

SB 66 - AS INTRODUCED

2023 SESSION

23-0946

05/04

SENATE BILL        **66**

AN ACT            relative to financial transactions involving the liquidation or rehabilitation of an insurer in which the Federal Home Loan Bank is a party.

SPONSORS:        Sen. Gannon, Dist 23; Sen. Soucy, Dist 18; Rep. Hunt, Ches. 14; Rep. Sweeney, Rock. 25

COMMITTEE:      Commerce

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ANALYSIS

This bill provides that in financial transactions involving the liquidation or rehabilitation of an insurer, a person shall not be prohibited from enforcing any right or cause of action under any agreement to which a Federal Home Loan Bank is a party.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Three*

AN ACT relative to financial transactions involving the liquidation or rehabilitation of an insurer in which the Federal Home Loan Bank is a party.

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

1 1 New Paragraph; Insurers Rehabilitation and Liquidation; Injunctions and Orders; Federal  
2 Home Loan Bank. Amend RSA 402-C:5 by inserting after paragraph II the following new  
3 paragraph:

4 III. Exception. Notwithstanding paragraphs I and II, RSA 402-C:18, I, or any other  
5 provision of this chapter, no person shall be restrained, stayed, enjoined, or prohibited from  
6 exercising or enforcing any right or cause of action under any pledge, security, credit, collateral, loan,  
7 advances, reimbursement, or guarantee agreement or arrangement or any similar agreement,  
8 arrangement, or other credit enhancement to which a Federal Home Loan Bank is a party. A  
9 “Federal Home Loan Bank” is a government-sponsored enterprise, created by the United States  
10 Congress pursuant to the Federal Home Loan Bank Act of 1932, 12 U.S.C. section 1421 et seq.. as  
11 amended, that is charged with a public mission of providing products and services that assist its  
12 members in financing housing and community lending. 12 C.F.R. section 1265.2, as amended.

13 2 New Paragraph; Insurers Rehabilitation and Liquidation; Fraudulent Transfers Prior to  
14 Petition. Amend RSA 402-C:30 by inserting after paragraph III the following new paragraph:

15 IV. Exception. Notwithstanding paragraph I, RSA 402-C:31, or any other provision of this  
16 chapter, no receiver or any other person shall avoid any transfer of, or any obligation to transfer,  
17 money or any other property arising under or in connection with any pledge, security, credit,  
18 collateral, loan, advances, reimbursement, or guarantee agreement or arrangement or any similar  
19 agreement, arrangement or other credit enhancement to which a Federal Home Loan Bank is a  
20 party, that is made, suffered, or incurred prior to or after the filing of a successful petition for  
21 rehabilitation or liquidation under this chapter, or otherwise would be subject to avoidance under  
22 this section or RSA 402-C:31; provided, however, that such a transfer or obligation may be avoided  
23 under this section or RSA 402-C:31 if such transfer or obligation was made, suffered, or incurred  
24 with actual intent to hinder, delay, or defraud the insurer, the receiver, or existing or future  
25 creditors.

26 3 New Subparagraph; Voidable Preferences and Liens. Amend RSA 402-C:32, I by inserting  
27 after subparagraph (b) the following new subparagraph:

28 (c) Exception. Notwithstanding subparagraph I(b), or any other provision of this  
29 chapter, no receiver or any other person shall avoid any preference arising under or in connection  
30 with any pledge, security, credit, collateral, loan, advances, reimbursement or guarantee agreement

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1 or arrangement or any similar agreement, arrangement or other credit enhancement to which a  
2 Federal Home Loan Bank is a party.

3 4 Effective Date. This act shall take effect January 1, 2024.

**CONSENT CALENDAR**

**May 10, 2023**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Commerce and Consumer Affairs to  
which was referred SB 66,**

**AN ACT relative to financial transactions involving the  
liquidation or rehabilitation of an insurer in which the  
Federal Home Loan Bank is a party. Having considered  
the same, report the same with the recommendation  
that the bill OUGHT TO PASS.**

**Rep. John Hunt**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>Commerce and Consumer Affairs</b>
Bill Number:	<b>SB 66</b>
Title:	<b>relative to financial transactions involving the liquidation or rehabilitation of an insurer in which the Federal Home Loan Bank is a party.</b>
Date:	<b>May 10, 2023</b>
Consent Calendar:	<b>CONSENT</b>
Recommendation:	<b>OUGHT TO PASS</b>

### STATEMENT OF INTENT

This bill would modify insurance insolvency regulations pertaining to stays and voidable transfers. Currently, the Federal Home Loan Bank (FHLB) may have secured credit that is subjected to a stay, injunction, or voidable transfer that can cause a delay in the liquidation of their collateral. This bill will enable the FHLB to work with insurance companies in the extremely rare scenario of an imminent or anticipated failure of a New Hampshire insurance member. The bill seeks to allow insurers to be treated like depository institutions, allowing them better access to funding and more favorable credit terms in these circumstances, which ultimately benefits their policyholders. Similar legislation has become law in 24 other states and has been supported by the American Council of Life Insurers.

Vote 18-0.

Rep. John Hunt  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

Commerce and Consumer Affairs

**SB 66**, relative to financial transactions involving the liquidation or rehabilitation of an insurer in which the Federal Home Loan Bank is a party. **OUGHT TO PASS.**

Rep. John Hunt for Commerce and Consumer Affairs. This bill would modify insurance insolvency regulations pertaining to stays and voidable transfers. Currently, the Federal Home Loan Bank (FHLB) may have secured credit that is subjected to a stay, injunction, or voidable transfer that can cause a delay in the liquidation of their collateral. This bill will enable the FHLB to work with insurance companies in the extremely rare scenario of an imminent or anticipated failure of a New Hampshire insurance member. The bill seeks to allow insurers to be treated like depository institutions, allowing them better access to funding and more favorable credit terms in these circumstances, which ultimately benefits their policyholders. Similar legislation has become law in 24 other states and has been supported by the American Council of Life Insurers. **Vote 18-0.**

Original: House Clerk

Cc: Committee Bill File

**HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS**

**PUBLIC HEARING ON SB 66**

**BILL TITLE:** relative to financial transactions involving the liquidation or rehabilitation of an insurer in which the Federal Home Loan Bank is a party.

**DATE:** April 26, 2023

**LOB ROOM:** 302-304                      **Time Public Hearing Called to Order:** 12:10 p.m.

**Time Adjourned:**

**Committee Members:** Reps. Hunt, Ammon, Beaulieu, Potucek, Terry, Post, Cole, Porcelli, Thackston, L. Walsh, Burroughs, Herbert, McAleer, Vincent, Filiault, Gibbs, Spier and J. Sullivan

**Bill Sponsors:**

Sen. Gannon  
Rep. Sweeney

Sen. Soucy

Rep. Hunt

**TESTIMONY**

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

Maya Harvey introduced SB66 for Senator Bill Gannon

\*Keith Walsh - Federal Home Loan Bank - Supports

- This bill has been adopted in 24 states
- 427 Shareholders

\*Doug Bartlett - NH Insurance Dept - Supports

Respectfully Submitted,

Rep Jane Beaulieu, Clerk







# House Remote Testify

Commerce and Consumer Affairs Committee Testify List for Bill **SB66** on 2023-04-26

Support: 2 Oppose: 0 Neutral: 0 Total to Testify: 0

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Support	No	No	4/25/2023 10:54 AM
Soucy, Donna	manchester, NH donna.soucy@leg.state.nh.us	An Elected Official	SD 18	Support	No	No	4/25/2023 2:39 PM

**To: House Committee on Commerce and Consumer Affairs**

**From: Federal Home Loan Bank of Boston**

**Date: April 26, 2023**

**Subject: SB66 An Act relative to financial transactions involving the liquidation or rehabilitation of an insurer in which the Federal Home Loan Bank is a party**

My name is Keith Walsh. I am the General Counsel of the Federal Home Loan Bank of Boston ("FHLBank Boston"), one of eleven regional Federal Home Loan Banks (FHLBanks) chartered by Congress in 1932. Banks, credit unions, insurance companies, and community development financial institutions located in the six New England states are eligible to join FHLBank Boston as a member. FHLBank Boston currently has 427 members, including 33 in New Hampshire.

**BACKGROUND:**

The FHLBanks, which are government sponsored enterprises (GSEs), are cooperatively structured, member-owned wholesale banks that provide highly reliable wholesale funding to our members to support housing finance and community development. The FHLBanks are regulated by the Federal Housing Finance Agency (FHFA). In order to access FHLBank funding, members pledge collateral, primarily consisting of residential loans or securities backed by residential loans. Members can thus "liquefy" their residential mortgage assets by pledging them to support their FHLBank borrowings, using the proceeds from those borrowings for further lending and investment within their communities. In this way, the FHLBanks support housing finance and the local economy.

The FHLBanks also contribute at least 10% of our annual net income toward grants and subsidized loans for affordable rental and homeownership projects, in partnership with our members. As part of its Equity Builder and Housing Our Workforce programs, FHLBank Boston awards grants for down-payment and closing-cost assistance to help low- to moderate-income families realize the dream of homeownership. Moreover, since 2016, FHLBank Boston has provided discounted advances to members through its Jobs for New England program so that members can in turn provide critical below market-rate financing to small businesses in New England, many of which are owned by minorities, women, or veterans. These small business loans stimulate local economies by providing the funding needed to expand businesses and create or preserve jobs that would have otherwise been lost. New for 2023, FHLBank Boston plans to launch a

Special Purpose Credit Program providing down payment assistance to people of color in an effort to close the racial homeownership gap.

The FHLBanks' government sponsored enterprise status enables us to borrow funds in global capital markets at attractive rates and pass on the benefit of such low-cost funds to our members by making loans to them on very narrow margins. Having access to this reliable source of liquidity helps our insurance company members manage their balance sheets more efficiently and build capital to protect policyholders. Unlike commercial lenders that may halt lending to insurance companies at times when they face their own liquidity pressures, FHLBanks have historically been able to maintain access to the global capital markets and continue lending to our members across business cycles, including during times of economic and market stress, serving as a stabilizing force in the economy. The events in the banking industry last month further highlighted the importance of the FHLBanks. When the banking industry became destabilized as a result of two high profile bank failures (Silicon Valley Bank and Signature Bank), the FHLBanks stepped up to meet the needs of our depository institution members by raising record amounts of funding in the global capital markets. While the recent bank failures have been a non-event for the insurance industry, the amendments to the New Hampshire insurance code contained in SB66 are designed to enable the FHLBanks to serve our New Hampshire insurance company members when market forces or more unique circumstances create a liquidity need, just as we are able to do for our New Hampshire depository institution members. Consequently, with the amendments contained in SB66, FHLBanks can help protect the New Hampshire consumers, who are the policyholders of a struggling insurance company member, from the uncertainty and confusion that can result from the sudden, chaotic collapse of an insurance company.

#### WHY WE ARE HERE:

We are here to resolve disparities between federal law and New Hampshire law that result in worse treatment of a FHLBank claim in the rare event that a New Hampshire insurance company member is subject to a receivership as compared to when a New Hampshire bank or credit union member is subject to a receivership. Although SB66 relates to the New Hampshire insurance company receivership laws, there is no imminent failure or anticipated failure of a New Hampshire insurance company member of FHLBank Boston. Instead, SB66 addresses an extremely rare "what if" scenario. In fact, since 1932, there have only been two instances of a FHLBank insurance company member going into a receivership (and in each case, the insurance company member was successfully rehabilitated with the support of a FHLBank). SB66 will enable FHLBank Boston to work with our insurance company members in New Hampshire when they need us most.

Let me describe this in more detail.

**PRESENT LAW:**

As a government sponsored enterprise, FHLBank Boston is heavily regulated by the FHFA and is only permitted to advance funds to its members on a fully secured basis. Due to disparities between federal banking law and state insurance law, and concern over those disparities on the part of our regulator, FHLBank Boston's credit posture must be more conservative toward our New Hampshire insurance company members than our New Hampshire bank and credit union members.

A central reason for this disparity is that New Hampshire insurance law does not provide the same protections that are afforded to the FHLBanks under federal banking law. For example, New Hampshire insurance law gives the receiver broad powers to settle an insolvent insurance company's affairs, which could result in FHLBank Boston, as secured creditor, being subjected to a stay or injunction delaying its statutory right to resort to its collateral or subjected to "voidable transfer" or similar challenge to its secured position. Due to protections specific to the FHLBanks that are built into federal banking law, FHLBank Boston does not face these risks when it lends to bank and credit union members in New Hampshire.

**ARGUMENT IN FAVOR:**

By equalizing these disparities between state and federal law, SB66 will enable FHLBank Boston to equalize its approach to lending to insurance company members, on the one hand, and bank and credit union members, on the other hand, in New Hampshire. The certainty provided to the FHLBank in SB66 will enable the FHLBank to continue to lend to a New Hampshire insurance company member when it needs funding the most and additional liquidity may be the only thing staving off a receivership. This would benefit policyholders by helping to stabilize the insurance company, and if not avoiding receivership, at least facilitating an orderly resolution or rehabilitation of the insurance company. Without SB66, the uncertainty under New Hampshire insurance laws as to the treatment of an FHLBank's claim will require FHLBank Boston to be more conservative when a New Hampshire insurance company member's needs are at their greatest than when a New Hampshire bank or credit union has a similar pressing need for liquidity.

Similar legislation has already become law in 24 states. Furthermore, the American Council of Life Insurers supports this legislation, as it will strengthen insurance companies by providing them with better access to FHLBank funding.

CONCLUSION:

Thank you for your consideration of our position in support of SB66. On behalf of the Federal Home Loan Bank of Boston, I respectfully request the Committee report SB66 favorably.

Respectfully submitted,



Keith R. Walsh  
Senior Vice President/General Counsel

**HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS**

**EXECUTIVE SESSION on SB 66**

**BILL TITLE:** relative to financial transactions involving the liquidation or rehabilitation of an insurer in which the Federal Home Loan Bank is a party.

**DATE:** May 10, 2023

**LOB ROOM:** 302-304

**MOTIONS:** OUGHT TO PASS

Moved by Rep. Hunt

Seconded by Rep. Potucek

Vote: 18-0

**CONSENT CALENDAR: YES**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Lisa Post, Acting Clerk





2023 SESSION

Commerce and Consumer Affairs

Bill #: 66 Motion: OTP AM #: \_\_\_\_\_ Exec Session Date: 5/10/23

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Hunt, John B. Chairman	18		
Ammon, Keith Michael Vice Chairman	1		
Osborne, Jason M.	2		
Potucek, John M.	3		
<del>Terry, Paul A.</del>			
Post, Lisa C.M.	4		
Cole, Brian D	5		
Porcelli, Susan M	6		
Thackston, Dick H	7		
Walsh, Lilli M	8		
Burroughs, Anita D.	9		
Herbert, Christopher J.	10		
Beaulieu, Jane E. Clerk <i>Lore</i>	11		
McAleer, Chris R. <i>Jack</i>	12		
Vincent, Kenneth S.			
Calabro, Karen E	13		
Filiault, Shaun M	14		
Gibbs, Merryl	15		
Spier, Carry	16		
Sullivan, Jared	17		
<b>TOTAL VOTE:</b>	18		0