

HB 1674-FN - AS INTRODUCED

2024 SESSION

24-2675.1

10/05

HOUSE BILL

1674-FN

AN ACT relative to establishing the New Hampshire legal tender act and establishing a state bullion depository.

SPONSORS: Rep. Ammon, Hills. 42; Rep. J. Harvey-Bolia, Belk. 3; Rep. Osborne, Rock. 2; Rep. Potenza, Straf. 19; Rep. Polozov, Merr. 10; Sen. Avard, Dist 12

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill creates the New Hampshire legal tender act; establishes gold and silver as legal tender; establishes a state depository; and enables digital use of gold and silver.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

In the Year of Our Lord Two Thousand Twenty Four

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

(b) The functional currency is used by the entity to report its operating results and financial position.

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VII. "Legal tender" means a medium of exchange that is authorized by the United States Congress or by any state pursuant to Article I Section 8 or Section 10, respectively, of the United States Constitution, for the payment of debts, public charges, taxes or dues.

VIII. "Open blockchain token" means a digital asset that is:

(a) Created upon the confirmation or aggregation of specific transactions on a digital ledger or database; or

(b) Created by deploying computer code to a blockchain network, facilitating the creation of digital tokens or other units; or

(c) Through a combination of the methods described in subparagraphs (a) or (b);

(d) Recorded in a digital ledger or database that is chronological, consensus-driven, decentralized, and cryptographically secured, particularly concerning the token's supply and distribution;

(e) Able to be exchanged or transferred between individuals without the need for a central intermediary; and

(f) Developed and maintained with a codebase consisting entirely of open-source software, ensuring transparency and collaborative improvement.

IX. "Open source software" means software that ensures the user:

(a) The right to use the software for any purpose, without limitations;

(b) Unhindered access to its source code, promoting transparency and understanding, except for cryptographic private keys required to cryptographically sign and verify transactions on a blockchain or distributed ledger;

(c) The ability to thoroughly inspect and review the software's inner workings, excluding values related to the aforementioned cryptographic keys;

(d) The right to leverage, adapt, or modify specific components or functionalities based on individual requirements;

(e) The right to replicate and share the software with others, excluding any distribution of cryptographic keys essential for signing and verification on blockchains or distributed ledgers; and

(f) The privilege to enhance or modify the software and disseminate those changes, ensuring that derivative works remain under a license consistent with the original software's licensing terms.

X. "Precious metal" means gold and silver.

XI. "Qualified business unit" means any unit of trade or business of a taxpayer which maintains separate books and records in a particular functional currency.

XII. "Specie" means bullion fabricated into products of uniform shape, size, design, content, weight, and purity, that are suitable for or customarily used as currency, as a medium of exchange, or as the medium for purchase, sale, storage, transfer, or delivery of precious metals in retail or wholesale transactions.

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1 XIII. "Specie legal tender" means:

2 (a) Specie coin issued by the United States government at any time; and

3 (b) Any other specie designated by the state treasurer as legal tender pursuant to the
4 monetary authority not prohibited by Article I Section 10 of the United States Constitution.

5 5-D:2 Legal Tender.

6 I. The following are considered legal tender:

7 (a) Specie legal tender; and

8 (b) Electronic currency.

9 II. Bullion shall not be characterized as personal property for taxation or regulatory
10 purposes.

11 III. The exchange of one type or form of legal tender for another type or form of legal tender
12 shall not give rise to any tax liability.

13 IV. The purchase or sale of any type or form of bullion shall not give rise to any tax liability.

14 V. Unless specifically provided by law or by contract, a person shall not compel another
15 person to tender specie/electronic currency or to accept specie/electronic currency as legal tender.

16 VI. The attorney general's office shall enforce this section without prejudice to a private
17 right of action.

18 VII. If a valid and enforceable contract expressly designates a type or form of specie as
19 tender, then a New Hampshire court asked to adjudicate the breach of such a contract shall require,
20 as a remedy for the breach, the specific performance of tendering the type or form of specie specified
21 in the contract.

22 VIII. Legal tender specie may be recognized to pay private debts, taxes, and fees levied by
23 the state of New Hampshire or any local subdivisions thereof.

24 IX. Any taxpayer may maintain one or more qualified business units having a single
25 functional currency for each such unit, and may elect to either pay the tax liability of such qualified
26 business unit in such functional currency, if authorized by the treasurer, or in U.S. dollars
27 determined:

28 (a) By computing the taxable income or loss separately for each such unit in its
29 functional currency.

30 (b) By translating the income or loss separately computed under subparagraph (a) at the
31 appropriate exchange rate, and

32 (c) By making proper adjustments as prescribed by the treasurer for transfers of
33 property between qualified business units of the taxpayer having different functional currencies.

34 5-D:3 Depository; Establishment and Administration.

35 I. The New Hampshire state treasury may establish and administer a bullion depository to
36 provide a secure location for the storage of bullion; or

1 II The department may contract with a third party to act as the administrator to manage
2 the day-to-day operations of the depository and implement the depository security, storage,
3 transactional, and administrative procedures in accordance with this subsection and any rule
4 adopted thereunder. As used in this subsection, the term "security" means physical, online, and
5 logical security standards that meet generally accepted standards within the information assurance
6 industry.

7 5-D:4 Depository Accounts; Establishment.

8 I. A person, including but not limited to, an individual, a corporation, or a governmental
9 entity, may establish a depository account by entering into a depository agreement with the
10 depository.

11 II. The administrator shall maintain a record of all depository accounts, and all
12 transactions, deposits, and withdrawals associated with each account. Such records shall be
13 provided upon written request within 5 business days. All records should be kept, at a minimum, on
14 approved state of New Hampshire computer systems and records of depository accounts should be
15 maintained by the state for a period of not less than 7 years and one day. The administrator shall
16 ensure that account information remains confidential and is protected from unauthorized access.

17 III. A depository account holder may deposit, withdraw, sell, or purchase bullion through
18 their account in accordance with this chapter and any rules adopted under it. The depository shall
19 develop processes and systems to facilitate timely bullion purchase, sale, deposits, and withdrawals
20 which may include but are not limited to:

21 (a) Physical deposit and withdrawals to and from the depository's physical location, or,
22 to a partner organization such as a major mint or refiner capable of providing bullion that meets
23 standards set by the state treasurer.

24 (b) Electronic systems that meet current industry standards for the purchase and sale of
25 bullion for account holders that cannot or choose not to travel to the physical location.

26 IV. State agencies, counties, municipalities, and other governmental entities may use the
27 depository for storing bullion. The state treasurer may deposit a portion of its funds into the
28 depository in the form of bullion, and such bullion is considered part of the state's official financial
29 reserves. The department shall develop guidelines for the state's use of the depository.

30 5-D:5 Security Measures and Insurance.

31 I. The administrator shall ensure the depository has state-of-the-art security measures to
32 prevent theft, fraud, or other unauthorized access or removal of bullion.

33 II. The depository shall maintain insurance coverage sufficient to cover the full value of all
34 bullion stored at the depository. Such insurance should be provided by an insurer rated A
35 (Excellent) by A.M. Best or similar rating agency.

36 III. Regular audits, occurring not less than bi-annually, shall be conducted by an
37 independent third-party to verify the amount and value of bullion stored in the depository and to

1 inspect the security measures and protocols in place. The third party should be an established
2 provider with a good history of providing such service. Documentation of audit results must be made
3 available to the public upon request within a reasonable time frame. Documentation should include,
4 at a minimum, summary totals of metals amounts assessed, as well as documentation of any
5 discrepancies found during the audit.

6 5-D:6 Transactions and Service Fees.

7 I. The administrator may establish fees for the storage, withdrawal, and transfer of bullion
8 within the depository.

9 II. All fees shall be made public and available to depository account holders and the general
10 public.

11 III. The state treasury shall periodically review these fees to ensure they are reasonable and
12 in line with market rates.

13 5-D:7 State Use of the Depository.

14 I. State agencies, municipalities, and other governmental bodies in New Hampshire may use
15 the depository for storing bullion.

16 II. The state treasury may deposit a portion of its funds into the depository in the form of
17 bullion, with such bullion being considered as part of the state's official financial reserves.

18 III. The state treasury shall develop guidelines and adopt rules for the state's use of the
19 depository.

20 5-D:8 Reporting and Oversight.

21 I. The administrator shall provide a quarterly report to the state treasury detailing the
22 operations, transactions, and financial status of the depository.

23 II. The state treasury shall provide an annual report to the speaker of the house of
24 representatives and the senate president regarding the status, operations, and financials of the
25 depository.

26 5-D:9 Rulemaking. The state treasurer shall adopt rules under RSA 541-A as necessary for:

27 I. The establishment, operation, security, and administration of the depository.

28 II. Ensuring the security of the electronic currency.

29 III. Preventing fraud.

30 IV. Enter into contracts to administer this subsection and fulfill the purposes of this
31 chapter.

32 5-D:10 Conflicts of Interest.

33 I. No employee or official associated with the oversight or operation of the depository shall
34 have any financial interests in companies or entities that produce, sell, or manage bullion.

35 II. Any potential conflict of interest must be disclosed to the state treasury immediately
36 upon discovery.

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1 III. Violations of this section may result in removal from position, fines, or other legal
2 penalties as determined by the attorney general.

3 5-D:11 Contractual Agreements.

4 I. The state treasurer has all authority necessary to enter into contracts to administer this
5 chapter and fulfill the purposes of this chapter.

6 II. The administrator may enter into contractual agreements with private entities for
7 services related to the storage, transportation, or security of bullion.

8 III. All contractual agreements shall be reviewed and approved by the state treasury to
9 ensure they align with the state's interests and security requirements.

10 5-D:12 Legal and Regulatory Compliance.

11 I. The depository shall operate in compliance with all federal and state laws pertaining to
12 bullion storage, management, and transactions.

13 II. The administrator shall consult regularly with legal counsel to ensure that the depository
14 remains compliant with evolving legal and regulatory landscapes.

15 5-D:13 Termination or Transfer of the Depository.

16 I. The depository may only be terminated or transferred to a private entity by an act
17 adopted by the New Hampshire legislature.

18 II. Any termination or transfer must ensure the security of the bullion, the rights of account
19 holders, and the financial interests of the state.

20 5-D:14 Establishment and Administration of Electronic Gold and Silver Currencies.

21 I. As authorized by the U.S. Constitution in Art. I Sec. 10 the state treasurer shall, establish
22 electronic currencies backed by specie legal tender, or other bullion designated by the state
23 treasurer, so that each unit of the electronic currency issued represents a particular fraction of
24 specie legal tender or such other form of bullion, which shall be held as bailment as provided in this
25 section.

26 II. The electronic currencies established under this chapter shall utilize an open blockchain
27 token to ensure transparency, security, and auditability of the currencies.

28 III. The state treasurer may contract with a private vendor to establish the electronic
29 currencies or perform other duties under this chapter.

30 IV. In establishing the electronic currency, the state treasurer shall establish a means to
31 ensure that a person who holds the electronic currency may readily transfer or assign the electronic
32 currency to any other person by electronic means.

33 5-D:15 Gold and Silver Held as a Bailment.

34 I. The state treasurer shall, on behalf of the electronic currency holders, hold as a bailment
35 the specie legal tender or other designated bullion acquired to back each electronic currency. The
36 state treasurer shall maintain enough specie legal tender or other designated bullion to provide for

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1 the redemption in specie legal tender or other designated bullion of all units of the electronic
2 currencies that have been issued.

3 II. The state treasurer may establish an account in the depository to hold specie legal tender
4 or other designated bullion purchased to back the electronic currency and may hold the specie legal
5 tender or other designated bullion otherwise as convenient for the administration of this section.

6 5-D:16 Purchase and Deposit; Issuance. A person may:

7 I. Purchase from this state through the state treasurer any number of units of the electronic
8 currencies;

9 II. Deposit specie legal tender or other designated bullion with the state treasurer, the
10 administrator, or the depository, in exchange for units of an electronic currency;

11 III. Present to the state treasurer or the administrator any number of units of an electronic
12 currency to exchange for legal tender other than that backing the electronic currency; or

13 IV. Surrender to the state treasurer or the administrator, for redemption, any number of
14 units of an electronic currency in exchange for an equal amount of specie legal tender or other
15 designated bullion backing such surrendered electronic currency, with any fractional remainders
16 paid in other legal tender as necessary to facilitate the transaction.

17 5-D:17 Value of Electronic Currency.

18 I. At the time of each transaction involving the issuance or redemption of the electronic
19 currency, the state treasurer or administrator shall determine the value of a unit of the electronic
20 currency in non-specie legal tender based on market prices.

21 II. The state treasurer or administrator shall publish online exchange rates in non-specie
22 legal tender for any specie legal tender or other bullion products that are accepted in the depository
23 to back the electronic currencies.

24 5-D:18 Certain Money and Deposits Held in Bailee Relationship and Not Subject to Legislative
25 Appropriation. All legal tender and other designated bullion holdings are:

26 I. Held as a bailment by the state treasurer as bailee on behalf of persons who hold the
27 electronic currency; and

28 II. Not available for legislative appropriation.

29 5-D:19 Fees. The state treasurer may establish a fee for the issuance or redemption of the
30 electronic currencies at any rate necessary to cover the costs of administering this chapter. The
31 state treasurer shall deposit the fee proceeds to the credit of an account established in the general
32 fund that may be used to pay the costs.

33 5-D:20 Confiscations, Requisitions, Seizures, And Other Actions Void.

34 I. A purported confiscation, requisition, seizure, or other attempt to control the ownership,
35 disposition, or proceeds of a withdrawal, transfer, liquidation, or settlement of a depository account,
36 including the precious metals represented by the balance of a depository or electronic currency
37 account, if effected by a governmental or quasi-governmental authority other than an authority of

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1 this state or by a financial institution or other person acting on behalf of or pursuant to a directive or
2 authorization issued by a governmental or quasi-governmental authority other than an authority of
3 this state, in the course of a generalized declaration of illegality or emergency relating to the
4 ownership, possession, or disposition of one or more precious metals, contracts, or other rights to the
5 precious metals or contracts or derivatives of the ownership, possession, disposition, contracts, or
6 other rights, is void ab initio and of no force or effect.

7 II. The depository in the case of receiving notice of a purported confiscation, requisition,
8 seizure, or other attempt to control the ownership, disposition, or proceeds of a withdrawal, transfer,
9 liquidation, or settlement of a depository or electronic currency account, including the precious
10 metals represented by the balance of a depository or electronic currency account, effected by a
11 governmental or quasi-governmental authority other than an authority of this state or by a financial
12 institution or other person acting on behalf of or pursuant to a directive or authorization issued by a
13 governmental or quasi-governmental authority other than an authority of this state, in the course of
14 a generalized declaration of illegality or emergency relating to the ownership, possession, or
15 disposition of one or more precious metals, contracts, or other rights to the precious metals or
16 contracts or derivatives of the ownership, possession, disposition, contracts, or other rights, may not
17 recognize the governmental or quasi-governmental authority, financial institution, or other person
18 acting as the lawful successor of the registered holder of a depository or electronic currency account
19 in question.

20 III. On receipt of notice of any transaction described by paragraph II with respect to all or
21 any portion of the balance of a depository or electronic currency account, the depository shall
22 suspend withdrawal privileges associated with the balances of the depository or electronic currency
23 account until suitable substitute arrangements may be effected in accordance with rules of the state
24 treasurer to enable the registered account holder to take delivery of the precious metals represented
25 by the account balances in question. A voluntary transfer of a depository or electronic currency
26 account balance or of a depository or electronic currency account among depository or electronic
27 currency account holders may continue to take place unaffected by the suspension, and the
28 depository shall recognize to the full extent authorized by this chapter and rules adopted under this
29 chapter.

30 IV. The depository shall refer any matter relating to an action described by subsection (a) to
31 the attorney general for resolution.

32 5-D:21 Severability. If any provision of this chapter or the application thereof to any person or
33 circumstances is held invalid, such invalidity shall not affect other provisions or applications of the
34 chapter which can be given effect without the invalid provision or application, and to this end the
35 provisions of this chapter are declared to be severable.

36 2 Effective Date. This act shall take effect July 1, 2024.

HB 1674-FN- FISCAL NOTE
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AN ACT relative to establishing the New Hampshire legal tender act and establishing a state bullion depository.

FISCAL IMPACT: ☒ State ☒ County ☒ Local ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
<i>Revenue Fund(s)</i>	General Fund and Education Trust Fund Various Agency Funds			
Expenditures	\$0	Indeterminable Increase \$1,000,000+	Indeterminable Increase	Indeterminable Increase
<i>Funding Source(s)</i>	General Fund Various Agency Funds			
Appropriations	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ No

Estimated Political Subdivision Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	Significant Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill creates the New Hampshire legal tender act; establishes gold and silver as legal tender; establishes a state depository; and enables digital use of gold and silver.

The Treasury Department states this bill outlines three key initiatives: introducing an alternate legal tender using gold and silver, establishing a state-run bullion depository managed by the State Treasurer, and creating an electronic currency backed by precious metals. However, the fiscal implications of these proposals are significant.

The legislation mandates the State Treasury to set up and oversee the New Hampshire state bullion depository, responsible for securely storing gold and silver. Yet, there's no provision for funding the construction or daily operations of the depository, estimated to cost millions. While the legislation allows contracting with a third party for depository administration, there's no funding mechanism specified. If a third-party contract isn't feasible, the State Treasury would need more staff and resources, with costs currently undetermined.

Without this depository, the State lacks the necessary infrastructure to accept gold and silver as legal tender for debts and taxes. Furthermore, failing to establish the depository impedes the implementation of an electronic currency backed by these metals by the State Treasurer.

Even if the depository were built and metals were accepted, the costs of creating and managing a gold and silver-backed digital currency through a third-party vendor remain uncertain.

Lastly, setting up the goals outlined in this proposed chapter is expected to have a fiscal impact at the local and county levels. Overall, the legislation presents several requirements with costs that cannot be clearly determined for the State and other governing bodies to execute these initiatives. Notably, the proposal lacks funding for all its components, and presently, the State Treasury's budget is incapable of accommodating the extra expenses needed to implement or administer this legislation.

The Department of Revenue (DRA) states the Department anticipates increased expenses related to handling gold and silver as legal tender, including security measures like armored transportation and secure room updates. However, predicting the frequency of tax payments in these metals makes determining the costs of these security measures challenging resulting in an indeterminable fiscal impact to State expenditures starting in FY 2025.

The proposed RSA 5-D:2, III and IV specify that exchanging legal tender or bullion won't incur tax liabilities, potentially leading to multiple conversions between these forms without tax implications. However, estimating the fiscal impact of these conversions, especially regarding potential gains or losses exempted under this bill, proves difficult for the DRA due to the uncertainty of the magnitude and frequency of such transactions.

The Department of Justice (DOJ) state "The New Hampshire Legal Tender Act" establishes gold and silver as legal tender, creates a state depository, and permits digital use of these metals. Section 5-D:2, VI assigns enforcement to the attorney general's office without specifying the nature (criminal, civil, or injunctive) or the targeted section(s) of the bill. This

lack of clarity makes it impossible to determine the fiscal impact on the DOJ. With no defined enforcement actions, both revenue and expenditure fiscal impacts are indeterminable at this time.

The New Hampshire Municipal Association states switching to precious metals like gold and silver for transactions in today's electronic-based economy would mean more security measures for municipalities. This includes enhanced protection for storing these metals in larger safes and needing extra staff to handle transporting and overseeing transactions involving gold and silver.

There's a state law (RSA 41:29 VII) requiring municipal treasurers to deposit funds at least weekly or daily if the total from all departments hits \$1,500 or more. This law also allows for setting fees on transferring, storing, or taking out bullion from the state-run storage. But the exact costs for municipalities tied to these fees aren't clear.

In addition, there's the need for software updates to deal with fluctuating gold and silver prices in accounting systems. Plus, if municipalities opt for a digital gold currency (DGC) system—a type of electronic money backed by gold—more software changes will be necessary. This system lets people pay each other using gold or currency linked to physical gold held by a private company. But municipalities currently lack experience in this area.

Overall there would be a significant increase in local expenditures starting in FY 2025.

AGENCIES CONTACTED:

Treasury Department, Department of Revenue, Department of Justice and New Hampshire Municipal Association