

HB 330-FN-LOCAL -AS INTRODUCED

2013 SESSION

13-0410
10/03

HOUSE BILL **330-FN-LOCAL**

AN ACT allowing counties to adopt a county income tax to be administered by the department of revenue administration.

SPONSORS: Rep. Burrige, Ches 16; Rep. Robertson, Ches 6

COMMITTEE: Municipal and County Government

ANALYSIS

This bill establishes requirements and procedures for a county income tax administered by the department of revenue administration which may be implemented by counties by adoption of the provisions of RSA 76-A by majority vote of the county convention. The revenues received by each town or city in the county are used to fund local education costs, reducing the revenues needed to calculate the local property tax rate. The authorization is repealed in 6 years.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT allowing counties to adopt a county income tax to be administered by the department of revenue administration.

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

1 1 New Paragraph; Commissioner of Revenue Administration; Duties. Amend RSA 21-J:3 by
2 inserting after paragraph XXIX the following new paragraph:

3 XXX. Administer the county income tax on a statewide basis and assist each county in the
4 implementation of the county income tax under RSA 76-A.

5 2 New Chapter; County Income Tax. Amend RSA by inserting after chapter 76 the following
6 new chapter:

7 CHAPTER 76-A

8 COUNTY INCOME TAX

9 76-A:1 Definitions. In this chapter:

10 I. "Department" means the department of revenue administration.

11 II. "Individual" means a natural person.

12 III. "Taxable income" means New Hampshire gross income as determined in RSA 76-A:3.

13 IV. "Nonresident individual" means an individual who receives wages, self-employment, or
14 unearned income for the taxable year from sources in the adopting municipality, who maintains his
15 or her domicile outside the adopting municipality.

16 V.(a) "Resident fiduciary" means:

17 (1) The executor or administrator of the estate of a decedent who at death was
18 domiciled in the municipality;

19 (2) The trustee of a trust created by will of a decedent who at death was domiciled in
20 the municipality;

21 (3) The trustee of a trust created by, or consisting of property of, a person domiciled
22 in this municipality; or

23 (4) The trustee of a resident trust the property of which includes a business
24 organization as defined in RSA 77-A:1, with business activity in New Hampshire as defined in
25 RSA 77-A:1.

26 (b) "Resident fiduciary" shall not include the trustee of any trust which is taxable as a
27 corporation under the United States Internal Revenue Code, a trust to the extent it is considered to
28 be a grantor trust pursuant to sections 671-679 of the United States Internal Revenue Code, and the
29 trustee of a tax-qualified retirement plan under section 401(a) of the United States Internal Revenue
30 Code.

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1 VI. “Resident individual” means:

2 (a) An individual domiciled in a municipality in the county; or

3 (b) An individual who maintains a permanent place of abode within a municipality in
4 the county and spends more than 183 days of the taxable year within the county.

5 X. “Taxable year” means the calendar or fiscal year or portion thereof which the taxpayer
6 uses for federal income tax purposes under the United States Internal Revenue Code.

7 XI. “Taxpayer” means any individual or fiduciary subject to the provisions of this chapter.

8 XII. “Unearned income” means any income which is not wage or self-employment income,
9 including but not limited to capital gains, allocations of income from S corporations, partnerships,
10 limited liability companies, or other similar entities, dividends, interests, rents, and royalties.

11 XIII. “United States Internal Revenue Code” means the United States Internal Revenue
12 Code of 1986, as amended. The forms, procedures, and regulations of the United States Internal
13 Revenue Service may be used by the commissioner of revenue administration in formulating rules
14 for adoption under RSA 541-A. This definition shall be operative unless and until a specific
15 statutory exception to its adoption is provided in this chapter, or until the application of one of its
16 provisions is held to violate the New Hampshire constitution.

17 76-A:2 Imposition of Tax. A tax is imposed upon every resident of each municipality within the
18 county adopting the provisions of this chapter and upon every resident fiduciary of each municipality
19 within the county adopting the provisions of this chapter at the rate of one percent of
20 New Hampshire gross income as determined in RSA 76-A:3.

21 I. Any resident or resident fiduciary of a municipality within a county failing to adopt the
22 county income tax shall not be subject to the requirement for filing returns or for compliance with
23 recordkeeping or other provisions of this chapter.

24 II. An employer employing any person within this state who is liable for the county income
25 tax, pursuant to RSA 76-A:8, shall comply with the requirements for withholding taxes under this
26 chapter.

27 76-A:3 New Hampshire Gross Income. In this chapter, New Hampshire gross income means, for
28 any taxable year, the amount of the taxpayer’s gross income for federal income tax purposes under
29 the United States Internal Revenue Code.

30 76-A:4 Tax; When Due. Subject to the provisions of this chapter concerning the withholding of
31 tax and estimated tax declarations, the tax imposed by this chapter shall be deemed to be assessed
32 and due and payable on the fifteenth day of the fourth month following the close of the taxpayer’s
33 taxable year.

34 76-A:5 Credits. The following credits are allowed against the tax due under this chapter:

35 I. Taxes withheld pursuant to the provisions of this chapter.

36 II. Estimated tax payments made pursuant to this chapter.

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1 III. In the case of a resident individual, a credit determined by calculating the wages, self-
2 employment income, and unearned income of the individual earned or derived from sources in
3 another state and subject to income tax or a tax measured by income in that state, and multiplying
4 the amount calculated by the rate of tax provided in RSA 76-A:2.

5 IV. In the case of a nonresident individual, a credit calculated by reducing the taxpayer's
6 New Hampshire gross income by the amount of wages and self-employment income earned by the
7 taxpayer in New Hampshire and the amount of unearned income from New Hampshire sources, and
8 multiplying the amount calculated by the rate of tax provided in RSA 76-A:2.

9 Returns

10 76-A:6 Returns.

11 I. Every resident individual and nonresident individual having New Hampshire gross
12 income and every resident fiduciary shall make a return to the department of revenue
13 administration under such rules and in such form or manner as the commissioner may prescribe, on
14 or before the due date of the tax as provided in RSA 76-A:4.

15 II. A husband and wife who are both residents or who both earn wages or self-employment
16 income from sources within New Hampshire shall file a joint return for any taxable year for which
17 such a joint return is filed for United States income tax purposes.

18 III. Whenever any return shows that overpayments allowable to the taxpayer exceed the
19 amount of tax due, the department shall certify the amount of overpayment to the treasurer of the
20 county for refund or shall allow the taxpayer a credit against taxes due for a subsequent year, to the
21 extent of the overpayment, at the taxpayer's option.

22 76-A:7 Information Returns. Each individual, partnership, limited liability partnership
23 corporation, limited liability corporation, proprietorship, joint stock company, association, insurance
24 company, business trust, real estate trust, or other form of organization, organized for gain or profit,
25 being a resident or having a place of business in the county or being a nonresident having income
26 derived from sources subject to tax under this chapter, in whatever capacity acting, including lessors
27 or mortgagors of personal property, fiduciaries, employers, and all officers and employees of the state
28 or any political subdivision of the state, having the control, receipt, custody, disposal, or payment of
29 salaries, wages, rentals, or other compensation or income subject to the provisions of this chapter
30 paid or payable during any year to any taxpayer subject to a tax under this chapter shall on such
31 date or dates as the department shall from time to time designate, make complete return thereof to
32 the department, in such form as the department may prescribe.

33 Withholding of Tax

34 76-A:8 Who Must Withhold. Every employer as defined by section 3401(d) of the United States
35 Internal Revenue Code, employing any person within this state who is liable for payment of the
36 county income tax, shall deduct and withhold upon wages paid to said employee, a tax equal to the
37 rate percent applied to such wages, subject, however, to the provisions of RSA 76-A:11.

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1 79-A:9 Time for Payment of Withheld Taxes and Filing Withheld Taxes Returns.

2 I. Every employer required to deduct and withhold any tax under RSA 76-A:8 shall make a
3 quarterly return thereof to the department on or before the fifteenth day of the first calendar month
4 following the calendar quarter for which the return is made. However, a return may be filed on or
5 before the last day of the first calendar month following such quarter if timely deposits have been
6 made in full payment of such taxes due for the quarter.

7 II. Every employer shall pay over to the department, or to a depository designated by the
8 department, the taxes so required to be deducted and withheld at the same time that such employer
9 is required, under federal income tax law and regulations, to pay over federal taxes that are required
10 to be deducted and withheld from wages to employees.

11 III. The department may, if such action is necessary in any emergency where collection of
12 the tax may be in jeopardy, require such employer to make such return and pay such tax at any
13 time, or from time to time.

14 76-A:10 Employer's Liability.

15 I. Each employer required to deduct and withhold tax under this chapter shall be liable for
16 such tax. In the event an employer fails to withhold and pay over to the department any amount
17 required to be withheld under RSA 76-A:8, the department shall assess such amount against the
18 employer.

19 II. The amount of tax required to be deducted and withheld and paid over to the department
20 under this chapter, when so deducted and withheld, shall be held to be a special fund in trust for the
21 municipalities in each of the counties of the state adopting the county income tax. No employee or
22 other person shall have any right of action against the employer in respect to any moneys deducted
23 and withheld from wages and paid over to the department in compliance or in intended compliance
24 with this chapter.

25 76-A:11 Use of Withholding Tables. At the election of the employer, the employer may deduct
26 and withhold a tax determined on the basis of tables to be prepared and furnished by the
27 department, which tax shall be substantially equivalent to the tax provided in RSA 76-A:8 and which
28 shall be in lieu of the tax required in such section.

Estimated Tax Declarations

29
30 76-A:12 Filing of Declarations. On the fifteenth day of the fourth month of the current taxable
31 year every resident individual, nonresident individual, and resident fiduciary shall furnish the
32 department with an estimate of such portion of such person's New Hampshire gross income for the
33 current taxable year as will not be subject to the withholding provisions of this chapter.

34 76-A:13 Payment of Estimated Tax. Each taxpayer required to file an estimated tax declaration
35 shall include with the declaration of estimated income, payment of not less than 25 percent of the tax
36 due thereon. Thereafter, on the fifteenth day of the sixth and ninth months of the taxable year, the
37 taxpayer shall pay not less than 25 percent of the tax due upon said estimated income or any revised

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1 estimate thereof. The fourth installment of estimated tax shall be paid on the fifteenth day of the
2 first month following the close of the taxable year for which the estimate was made.

3 **Miscellaneous Provisions**

4 76-A:14 Extension of Time for Returns. For good cause, the department may extend the time
5 within which a taxpayer is required to file a return or declaration and if such return or declaration is
6 filed during the period of extension no penalty or late payment charge may be imposed for failure to
7 file the return at the time required by this chapter, but the taxpayer shall be liable for interest and
8 late payment charges as prescribed in RSA 21-J:28 and RSA 21-J:33. Failure to file the return
9 during the period of the extension shall void the extension.

10 76-A:15 Administration.

11 I. This chapter shall be administered and enforced by the commissioner of revenue
12 administration. The commissioner shall adopt rules, under RSA 541-A, necessary to insure the
13 proper administration of this chapter.

14 II. The commissioner shall appoint such additional technical, clerical, and other personnel
15 as the commissioner shall deem necessary to carry out the provisions of this chapter.

16 III. The commissioner may institute actions in the name of the municipality to recover any
17 tax, interest on tax, or the penalties imposed by this chapter and RSA 21-J, as part of the
18 commissioner's authority to administer this chapter and to administer and enforce the tax laws of
19 this state generally under RSA 21-J.

20 IV. In the collection of taxes imposed by this chapter, the department may use all of the
21 powers granted to tax collectors under RSA 80 for the collection of taxes, and it has all of the duties
22 imposed upon the tax collectors by RSA 80 including the optional tax sale procedure under
23 RSA 80:58 through RSA 80:86. The following shall also apply:

24 (a) The provisions of RSA 80:26 apply to the sale of land for the payment of taxes due
25 under this chapter, and the state treasurer is authorized to purchase the land for the state.

26 (b) If the state purchases the land, the state treasurer shall certify the purchase to the
27 governor and the governor shall draw a warrant for the purchase price out of any money in the
28 treasury not otherwise appropriated.

29 V. The commissioner shall have the authority to subpoena witnesses, records, and
30 documents, as needed, and to administer oaths to those testifying at hearings. The department and
31 the taxpayer may take the depositions of witnesses residing within and without the state pertaining
32 to a matter under this chapter, in the same way as depositions are taken in civil actions in the
33 superior court.

34 76-A:16 Distribution of Revenues for Local Education. The department of revenue
35 administration shall collect the taxes, interest, and penalties imposed under this chapter and RSA
36 21-J and shall pay them to the treasurer of the municipality within each county adopting the county
37 income tax, less the administrative and enforcement costs of this chapter, as follows:

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1 I. Revenues received shall be attributed to the appropriate county and apportioned to each of
2 the towns, cities, or unincorporated places within each county in accordance with the town, city, or
3 place of residence of each taxpayer.

4 II. The treasurer of the municipality shall credit the entire amount of the funds received to
5 fund the local education cost, kindergarten through grade 12, as provided under RSA 198:43.

6 76-A:17 Fees. Fees of witnesses shall be the same as those allowed to witnesses in the superior
7 court. In the case of witnesses summoned by the commissioner, it shall be considered as an expense
8 of administration of this chapter.

9 76-A:18 Notice. Any notice required by this chapter to be given by the department to a taxpayer
10 shall be made by mail to the last known address of the taxpayer and in the case of hearings shall be
11 given at least 10 days before the date thereof.

12 76-A:19 Preference. The taxes and interest imposed by this chapter have preference in any
13 distribution of the assets of the taxpayer, whether in insolvency or otherwise.

14 76-A:20 Dissolutions, Withdrawals, and Statements of Good Standing.

15 I.(a) No employer organized under any law of this state may transfer property to its
16 shareholders pursuant to RSA 293-A:14.05(a) or to its members and managers pursuant to RSA 304-
17 C:141 until all taxes required to be withheld by the employer under this chapter, and any interest
18 and penalties that related thereto, have been fully paid and a certificate of dissolution shall have
19 been obtained from the commissioner of revenue administration that no returns, tax required to be
20 withheld, tax interest, or penalties for taxes administered by the department are due and unpaid.

21 (b) In order to transfer property to its shareholders pursuant to RSA 293-A:14.05(a) or
22 its members or managers pursuant to RSA 304-C:141, an employer shall submit a written request
23 containing the complete corporate or limited liability company name and identification number and
24 accompanied by a non-refundable fee of \$30 to the commissioner of revenue administration. This fee
25 shall be deposited into the general fund. If, after reviewing the employer's records, the commissioner
26 determines that no returns, tax required to be withheld, interest, or penalties for taxes administered
27 by the department are due and unpaid, the commissioner shall prepare a certificate in accordance
28 with subparagraph (a).

29 II. In order to obtain a statement for withdrawal, in accordance with RSA 293-A:15.20(b)(6)
30 or RSA 304-C:179, an employer shall submit a written request containing the complete employer
31 name and identification number and accompanied by a non-refundable fee of \$30 to the
32 commissioner of revenue administration. This fee shall be deposited into the general fund. If, after
33 reviewing the employer's records, the commissioner determines that no returns, tax required to be
34 withheld, interest, or penalties for taxes administered by the department are due and unpaid, the
35 commissioner shall prepare a statement for withdrawal for the purposes required under RSA 293-
36 A:15.20(b)(6) or RSA 304-C:179.

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1 III. In order to obtain a statement that it is in good standing with the department of revenue
2 administration, an employer shall submit a written request containing the complete employer name
3 and identification number and accompanied by a non-refundable fee of \$30 to the commissioner of
4 revenue administration. This fee shall be deposited into the general fund. If, after reviewing the
5 employer's records, the commissioner determines that no returns, tax required to be withheld,
6 interest, or penalties for taxes administered by the department are due and unpaid, the
7 commissioner shall prepare a statement of good standing.

8 76-A:21 Liens for Tax.

9 I. If any employer required to deduct and withhold a tax under this chapter neglects or
10 refuses to pay the same after demand, the unpaid amount, including any late payment charge and
11 interest together with any costs that may accrue in addition thereto, shall be a lien in favor of the
12 state upon all property and rights to property, whether real or personal, belonging to such employer.
13 Such liens shall arise at the time assessment and demand is made by the department and shall
14 continue until the liability for the full amount of the lien is satisfied or becomes unenforceable. Such
15 lien against personal property shall be valid as against any subsequent mortgagee, pledgee,
16 purchaser, or judgment creditor when notice of such lien and the sum due has been placed on record
17 by the department with the secretary of state and in the office of the town clerk where the taxpayer
18 resides. Such lien against real property shall be valid as against any subsequent mortgagee,
19 pledgee, purchaser, or judgment creditor when notice of such lien and the sum due has been placed
20 on record by the department with the register of deeds for the county in which the property subject
21 to the lien is situated. In the case of any prior mortgage on real or personal property so written as to
22 secure a present debt plus future advances by the mortgagee to the mortgagor, the lien herein
23 provided, when notice thereof has been properly recorded, shall be subject to such prior mortgage
24 unless the department also notifies the mortgagee in writing of the recording of such lien, in which
25 case any indebtedness thereafter created from mortgagor to mortgagee shall be junior to the lien
26 herein provided for.

27 II. The lien created by paragraph I shall be released upon satisfaction of the amount of the
28 lien or upon a finding by the commissioner that the lien has become unenforceable, or if there is
29 furnished to the department a bond with surety approved by the department in a penal sum
30 sufficient to equal the amount of the lien, said bond to be conditioned upon the payment of the
31 amount of the lien upon a final determination or adjudication of the employer's liability therefor.

32 III. The lien created by paragraph I may be foreclosed in the case of real estate agreeably
33 with the provisions of law relating to foreclosure of mortgages on real estate, and in the case of
34 personal property agreeably with the provisions of law relating to the foreclosure of security
35 interests in personal property.

36 IV. To secure payment of the taxes, fees, charges, and interest imposed by this chapter and
37 RSA 21-J, the department may avail itself of any other provision of law relating to liens for taxes.

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1 76-A:22 Additional Returns. When the commissioner has reason to believe that a taxpayer has
2 failed to file a return or to include any part of New Hampshire gross income in a filed return, the
3 commissioner may require the taxpayer to file a return or a supplementary return showing such
4 additional information as the commissioner prescribes. Upon the receipt of the supplementary
5 return, or if none is received, within the time set by the commissioner, the commissioner may find
6 and assess the amount due upon the information that is available. The making of such additional
7 return does not relieve the taxpayer of any penalty for failure to make a correct original return or
8 relieve the taxpayer from liability for interest imposed under RSA 21-J:28 or any other additional
9 charges imposed by the commissioner. This section shall not be construed to modify or extend the
10 statute of limitations provided in RSA 21-J:29.

11 76-A:23 Corrections. Each taxpayer shall report to the commissioner any change in the amount
12 of the taxpayer's New Hampshire gross income as finally determined by the United States Internal
13 Revenue Service with respect to any previous year for which the taxpayer has made a return under
14 this chapter. Such a report shall be made not later than 6 months after the taxpayer has received
15 notice that such change has finally been determined. Notwithstanding any other provision of law, a
16 taxpayer reporting a correction pursuant to this section shall be given notice by the department of
17 any adjustment to the tax due with respect to such correction within 6 months of the filing of the
18 report.

19 76-A:24 Taxpayer Records.

20 I. Every taxpayer liable for the county income tax shall:

21 (a) Keep such records as may be necessary to determine the amount of the taxpayer's
22 liability under this chapter;

23 (b) Preserve such records for the period of 3 years or until any litigation or prosecution
24 hereunder is finally determined;

25 (c) Make such records available for inspection by the commissioner or authorized agents,
26 upon demand, at reasonable times.

27 II. Whoever violates the provisions of this section shall be subject to the penalties imposed
28 under RSA 21-J:39.

29 76-A:25 County Adoption of the County Income Tax.

30 I. A county may implement the county income tax by adopting the provisions of this chapter,
31 after a public hearing, by a majority vote of the county convention.

32 II. A county may rescind the implementation of the county income tax in the manner
33 described in paragraph I.

34 III. The revenues collected by the commissioner of revenue administration for the
35 municipality, less the administrative and enforcement costs attributable to the municipality as
36 determined according to rules for calculating a municipality's administrative and enforcement costs
37 adopted under RSA 541-A, shall be included in the revenues reported to the department of revenue

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1 administration under RSA 21-J:34 and used in the calculation of the property tax rate set by the
2 commissioner under RSA 21-J:35.

3 3 New Paragraph; Tax on Interest and Dividends; Exemption. Amend RSA 77:5 by inserting
4 after paragraph IV the following new paragraph:

5 V. Any income from interest or dividends to the extent it is subject to tax under the county
6 income, RSA 76-A.

7 4 Prospective Repeal. RSA 76-A, relative to the county income tax, is repealed.

8 5 Effective Date.

9 I. Section 4 of this act shall take effect March 30, 2019.

10 II. The remainder of this act shall take effect July 1, 2013.

HB 330 FISCAL NOTE

AN ACT allowing counties to adopt a county income tax to be administered by the department of revenue administration.

FISCAL IMPACT:

The Department of Revenue Administration, New Hampshire Association of Counties, and New Hampshire Municipal Association state this bill, **as introduced**, may decrease state general fund revenue, increase state general fund expenditures, increase county expenditures and increase local revenue by an indeterminable amount in FY 2014 and each year thereafter. There is no fiscal impact on county revenue or local expenditures.

METHODOLOGY:

The Department of Revenue Administration (DRA) states this bill establishes requirements and procedures for a county income tax which may be adopted by New Hampshire Counties and administered by the DRA. Residents within a county adopting the income tax would be taxed at a rate of one percent of New Hampshire gross income. Interest and dividends taxes are exempt to the extent they are subject to tax under the county income tax. This bill would be repealed on March 30, 2019. Revenue will be collected by DRA and paid to the treasurer of each municipality within each county adopting the county income tax, less administrative and enforcement costs. Revenue to each municipality will be used in calculating the property tax rate set by the DRA. DRA states it cannot estimate the cost to administer this bill without knowing how many counties would adopt the tax. DRA was however, able to estimate potential revenue for each county. Using data from the New Hampshire Department of Employment Security county profiles, DRA estimated \$223,866,616 per year could be raised if all counties adopted the 1% income tax. DRA estimates this revenue by using the average per capita income multiplied by the proposed tax rate (1%) to determine the tax per employee, which is then multiplied by the number of taxpayers employed. The revenue estimate breakdown by county is shown below.

<u>County</u>	<u>Per Capita Income</u>	<u>Tax Rate</u>	<u>Tax Per Employee</u>	<u>Taxpayers Employed</u>	<u>Total Tax</u>
Belknap	28,953	x 1% =	\$289.53	x 29,910	= \$ 8,659,842
Carroll	29,106	x 1% =	\$291.06	x 24,110	= \$ 7,017,457
Cheshire	26,646	x 1% =	\$266.46	x 38,600	= \$ 10,285,356
Coos	23,279	x 1% =	\$232.79	x 14,730	= \$ 3,428,997
Grafton	28,658	x 1% =	\$286.58	x 46,560	= \$ 13,343,165
Hillsborough	33,331	x 1% =	\$333.31	x 215,700	= \$ 71,894,967
Merrimack	30,800	x 1% =	\$308.00	x 75,900	= \$ 23,377,200
Rockingham	36,972	x 1% =	\$369.72	x 165,030	= \$ 61,014,892
Strafford	28,855	x 1% =	\$288.55	x 66,450	= \$ 19,174,148
Sullivan	26,635	x 1% =	\$266.35	x <u>21,290</u>	= <u>\$ 5,670,592</u>
				698,280	\$223,866,616

DRA states it cannot administer this bill within its current operating budget and within its current staffing levels. An exact fiscal impact cannot be determined at this time.

The New Hampshire Association of Counties (NHAC) states this bill would require counties as employers to set up a system for deduction and withholding from wages which may cause county expenditures to increase by an indeterminable amount. The NHAC states this bill will have no fiscal impact on county revenue.

The New Hampshire Municipal Association states income tax revenue would be used to fund education costs rather than municipal expenditures, so this bill would not have a direct impact on municipal revenue or expenditures. This bill may increase local revenue in FY 2014 and each year thereafter.