Committee Report

CONSENT CALENDAR

May 4, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Executive Departments and Administration to which was referred SB 42,

AN ACT restricting public officers from engaging in certain private dealings. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Mark Alliegro

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Executive Departments and Administration**
Bill Number:	**SB 42**
Title:	**restricting public officers from engaging in certain private dealings.**
Date:	**May 4, 2021**
Consent Calendar:	**CONSENT**
Recommendation:	**OUGHT TO PASS WITH AMENDMENT 2021-1281h**

STATEMENT OF INTENT

This bill updates and slightly expands existing statute (RSA 95:1), which went into effect in 1975. RSA 95:1 specifies that a public office holder may not engage in private sales in excess of $200 with the state or political subdivision in which he or she holds office, except by open, competitive bidding. This bill as amended, revises current statute in the following two ways: (1) It applies the same standard for services as previously indicated for the sale of goods, specifying the term of such service to be one year; (2) It updates the permissible dollar amount from $200 to $1,000 to accommodate the rise in costs that have occurred between 1975 and the present. In summary, this is a simple, common sense bill that fortifies the existing conflict of interest statute.

Vote 19-0.

Rep. Mark Alliegro
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Executive Departments and Administration

SB 42, restricting public officers from engaging in certain private dealings. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Mark Alliegro for Executive Departments and Administration. This bill updates and slightly expands existing statute (RSA 95:1), which went into effect in 1975. RSA 95:1 specifies that a public office holder may not engage in private sales in excess of $200 with the state or political subdivision in which he or she holds office, except by open, competitive bidding. This bill as amended, revises current statute in the following two ways: (1) It applies the same standard for services as previously indicated for the sale of goods, specifying the term of such service to be one year; (2) It updates the permissible dollar amount from $200 to $1,000 to accommodate the rise in costs that have occurred between 1975 and the present. In summary, this is a simple, common sense bill that fortifies the existing conflict of interest statute. **Vote 19-0.**

Original: House Clerk
Cc: Committee Bill File

Rep. Alliegro, Graf. 7
May 3, 2021
2021-1281h
05/06

Amendment to SB 42

Amend the bill by replacing section 1 with the following:

1 Public Officials Barred from Certain Private Dealings. Amend RSA 95:1 to read as follows:

95:1 Public Officials Barred From Certain Private Dealings. No person holding a public office, as such, in state or any political subdivision governmental service shall, by contract or otherwise, except by open competitive bidding, buy real estate, sell or buy goods, commodities, or other personal property of a value in excess of [~~$200~~] ***$1000*** at any one sale***, or provide services of a value in excess of $1000 in any one year,*** to or from the state or political subdivision under which he ***or she*** holds [~~his~~] public office.

2021-1281h

AMENDED ANALYSIS

This bill prohibits a public official from contracting with the state or a political subdivision for goods or services valued at more than $1000 unless the contract is obtained through open competitive bidding.

Archived: Thursday, May 6, 2021 8:27:56 AM
From: Carol McGuire
Sent: Wednesday, May 5, 2021 7:05:18 PM
To: Mark Alliegro
Cc: Miriam Simmons
Subject: Re: Minor correction to SB 42 Committee Report
Response requested: Yes
Importance: Normal

OK

On Wed, May 5, 2021 at 4:36 PM Mark Alliegro <Mark.Alliegro@leg.state.nh.us> wrote:

> In the last sentence, please substitute the word "bill" for "law".
>
> ---
>
> **From:** Mark Alliegro <Mark.Alliegro@leg.state.nh.us>
> **Sent:** Wednesday, May 5, 2021 4:33 PM
> **To:** Carol McGuire <mcguire4house@gmail.com>
> **Cc:** Miriam Simmons <miriam.simmons@leg.state.nh.us>
> **Subject:** Fw: Committee Report, SB 42
>
> SB42 Committee Report
>
> This bill updates and slightly expands existing statute (RSA 95:1), which went into effect in 1975. RSA 95:1 specifies that a public office holder may not engage in private sales in excess of $200 with the state or political subdivision in which he or she holds office, except by open, competitive bidding. SB 42, as amended (2021-1281h), revises current statute in the following two ways: (1) It applies the same standard for services as previously indicated for the sale of goods, specifying the term of such service to be one year; (2) It updates the permissible dollar amount from $200 to $1,000 to accommodate the rise in costs that have occurred between 1975 and the present. In summary, SB 42 is a simple, common sense law that fortifies existing conflict of interest statute.
>
> ---
>
> **From:** Miriam Simmons <miriam.simmons@leg.state.nh.us>
> **Sent:** Wednesday, May 5, 2021 9:21 AM
> **To:** Carol McGuire <mcguire4house@gmail.com>; Tony Lekas <rep.tony.lekas@gmail.com>; Mark Alliegro <Mark.Alliegro@leg.state.nh.us>
> **Cc:** Pam Smarling <Pam.Smarling@leg.state.nh.us>; Miriam Simmons <miriam.simmons@leg.state.nh.us>
> **Subject:** Committee Reports
>
> Please submit your Committee Reports to Rep. McGuire (copy to me).
> The Chair will review and give me the “Okay” when they are ready to publish.
>
> | | | |
> |---|---|---|
> | SB 114 Consent Calendar | ITL vote 17-2 | Rep Lekas |
> | SB 42 Consent Calendar | OTP/ Am # 2021-1281h vote 19-0 | Rep Alliegro |
> | SB 57 Consent Calendar | OTP vote 19-0 | Rep Lekas |

Miriam Simmons
Committee Assistant
271-3600 (leave msg for remote contact)
.or email -
miriam.simmons@leg.state.nh.us



Voting Sheets

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on SB 42

BILL TITLE: restricting public officers from engaging in certain private dealings.

DATE: May 4, 2021

LOB ROOM: Remote / Hybrd

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Alliegro	Seconded by Rep. Goley	AM Vote: 19-0

Amendment # 2021-1281h

Moved by Rep. Alliegro	Seconded by Rep. Goley	Vote: 19-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep John Sytek, Clerk

HOUSE COMMITTEE ON ED+A

EXECUTIVE SESSION ON ~~HB~~ SB 42

BILL TITLE: RESTRICTING PUBLIC OFFICERS FROM ENGAGING IN CERTAIN PRIVATE DEALINGS.

DATE: 5-4-21

LOB ROOM: 206

MOTION: (Please check one box)

☐ OTP ☐ ITL ☐ Retain (1st year) ☒ Adoption of Amendment # 1281H *(if offered)*

☐ Interim Study (2nd year)

Moved by Rep. ALLIEGRO Seconded by Rep. GOLEY Vote: 19-0

MOTION: (Please check one box)

☐ OTP ☒ OTP/A ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment # _____ *(if offered)*

☐ Interim Study (2nd year)

Moved by Rep. ALLIEGRO Seconded by Rep. GOLEY Vote: 19-0

MOTION: (Please check one box)

☐ OTP ☐ OTP/A ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment # _____ *(if offered)*

☐ Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

☐ OTP ☐ OTP/A ☐ ITL ☐ Retain (1st year) ☐ Adoption of Amendment # _____ *(if offered)*

☐ Interim Study (2nd year)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR? X **Yes** _____ **No**

Minority Report? _____ Yes _____ No If yes, author, Rep.: _____ Motion: _____

Respectfully submitted, Rep. _____, **Clerk**

1/22/2021 9:57:48 AM
Roll Call Committee Registers Report

2021 SESSION

Executive Departments and Administration

Bill #: SB 42 **Motion:** ADOPT AMENDMENT **AM #:** 1281H **Exec Session Date:** 5-4-21

Members	YEAS	Nays	NV
McGuire, Carol M. Chairman	X		
Roy, Terry Vice Chairman	X		
Sytek, John Clerk	X		
Pearson, Stephen C.	X		
Yakubovich, Michael	X		
Lekas, Tony	X		
Alliegro, Mark C.	X		
Bailey, Glenn	X		
Lanzara, Tom E.	X		
Santonastaso, Matthew	X		
Goley, Jeffrey P.	X		
Schuett, Dianne E.	X		
Jeudy, Jean L.	X		
Schmidt, Peter B.	X		
Schultz, Kristina M.	X		
Fellows, Sallie D.	X		
Fontneau, Timothy J.	X		
Grote, Jaci L.	X		
O'Brien, Michael B.	X		
TOTAL VOTE:			

19-0

1/22/2021 9:57:48 AM
Roll Call Committee Registers Report

2021 SESSION

Executive Departments and Administration

Bill #: SB 42 Motion: OTP/A AM #: _____ Exec Session Date: 5-4-21

Members	YEAS	Nays	NV
McGuire, Carol M. Chairman	X		
Roy, Terry Vice Chairman	X		
Sytek, John Clerk	X		
Pearson, Stephen C.	X		
Yakubovich, Michael	X		
Lekas, Tony	X		
Alliegro, Mark C.	X		
Bailey, Glenn	X		
Lanzara, Tom E.	X		
Santonastaso, Matthew	X		
Goley, Jeffrey P.	X		
Schuett, Dianne E.	X		
Jeudy, Jean L.	X		
Schmidt, Peter B.	X		
Schultz, Kristina M.	X		
Fellows, Sallie D.	X		
Fontneau, Timothy J.	X		
Grote, Jaci L.	X		
O'Brien, Michael B.	X		
TOTAL VOTE:			

19-0

Rep. Alliegro, Graf. 7
May 3, 2021
2021-1281h
05/06

Amendment to SB 42

Amend the bill by replacing section 1 with the following:

1 Public Officials Barred from Certain Private Dealings. Amend RSA 95:1 to read as follows:

95:1 Public Officials Barred From Certain Private Dealings. No person holding a public office, as such, in state or any political subdivision governmental service shall, by contract or otherwise, except by open competitive bidding, buy real estate, sell or buy goods, commodities, or other personal property of a value in excess of [~~$200~~] ***$1000*** at any one sale***, or provide services of a value in excess of $1000 in any one year,*** to or from the state or political subdivision under which he ***or she*** holds [~~his~~] public office.

UNAPPROVED

2021-1281h

AMENDED ANALYSIS

This bill prohibits a public official from contracting with the state or a political subdivision for goods or services valued at more than $1000 unless the contract is obtained through open competitive bidding.

UNAPPROVED

Hearing Minutes

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON SB 42

BILL TITLE: **restricting public officers from engaging in certain private dealings.**

DATE: **March 24, 2021**

LOB ROOM: **LOB Hybrid** **Time Public Hearing Called to Order:** **1:15 p.m.**

Time Adjourned: **1:30 p.m.**

Committee Members: Reps. McGuire, Roy, Sytek, S. Pearson, Yakubovich, T. Lekas, Alliegro, Bailey, Lanzara, Santonastaso, Goley, Schuett, Jeudy, P. Schmidt, Schultz, Fellows, Fontneau, Grote and O'Brien

Bill Sponsors:

Sen. Reagan	**Sen. Carson**	**Sen. French**
Sen. Kahn	**Sen. Watters**	**Sen. Sherman**
Sen. Prentiss	**Sen. Gray**	**Sen. Giuda**
Sen. Hennessey	**Sen. D'Allesandro**	**Sen. Ward**
Rep. Tudor	**Rep. Spillane**	**Rep. McGuire**

TESTIMONY

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

SB 42 restricting public officers from engaging in certain private dealings. (1:15 PM/1:30 PM) The entire ED&A Committee was present.

***Sen. Reagan, prime sponsor, introduced the bill and spoke in support.**

He said that it corrects an omission to present law. This would bar public officials from contracting for amounts over $200 without an open, competitive bid. There were committee questions: whether there were actual abuses, whether an official could buy advertised property, whether an official could contract with another town, whether the $200 should be raised; whether this affected employer/employee relationship; whether disclosure would be required, whether there was a definition of open, competitive bidding.

Hearing adjourned at 1:30 p.m.

Respectfully submitted by,
Rep. John Sytek
Committee Clerk

March 24, 2021

SB 42 restricting public officers from engaging in certain private dealings. (1:15 PM/1:30 PM) The entire ED&A Committee was present.

>Sen. Reagan, prime sponsor, introduced the bill and spoke in support. He said that it corrects an omission to present law. This would bar public officials from contracting for amounts over $200 without an open, competitive bid. There were committee questions: whether there were actual abuses, whether an official could buy advertised property, whether an official could contract with another town, whether the $200 should be raised; whether this affected employer/employee relationship; whether disclosure would be required, whether there was a definition of open, competitive bidding.

House Remote Testify

Executive Departments and Administration Committee Testify List for Bill SB42 on 2(

Support: 14 Oppose: 0 Neutral: 0 Total to Testify: 1

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	S
Reagan, Senator John	Deerfield, NH kathryn.cummings@leg.state.nh.us	An Elected Official	Senate District 17	Support	Yes (0m)	3
See, Alvin	Loudon, NH absee@4Liberty.net	A Member of the Public	Myself	Support	No	3
DeMark, Richard	Meredith, NH demarknh114@gmail.com	A Member of the Public	Myself	Support	No	3
Fordey, Nicole	Litchfield, NH nikkif610@gmail.com	A Member of the Public	Myself	Support	No	3
Larson, Ruth	Alton, NH ruthlarson@msn.com	A Member of the Public	Myself	Support	No	3
Ladd, Carl	Northumberland, NH dr.carl.ladd@gmail.com	A Member of the Public	Myself	Support	No	3
Sherman, Senator Tom	SD24, NH jennifer.horgan@leg.state.nh.us	An Elected Official	SD24	Support	No	3
French, Senator Harold	Canterbury, NH kathryn.cummings@leg.state.nh.us	An Elected Official	Senate District 7	Support	No	3
Hennessey, Erin	Concord, NH erin.hennessey@leg.state.nh.us	An Elected Official	SD1	Support	No	3
Watters, Senator David	Dover, NH david.watters@leg.state.nh.us	An Elected Official	Myself (SD 4)	Support	No	3
Casino, Joanne	Concord, NH joannecasino@comcast.net	A Member of the Public	Myself	Support	No	3
Gray, Senator James	Rochester, NH james.gray@leg.state.nh.us	An Elected Official	Senate District 6	Support	No	3
Ward, Senator Ruth	Stoddard, NH ruth.ward@leg.state.nh.us	An Elected Official	Senate District 8	Support	No	3
Carson, Sharon	Londonderry, NH deborah.chroniak@leg.state.nh.us	An Elected Official	Senate District 14	Support	No	3

Testimony

HOUSE COMMITTEE RESEARCH OFFICE
New Hampshire House of Representatives
4th Floor, Legislative Office Building
Concord, NH 03301
(603) 271-3600

Pam Smarling, Senior Committee Researcher
(603) 271-3387; Pam.Smarling@leg.state.nh.us

To: Rep. Carol M. McGuire, Chairman, House Executive Departments and Administration Committee

From: Pam Smarling, Senior Committee Researcher
House Committee Research

Date: April 9, 2021

RE: SB 42, restricting public officers from engaging in certain private dealings.

You asked:

> Have NH municipalities adopted policies restricting contracting for services provided by an elected official?

SB 42 amends RSA 95:1 to require a public official providing services valued at more than $200 to the state or municipality in which he or she holds office, to do so only through a competitive bidding process. Currently, a public official must engage in competitive bidding in order to sell or buy goods or property to the state or municipality in which he or she holds office.

> **95:1 Public Officials Barred From Certain Private Dealings. –** No person holding a public office, as such, in state or any political subdivision governmental service shall, by contract or otherwise, except by open competitive bidding, buy real estate, sell or buy goods, commodities, or other personal property of a value in excess of $200 at any one sale to or from the state or political subdivision under which he holds his public office.

I asked Cordell Johnston, Government Affairs Counsel, New Hampshire Municipal Association (NHMA) if NH municipalities have adopted policies restricting contracting for services provided by an elected official. He responded by saying that

there is no uniform practice in place across the state. Some municipalities have policies and some don't, and the policies tend to vary.

The Municipal Association has not conducted a survey on this issue. It is their sense that most municipalities, even if they don't have a written policy, are careful about avoiding conflicts with respect to both property transactions and services. They advise local officials that although RSA 95:1 does not explicitly cover services, they should act as if it does and not purchase services from a town official except through an open bidding process. They acknowledge that the occasional town may award a plowing or landscaping contract to one of the selectmen without any kind of bidding process, but most of them know better.

The various approaches to this issue are:

- Some municipalities (typically the larger ones that tend to have more formal processes) have a written policy that requires a bidding process for any kind of services (with certain exceptions), regardless of whether a public official is one of the bidders.

- Others have more limited policies that prohibit transactions with a public official unless a competitive bidding process is used.

- Others simply follow RSA 95:1, without having a written policy. Of those, some may read the statute literally and conclude that there is no prohibition on awarding service contracts to public officials, while others apply it more broadly, as the Municipal Association encourages them to do.

- There may be others that are not aware of the statute—but the NHMA hopes they would at least recognize that doing business with a selectman or a police chief or the town administrator presents a conflict, and that they should use an open bidding process if the occasion ever arises.

Possible Amendment

The other issues that Mr. Johnson noted were discussed during the hearing were:

(1) should the $200 threshold be increased?
(2) how should the threshold, which is "for any one sale," be applied in the case of ongoing services?

The first question is a straightforward policy decision. Given that it has been 46 years since it was last increased, he believes that it may be time to raise it again.

The second question is harder. If the language is left as it is in SB 42, he believes that it would be fairly easy to get around the statute just by making sure that each individual "sale" of services is for less than $200 (or $500, or $1,000, or whatever the

new threshold is). One example that a committee member mentioned was maintenance of town vehicles. If the threshold is increased to, $500, for example, and the selectman who owns the repair shop regularly services the town's vehicles but no one job costs more than $500, he could be paid thousands of dollars in a year without violating the letter of the law, although certainly it would violate the spirit of the law.

Mr. Johnson suggests having the services limitation apply on an annual basis and suggested the following for amendment for the committee's consideration:

> No person holding a public office, as such, in state or any political subdivision governmental service shall, by contract or otherwise, except by open competitive bidding, buy real estate, sell or buy goods, commodities, or other personal property, of a value in excess of ~~[$200~~] ***$500*** at any one sale***, or provide services of a value in excess of $500 in any one year,*** to or from the state or political subdivision under which he ***or she*** holds [~~his~~] public office.

If I can provide further information on this, please let me know.

Archived: Monday, April 12, 2021 8:02:13 AM
From: Pam Smarling
Sent: Friday, April 9, 2021 3:53:47 PM
To: ~House Executive Departments and Administration
Subject: question about SB 42
Response requested: No
Importance: Normal
Attachments:
april 9 SB 42 service contracts with public officials.pdf

TO: All Members of the House ED&A Committee,

At the public hearing on SB 42, I offered to ask the NH Municipal Association if they had information about municipal policies addressing contract for services with public officials in town. Attached is information provided by Cordell Johnston from the NH Municipal Association.

I'll see you on Thursday. Enjoy the weekend!

Pam

Pam Smarling, Senior Committee Researcher
House Committee Research, Room 409, LOB
33 N. State St., Concord, NH 03301
(603) 271-3387

Bill as Introduced

SB 42 - AS INTRODUCED

2021 SESSION

21-0272
05/10

SENATE BILL ***42***

AN ACT restricting public officers from engaging in certain private dealings.

SPONSORS: Sen. Reagan, Dist 17; Sen. Carson, Dist 14; Sen. French, Dist 7; Sen. Kahn, Dist 10; Sen. Watters, Dist 4; Sen. Sherman, Dist 24; Sen. Prentiss, Dist 5; Sen. Gray, Dist 6; Sen. Giuda, Dist 2; Sen. Hennessey, Dist 1; Sen. D'Allesandro, Dist 20; Sen. Ward, Dist 8; Rep. Tudor, Rock. 1; Rep. Spillane, Rock. 2; Rep. McGuire, Merr. 29

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill prohibits a public official from providing services valued at more than $200 to the state or political subdivision in which he or she holds office unless the contract is obtained through open competitive bidding.

- -

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.

SB 42 - AS INTRODUCED

21-0272
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT restricting public officers from engaging in certain private dealings.

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

1 Public Officials Barred from Certain Private Dealings. Amend RSA 95:1 to read as follows:

95:1 Public Officials Barred From Certain Private Dealings. No person holding a public office, as such, in state or any political subdivision governmental service shall, by contract or otherwise, except by open competitive bidding, buy real estate, sell or buy goods, commodities, or other personal property***, or provide services,*** of a value in excess of $200 at any one sale to or from the state or political subdivision under which he ***or she*** holds [~~his~~] public office.

2 Effective Date. This act shall take effect 60 days after its passage.