REGULAR CALENDAR

May 25, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Labor, Industrial and Rehabilitative Services to which was referred SB 42-FN, relative to overpayment of unemployment compensation.

WITHOUT RECOMMENDATION

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Labor, Industrial and Rehabilitative Services**
Bill Number:	**SB 42-FN**
Title:	**relative to overpayment of unemployment compensation.**
Date:	**May 25, 2023**
Consent Calendar:	**Regular Calendar**
Recommendation:	**WITHOUT RECOMMENDATION**

Statement in support of Ought to Pass: This bill, as it was passed by the senate, eliminates the collection of interest on most overpayment of unemployment benefits. Interest would still be charged in instances where the recipient willfully made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase the unemployment compensation. Committee members in support of Ought to Pass unamended believe interest should only be charged in instances of fraud, not when an honest mistake by the recipient leads to overpayment. It is understood that the overpayment itself should be repaid to the trust fund, but charging interest in a punitive manner is unwarranted. This bill received unanimous support in the senate committee and passed the full senate on a voice vote.

Amendment:

Rep. Brian Sullivan

Statement in support of Ought to Pass with Amendment: This bill addresses a very specific situation regarding unemployment payouts. Any individual who by omission, misrepresentation, or falsification obtains unemployment benefits for which they are not eligible is required to repay that money to the trust fund. Unless this overpayment is determined to be fraud, no additional penalties are pursued. If this repayment is not made within 60 days of being due, current law begins accruing interest at 1% per month. Although this interest will be waived if the debtor has followed a payment plan, the interest rate is fixed by law. As amended, this bill would have the Department of Employment Security develop rules by which the interest rate on late payments would be reduced or waived as circumstances warrant, in a similar manner as the department currently forgives interest. By allowing consideration of the individual circumstances surrounding an overpayment, the system will better serve the workers of NH when they need it.

Amendment: 2023-1799h

Rep. Brian Seaworth

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Labor, Industrial and Rehabilitative Services
SB 42-FN, relative to overpayment of unemployment compensation. **WITHOUT RECOMMENDATION**

Statement in support of Ought to Pass with Amendment: This bill addresses a very specific situation regarding unemployment payouts. Any individual who by omission, misrepresentation, or falsification obtains unemployment benefits for which they are not eligible is required to repay that money to the trust fund. Unless this overpayment is determined to be fraud, no additional penalties are pursued. If this repayment is not made within 60 days of being due, current law begins accruing interest at 1% per month. Although this interest will be waived if the debtor has followed a payment plan, the interest rate is fixed by law. As amended, this bill would have the Department of Employment Security develop rules by which the interest rate on late payments would be reduced or waived as circumstances warrant, in a similar manner as the department currently forgives interest. By allowing consideration of the individual circumstances surrounding an overpayment, the system will better serve the workers of NH when they need it.

Rep. Brian Seaworth

Statement in support of Ought to Pass: This bill, as it was passed by the senate, eliminates the collection of interest on most overpayment of unemployment benefits. Interest would still be charged in instances where the recipient willfully made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase the unemployment compensation. Committee members in support of Ought to Pass unamended believe interest should only be charged in instances of fraud, not when an honest mistake by the recipient leads to overpayment. It is understood that the overpayment itself should be repaid to the trust fund, but charging interest in a punitive manner is unwarranted. This bill received unanimous support in the senate committee and passed the full senate on a voice vote.

Rep. Brian Sullivan

Original: House Clerk
Cc: Committee Bill File

Rep. Seaworth, Merr. 12
May 12, 2023
2023-1799h
03/05

Amendment to SB 42-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Unemployment Compensation; Overpayment Penalties. Amend RSA 282-A:165, IV to read as follows:

IV. The commissioner shall collect any overpayment created under this chapter by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156***, and as provided in paragraphs V, VI, and VII,*** and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount withheld against the overpayment until it is repaid in full.

2 New Paragraphs; Unemployment Compensation; Overpayment Penalties. Amend RSA 282-A:165 by inserting after paragraph IV the following new paragraphs:

V. The commissioner shall charge interest on fraud overpayments under RSA 282-A:161 or RSA 281-A:164 at a rate of one percent per month or part thereof until payment plus accrued interest is received by the commissioner.

VI. The commissioner may charge interest on overpayments determined not to be fraud if the overpayment is determined to be the fault of the claimant, not to exceed a rate of one percent per month or part thereof, in accordance with rules the commissioner shall adopt pursuant to RSA 541-A.

VII. Interest collected pursuant to this section shall be paid into the contingent fund established in RSA 282-A:140.

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

2023-1799h

AMENDED ANALYSIS

This bill authorizes the department of employment security to charge interest on overpayments of unemployment compensation for fraudulent claims.

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on SB 42-FN

BILL TITLE: relative to overpayment of unemployment compensation.

DATE: May 25, 2023

LOB ROOM: 305-307

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Seaworth | Seconded by Rep. Avellani | AM Vote: 10-10

Amendment # 2023-1799h

Moved by Rep. Seaworth | Seconded by Rep. Avellani | Vote: 10-10

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Seaworth | Seconded by Rep. Avellani | Vote: 10-10

MOTIONS: OUGHT TO PASS

Moved by Rep. B. Sullivan | Seconded by Rep. DiSilvestro | Vote: 10-10

☑ **WITHOUT RECOMMENDATION**

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Kristina Schultz, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/9/2023 12:04:41 PM
Roll Call Committee Registers Report

2023 SESSION

Labor, Industrial and Rehabilitative Services

Bill #: SB42 Motion: OTP AM #: _____ Exec Session Date: May 25, 22

Members	YEAS	Nays	NV
Infantine, William J. Chairman		X	
Seaworth, Brian Vice Chairman		X	
Avellani, Lino M.		X	
Prout, Andrew J.		X	
Love, David C.		X	
Boyd, Stephen E.		X	
Mason, James L.		X	
Colcombe, Riché		X	
Drago, Mike		X	
Granger, Michael E		X	
Sullivan, Brian M.	X		
Baroody, Benjamin C.	X	X	
Cahill, Michael D.	X	X	
DiSilvestro, Linda A.	X	X	
~~Soucy, Timothy A.~~ Mike O'Brian	X		
Bouchard, Donald J.	X		
~~Adjutant, Joshua O~~ Crystal Lloyd	X		
MacKenzie, Mark S.	X		
Schultz, Kristina M.	X		
LeClerc, Daniel J	X		
TOTAL VOTE:	10	10	

Sullivan
DiSylvestro

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/9/2023 12:04:41 PM
Roll Call Committee Registers Report

2023 SESSION

Labor, Industrial and Rehabilitative Services

Bill #: SB 42 Motion: Amendment Acceptance #: 1799 Exec Session Date: May 25, 202

Members	YEAS	Nays	NV
Infantine, William J. Chairman	X		
Seaworth, Brian Vice Chairman	X		
Avellani, Lino M.	X		
Prout, Andrew J.	X		
Love, David C.	X		
Boyd, Stephen E.	X		
Mason, James L.	X		
Colcombe, Riché	X		
Drago, Mike	X		
Granger, Michael E	X		
Sullivan, Brian M.		X	
Baroody, Benjamin C.		X	
Cahill, Michael D.		X	
DiSilvestro, Linda A.		X	
~~Soucy, Timothy A.~~ Mike O'Brian		X	
Bouchard, Donald J.		X	
~~Adjutant, Joshua O~~ Crystal Lloyd		X	
MacKenzie, Mark S.		X	
Schultz, Kristina M.		X	
LeClerc, Daniel J		X	
TOTAL VOTE:	10	10	

1st: Seconded

Sec.: Avallani

does not Pass

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/9/2023 12:04:41 PM
Roll Call Committee Registers Report

2023 SESSION

Labor, Industrial and Rehabilitative Services

Bill #: SB 42 Motion: ITL AM #: _____ Exec Session Date: May 25, '23

Members	YEAS	Nays	NV
Infantine, William J. Chairman	X		
Seaworth, Brian Vice Chairman	X		
Avellani, Lino M.	X		
Prout, Andrew J.	X		
Love, David C.	X		
Boyd, Stephen E.	X		
Mason, James L.	X		
Colcombe, Riché	X		
Drago, Mike	X		
Granger, Michael E	X		
Sullivan, Brian M.		X	
Baroody, Benjamin C.		X	
Cahill, Michael D.		X	
DiSilvestro, Linda A.		X	
~~Soucy, Timothy A.~~ Mike O'Brian		X	
Bouchard, Donald J.		X	
~~Adjutant, Joshua O~~ Crystal Lloyd		X	
MacKenzie, Mark S.		X	
Schultz, Kristina M.		X	
LeClerc, Daniel J		X	
TOTAL VOTE:	10	10	

Sec. Avelani

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON SB 42-FN

BILL TITLE: **relative to overpayment of unemployment compensation.**

DATE: **April 13, 2023**

LOB ROOM: **305-307** **Time Public Hearing Called to Order:** **10:08 a.m.**

Time Adjourned: **10:45 a.m.**

Committee Members: Reps. Seaworth, Schultz, Avellani, Love, S. Boyd, Mason, Colcombe, Drago, Granger, Baroody, M. Cahill, Soucy, MacKenzie and LeClerc

Bill Sponsors:

Sen. Whitley	**Sen. Watters**	**Sen. D'Allesandro**
Sen. Rosenwald	**Sen. Carson**	**Sen. Fenton**
Sen. Perkins Kwoka	**Sen. Innis**	**Sen. Prentiss**
Sen. Soucy	**Sen. Lang**	**Rep. C. McGuire**
Rep. Wolf	**Rep. Wilhelm**	

TESTIMONY

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

- Senator Whitley - discussed for many years; federal unemployment currently does not charge interest. 22 states already ditched interest. Only where fraud is not an issue.
- Dawn McKinney - support for this bill. Confusion with pandemic and overpayment from the chaos.
- Deputy Commissioner Richard Lavers - neutral on the bill. Department pursues fraud aggressively. Non fraud over payments determined to be at fault or without fault (department screws up) 2022 = 2,400 overpaid (2.7 million)

Respectfully submitted,
Rep. Schultz, Clerk

House Remote Testify

Labor, Industrial and Rehabilitative Services Committee Testify List for Bill SB42 on 2023-04-13

Support: 32 Oppose: 5 Neutral: 1 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane	Signed Up
Lang, Senator Tim	Sanbornton, NH kathryn.cummings@leg.state.nh.us	An Elected Official	Senate District 2	Support	No	No	3/23/2023 1:44 PM
soucy, donna	manchester, NH donna.soucy@leg.state.nh.us	An Elected Official	SD 18	Support	No	No	3/28/2023 10:22 AM
Rosenwald, Cindy	Nashua, NH cindy.rosenwald@leg.state.nh.us	An Elected Official	SD 13	Support	No	No	3/28/2023 10:41 AM
Watters, David	Dover, NH david.watters@leg.state.nh.us	An Elected Official	Myself	Support	No	No	3/28/2023 11:13 AM
Perkins Kwoka, Rebecca	Portsmouth, NH rebecca.perkinskwoka@leg.state.nh.us	An Elected Official	Myself	Support	No	No	3/28/2023 11:21 AM
Smith, Julie	Nashua, NH cantdog@comcast.net	A Member of the Public	Myself	Oppose	No	No	3/30/2023 1:52 PM
Casino, Joanne	Concord, NH joannecasino@comcast.net	A Member of the Public	Myself	Support	No	No	4/9/2023 6:54 PM
Damon, Claudia	Concord, NH cordsdamon@gmail.com	A Member of the Public	Myself	Support	No	No	4/9/2023 6:56 PM
Blanchard, Sandra	Loudon, NH sandyblanchard3@gmail.com	A Member of the Public	Myself	Support	No	No	4/9/2023 7:13 PM
Beauchain, Brenda	Fremont, NH bbfly728@yahoo.com	A Member of the Public	Myself	Oppose	No	No	4/9/2023 7:30 PM
Beauchain, Edward	Fremont, NH ed@forwater.com	A Member of the Public	Myself	Oppose	No	No	4/9/2023 7:40 PM
Perencevich, Ruth	Concord, NH rperence@comcast.net	A Member of the Public	Myself	Support	No	No	4/9/2023 8:44 PM
Ellermann, Maureen	Concord, NH ellermannf@aol.com	A Member of the Public	Myself	Support	No	No	4/10/2023 6:18 AM

Willing, Maura	Concord, NH Maura.Willing@Comcast.net	A Member of the Public	Myself	Support	No	No	4/10/2023 8:46 AM
Jones, Andrew	Pembroke, NH arj11718@yahoo.com	A Member of the Public	Myself	Support	No	No	4/10/2023 10:00 AM
Devore, Gary	Pembroke, NH torin_asheron@yahoo.com	A Member of the Public	Myself	Support	No	No	4/10/2023 10:04 AM
Robinson, Steven	Northwood, NH Nikkiandme@yahoo.com	A Member of the Public	Myself	Oppose	No	No	4/10/2023 10:29 AM
Robinson, Karen	Northwood, NH KarenRobinson578@gmail.com	A Member of the Public	Myself	Oppose	No	No	4/10/2023 10:32 AM
Hackmann, Kent	Andover, NH hackmann@uidaho.edu	A Member of the Public	Myself	Support	No	No	4/10/2023 10:40 AM
Englund, Alfrieda	Munsonville, NH ditaenglund43@gmail.com	An Elected Official	Myself	Support	No	No	4/10/2023 12:05 PM
Moore, Susan	Franconia, NH susan.moore.franconia@gmail.com	A Member of the Public	Myself	Support	No	No	4/10/2023 1:40 PM
Bissex, Hannah	Rindge, NH hannahinrindge@gmail.com	A Member of the Public	Myself	Support	No	No	4/10/2023 3:25 PM
Merlone, Lynn	Rindge, NH prulone@gmail.com	A Member of the Public	Myself	Support	No	No	4/10/2023 3:29 PM
Hershey, Jane	Rindge, NH janelhershey@gmail.com	A Member of the Public	Myself	Support	No	No	4/10/2023 3:29 PM
Holt, Kimberley	Concord, NH kimberleyholt2301@gmail.com	A Member of the Public	Myself	Support	No	No	4/10/2023 4:22 PM
Hatch, Sally	Concord, NH sallyhatch@comcast.net	A Member of the Public	Myself	Support	No	No	4/10/2023 5:24 PM
Thomas, A	Rindge, NH annekerosie@gmail.com	A Member of the Public	Myself	Support	No	No	4/10/2023 9:02 PM
Martin, Patricia	Rindge, NH pmartin2894@yahoo.com	A Member of the Public	Myself	Support	No	No	4/10/2023 9:37 PM
Laker-Phelps, Gail	Chichester, NH lpsart@tds.net	A Member of the Public	Myself	Support	No	No	4/11/2023 12:46 PM
Walker, Deborah Klein	Meredith, NH debbie.walker@earthlink.net	A Member of the Public	Myself	Support	No	No	4/11/2023 5:43 PM
Rettew, Ann	Concord, NH abrettew@gmail.com	A Member of the Public	Myself	Support	No	No	4/11/2023 7:14 PM

Gordon, Laurie	Weare, NH Lgord23@yahoo.com	A Member of the Public	Myself	Support	No	No	4/12/2023 8:18 AM
Lamphier, Regan	Nashua, NH reganburkelamphier@gmail.com	An Elected Official	Myself	Support	No	No	4/12/2023 9:38 AM
Brennan, Nancy	Weare, NH burningnan14@gmail.com	A Member of the Public	Myself	Support	No	No	4/12/2023 10:01 AM
Brennan, Arthur	Weare, NH arete201314@gmail.com	A Member of the Public	Myself	Support	No	No	4/12/2023 10:02 AM
Fenton (SD 10), Senator Donovan	Keene, NH donovan.fenton@leg.state.nh.us	An Elected Official	Myself	Support	No	No	4/12/2023 1:48 PM
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Neutral	No	No	4/13/2023 10:25 AM
Altschiller, Senator Debra	SD24, NH kevin.condict@leg.state.nh.us	An Elected Official	Myself	Support	No	No	4/13/2023 3:26 PM

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # SB 42 Date 4/13/23

Committee LABOR

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Richard Lavers			NH Employment Security		
Dawn McKinney			NH Legal Assistance	✓	

Susan Moore

SB 42-FN - AS INTRODUCED

2023 SESSION

23-0875
05/04

SENATE BILL ***42-FN***

AN ACT relative to overpayment of unemployment compensation.

SPONSORS: Sen. Whitley, Dist 15; Sen. Watters, Dist 4; Sen. D'Allesandro, Dist 20; Sen. Rosenwald, Dist 13; Sen. Carson, Dist 14; Sen. Fenton, Dist 10; Sen. Perkins Kwoka, Dist 21; Sen. Innis, Dist 7; Sen. Prentiss, Dist 5; Sen. Soucy, Dist 18; Sen. Lang, Dist 2; Rep. C. McGuire, Merr. 27; Rep. Adjutant, Graf. 16; Rep. Wolf, Merr. 7; Rep. Wilhelm, Hills. 40

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill provides that the state shall not charge interest on the collection of an overpayment of unemployment compensation unless the person knowingly or willfully made a false statement in their application for benefits.

- -

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.

23-0875
05/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to overpayment of unemployment compensation.

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

1 Unemployment Compensation; Overpayment Penalties. Amend RSA 282-A:165, IV to read as follows:

IV. The commissioner shall collect any overpayment created under this chapter by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156***, except as provided in paragraph V,*** and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount withheld against the overpayment until it is repaid in full.

2 New Paragraph; Unemployment Compensation; Overpayment Amend RSA 282-A:165 by inserting after paragraph IV the following new paragraph:

V. The commissioner shall not charge interest on overpayments unless the person willfully made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase any benefit or other payment under this chapter, either for oneself or any other person pursuant to RSA 282-A:161 or RSA 282-A:164.

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

LBA
23-0875
1/10/23

SB 42-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to overpayment of unemployment compensation.

FISCAL IMPACT: [X] State [ ] County [ ] Local [ ] None

	Estimated Increase / (Decrease)			
STATE:	**FY 2023**	**FY 2024**	**FY 2025**	**FY 2026**
Appropriation	$0	$0	$0	$0
Revenue	$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	$0	$0	$0	$0
Funding Source:	[ ] General [ ] Education [ ] Highway [X] Other - Administrative Contribution (RSA 282-A:140)			

METHODOLOGY:

This bill provides that the state shall not charge interest on the collection of an overpayment of unemployment compensation unless the person knowingly or willfully made a false statement in their application for benefits.

The Department of Employment Security provided the following information concerning interest charged on collection of an overpayment of unemployment compensation:

- Under existing law, interest on overpaid benefits accrues at the rate of 1% per month with few exceptions. However, an individual is only required to repay the State if the individual is determined to be at fault with respect to the overpayment. If the Department or an employer caused benefits to be overpaid, then the individual is not required to repay the benefits and thus does not accrue any interest.
- While an individual may be determined to be at fault in causing the overpaid benefits, this does not necessarily mean the individual acted fraudulently. To be considered at fault, they must be found to have made a material statement or misrepresentation which they knew or should have known was inaccurate, or have failed or caused another to fail to disclose a material fact that they knew or should have known was material in obtaining benefits.
- In situations where the individual is determined to be at fault and is determined to have acted willfully or intentionally, the situation would be considered fraudulent.

- If the individual is determined to be at fault in causing the benefits to be overpaid, but it is determined this was the result of negligence and not a willful or intentional conduct, the overpaid benefits would be considered non-fraudulent.
- Interest accrues when the individual is at fault in causing the benefits to be overpaid, whether the overpayment is deemed to be the result of fraud or not. There are mitigating circumstances such as the Commissioner's ability to waive interest that is $50.00 or less if the waiver is deemed to be "for the best interests of the state."
- Interest does not accrue on overpayments paid within 60 days "from the date of mailing of the final decision creating the overpayment."
- As charging interest is generally considered to be a matter of state law, this proposal likely would not raise a conformity issue with the United States Department of Labor.
- The money received from overpayment interest is deposited into the Administrative Contribution fund at RSA 282-A:140. During Fiscal year 2022, the Department collected $91,115 in interest from non-fraud overpaid benefits.

As is customary with all proposed legislation seeking to amend state law governing the unemployment compensation program, once the bill becomes public the Department will submit a request for compliance and conformity review to the United States Department of Labor and ask that their review be expedited.

It is assumed that any fiscal impact would occur after FY 2023.

AGENCIES CONTACTED:

Department of Employment Security