	Rep. Trottier
Rep. Major HB 281-FN			
Rep. Abrami HB 324-FN	Rep. Ames		
Rep. Major	Rep. Almy	Rep. Ames	
Sonja Caldwell	271-2117	Bob J. Giud	<u>a</u>

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<u>Bob J. Giuda</u> Chairman

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Senate Ways and Means Committee

Sonja Caldwell 271-2117

HB 281-FN, relative to the tax expenditure report and relative to delaying the enactment of the single sales factor under the business profits and business enterprise taxes.

Hearing Date: March 22, 2021

Members of the Committee Present: Senators Giuda, D'Allesandro, Daniels, Hennessey and Rosenwald

Members of the Committee Absent : None

Bill Analysis: This bill removes the consideration of weighted apportionment factors under the business profits tax from inclusion in the tax expenditure report and includes the regional career and technical education center tax credit. The bill also delays the enactment of the single sales factor for determining apportionment under the business profits tax and the business enterprise tax and extends and amends the legislative committee on apportionment.

Sponsors:	
Rep. Abrami	Rep. Ames

Who supports the bill: Robin Vogt

Who opposes the bill: Peggy Gilmour (Greater Nashua Chamber of Commerce)

Who is neutral on the bill: No one

Summary of testimony presented:

Rep. Abrami

- This bill amends which tax expenditures must be reported on each year in the tax expenditure report. When we went to double sales factor years ago, the legislature asked DRA to report on how it was going. That practice is still continuing today even though DRA told House Ways and Means that no one pays attention to that report. They asked to remove that requirement.
- The bill also delays implementation of single sales factor under the BPT from taxable periods ending on or after December 31, 2022 to periods ending on or after December 31, 2026. This is because we are still trying to understand the impact of market-based sourcing. It will take until that period to understand the full impact.
- It also amends the duties of the legislative committee that the Senate put into HB4 from the last budget. The committee expired in December last year. This reactivates that committee. It's a joint committee of senate and house members.

- 4 years ago, there was a senate bill calling for a commission to study market-based sourcing and how a sales and apportionment formula would work. At that time, we were a cost of performance state. Under market-based sourcing, the state where the benefit is received gets the tax benefit. The report recommended moving forward with market-based sourcing. The report did not recommend moving forward with single sales factor.
- Market based sourcing is in effect for the first time this year.
- This solved the problem of our companies having to apportion tax to multiple states for the same service. Businesses that are based in NH and providing services to other states no longer have to pay tax to NH. They pay tax to the state in which the service is being performed. The legislature has to identify all those out of state businesses that provide services in NH. That is the only way to ensure this will be revenue neutral, if not positive, for NH.
- Single sales factor was in HB4, the last budget. It is slated to start next year. HB4 created a study committee on apportionment that was to meet and decide whether to rescind single sales factor. It never met because of covid. Legal counsel said the committee didn't have the authority to rescind single sales factor. As a result, single sales factor is now in statute. The House never had a hearing on single sales factor.
- He explained the reasons for wanting to slow down implementation of single sales factor as follows: we need to see the impact of market-based sourcing on business tax revenues; DRA needs time to compile data; We need to ensure that a move to single sales factor doesn't diminish business tax revenue. Other states jumped in without data. They were able to do that because they have income and sales taxes as a buffer.
- We have learned that the business community is split on whether this is a positive for them.

Sen. D'Allesandro said they got two different schools of thought from that commission. Attorney Sullivan gave them a positive note. DRA wasn't clear about what would happen as a result of adopting single sales factor. The positive opinion stated that because of activities taking place in surrounding states, that this was a direction we should move in. Pushing it off to 2026 is a huge difference.

Rep. Abrami agreed that Attorney Sullivan said about 30 states have adopted single sales factor. As a commission, they did not put in the report that NH should move forward with single sales factor. Attorney Sullivan's point was NH should do it because everyone else was. Rep. Abrami would like to slow it down and understand the impact of it. NH won't know the full picture of market-based sourcing until 2026. He is willing to discuss this with the Senate.

Sen. Rosenwald said her understanding is that we can't bind a future legislature. She questioned if pushing this back to 2026 would be binding.

Rep. Abrami said no. The next legislature could revert it back or push it out even further. If the legislature doesn't act now, this will become law next year.

Sen. Daniels said if we delay this, he understands there will be tax increases on our manufacturers. Rep. Abrami said that was not his understanding.

Rep. Almy

- Sen. D'Allesandro was on the committee, which did meet for two meetings. He was the only one who came consistently from the Senate.
- They asked DRA to separate out for the most recent data they could get, the amount of money we would have gained or lost each year if this had been in place before market-based sourcing. From 2013-2017 it averaged out to a small loss over 2 years and a small gain over

2 years. They finished the data for 2018 by the second meeting of the committee and learned NH would have lost about \$118 million.

- They also separated out the businesses over 1 million dollars and then all of the businesses. The loss that we experienced, they gained \$10 million more than that. All the rest of the businesses who paid less than a million dollars in taxes per year were having to pay more in order to compensate.
- They also separated the businesses they knew were mostly service oriented which are affected by market-based sourcing. The difference between them was very small in 2018. Meaning that market-based probably isn't going to make a lot of difference.
- Market-based sourcing returns won't come in until next year so that is why the House chose 2026. We won't have one year done until two years from now. There won't be any audits yet. 2026 is the first time they will have most of two years of data.
- They had an expert looking at this issue from a progressive think tank in DC and he said that most states lose when they go over to single sales factor, but not a lot, because the highest percentage of total revenues of states that have done this is 7% corporate tax of total revenues. They have a lot less to lose than we do.

sc Date Hearing Report completed: March 24, 2021 Speakers

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Name	Representing	Position	Testifing
Vogt Robin	Myself	Support	No
Gilmour Peggy	Greater Nashua Chamber of Commerce	Oppose	No

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Voting Sheets

Senate Ways & Means Committee EXECUTIVE SESSION RECORD 2021-2022 Session

Bill#HB281-FN

Hearing date: $3 - \partial \partial - \partial |$ Executive Session date: $3 - \partial \partial - \partial |$

Motion of: <u>ITL</u>			Vote	<u> </u>
Committee Member	Present	Made by	Second	Yes No
Sen. Giuda, Chair				
Sen. D'Allesandro,VC			<u> </u>	
Sen. Daniels				
Sen. Hennessey				
Sen. Rosenwald				

Motion of: Vote: Vote:					
Committee Member	Present	Made by	Second	Yes No	
Sen. Giuda, Chair					
Sen. D'Allesandro VC					
Sen. Daniels					
Sen. Hennessey					
Sen. Rosenwald					

Motion of: Vote: Vote:			e:		
Committee Member	Present	Made by	Second	<u>Yes No</u>	
Sen, Giuda, Chair					
Sen. D'Allesandro, VC					
Sen. Daniels					
Sen. Hennessey					
Sen. Rosenwald					

Reported out by: 6iuda

Notes:____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Tuesday, March 23, 2021

THE COMMITTEE ON Ways and Means

to which was referred HB 281-FN

AN ACT

relative to the tax expenditure report and relative to delaying the enactment of the single sales factor under the business profits and business enterprise taxes.

Having considered the same, the committee recommends that the Bill

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 5-0

Senator Bob Giuda For the Committee

Sonja Caldwell 271-2117

WAYS AND MEANS

HB 281-FN, relative to the tax expenditure report and relative to delaying the enactment of the single sales factor under the business profits and business enterprise taxes. Inexpedient to Legislate, Vote 5-0.

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Senator Bob Giuda for the committee.

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General Court of New Hampshire - Bill Status System

Docket of HB281

Docket Abbreviations

Bill Title: relative to the tax expenditure report and relative to delaying the enactment of the single sales factor under the business profits and business enterprise taxes.

Official	Docket	of	HB281.:
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Date	Body	Description
1/9/2021	Н	Introduced (in recess of) 01/06/2021 and referred to Ways and Means HJ 2 P. 42
1/20/2021	н	Public Hearing: 01/28/2021 01:45 pm Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/92120368845 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
2/9/2021	н	Committee Report: Ought to Pass (Vote 22-0; CC) HC 12 P. 14
2/24/2021	н	Ought to Pass: MA VV 02/24/2021 HJ 3 P. 20
3/4/2021	S	Introduced 03/04/2021 and Referred to Ways and Means; SJ 7
3/16/2021	S	Remote Hearing: 03/22/2021, 09:25 am; Links to join the hearing can be found in the Senate Calendar; SC 16
3/23/2021	S	Committee Report: Inexpedient to Legislate, 04/01/2021; SC 17
4/1/2021	S	Inexpedient to Legislate, RC 24Y-0N, MA === BILL KILLED ===; 04/01/2021; SJ 10

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: <u>HB381-FN</u>

Senate Committee: WAYS& MLANS

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
V 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 propose 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:
SLC 7-21-21
Committee Aide Date
Senate Clerk's Office