

HB 403-FN - AS INTRODUCED

2015 SESSION

15-0075
01/09

HOUSE BILL **403-FN**

AN ACT repealing the law relative to providing certain parameters for access to reproductive health care facilities.

SPONSORS: Rep. Souza, Hills 43; Rep. Kappler, Rock 3; Rep. Notter, Hills 21; Rep. Gould, Hills 7; Rep. Groen, Straf 10; Rep. Hoell, Merr 23; Rep. Cordelli, Carr 4; Rep. Itse, Rock 10; Rep. Baldasaro, Rock 5; Rep. Wuelper, Straf 3; Sen. Birdsell, Dist 19; Sen. Daniels, Dist 11; Sen. Avard, Dist 12; Sen. Cataldo, Dist 6; Sen. Carson, Dist 14

COMMITTEE: Judiciary

ANALYSIS

This bill repeals the law relative to providing certain parameters for access to reproductive health care facilities.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT repealing the law relative to providing certain parameters for access to reproductive health care facilities.

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

1 1 Statement of Findings and Purpose.

2 I. The general court hereby finds that:

3 (a) The exercise of a person's right to free speech is a First Amendment activity, the
4 protection of which is paramount.

5 (b) RSA 132:37 through RSA 132:40 (2014, 81) was based on a similar Massachusetts
6 statute, Mass. Gen. Laws, ch. 266 section 120E ½.

7 (c) On June 26, 2014 the United States Supreme Court unanimously struck down as
8 unconstitutional the Massachusetts statute in the case of *McCullen v. Coakley*, 134 S. Ct. 2518.

9 (d) On July 9, 2014, the United States District Court for the District of New Hampshire
10 held in the case of *Sister Mary Rose Reddy v. Foster*, Docket 14-cv-00299-JL that RSA 132:37 through
11 RSA132:40 "is materially indistinguishable from the Massachusetts statute that the Supreme Court
12 invalidated in *McCullen v. Coakley*."

13 II. Therefore, the general court hereby repeals RSA 132:37 through RSA 132:40 because if
14 left as law, this statute will cause the state of New Hampshire to expend considerable sums
15 defending a law which the United States Supreme Court unanimously found unconstitutional.

16 2 Repeal. RSA 132:37-132:40, relative to providing certain parameters for access to reproductive
17 health care facilities, are repealed.

18 3 Effective Date. This act shall take effect upon its passage.

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HB 403-FN - FISCAL NOTE

AN ACT repealing the law relative to providing certain parameters for access to reproductive health care facilities.

FISCAL IMPACT:

The Judicial Branch, the Department of Justice, and the Association of Counties state this bill, **as introduced**, will reduce state revenue and state and county expenditures by an indeterminable amount in FY 2015 and each year thereafter. There will be no fiscal impact on county and local revenue, or local expenditures.

METHODOLOGY:

The Department of Justice states this bill would repeal RSA 132:37 through 132:40 relative to certain parameters for access to reproductive health care facilities. The Department is involved in litigation defending the current law in Federal Court. The Department states this bill would likely result in dismissal of the lawsuit and the time currently being spent on the case would cease. As of January 1, 2015, the Department has spent 190 hours defending the case. The Department states the fiscal impact is indeterminable since it is difficult to determine the fiscal impact of the ongoing lawsuit, and difficult to determine what the fiscal impact will be in future years.

The Judicial Branch states the potential fiscal impact to the Judicial Branch is in the elimination of the enforcement section in RSA 132:39 which makes violation of the current statute a violation level offense. In addition, it authorizes the attorney general or county attorney to bring an action for injunctive relief to prevent further violation. The potential fiscal impact to the Branch is in the potential savings from the repeal of possible violation level offenses and injunction actions in the superior court.

The Branch has no information on which to estimate how many fewer violation level offenses will result from the proposed bill. The Branch does have information on the average cost of processing such cases. The estimated average cost of a violation level offense in the district division of the circuit court will be \$46.86 in FY 2016, and \$49.01 in FY 2017. Regarding injunction actions, the Branch has no information on how many injunctions would not be filed in the superior court as a result of the bill. The estimated average cost of an injunction (classified as a complex equity case) in the superior court will be \$699.40 in FY 2016, and

\$712.35 in FY 2017. These average costs do not consider the cost of any appeals that may be taken following trial. It should be noted the average case cost estimates for FY 2016 and FY 2017 are based on data that is more than nine years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.

The New Hampshire Association of Counties states this bill could reduce expenditures for prosecution and incarceration at the county level. The Association is not able to estimate the fiscal impact, but states the statewide average cost to incarcerate an individual in a county facility is about \$35,000.